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

MAILED
FEB 22 2012
OFFICE OF PETITIONS

In re
Lindbergh, et al.
Application No. 61/057,777
Filed: May 30, 2008
Attorney Docket No. TRCO130719

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed January 30, 2012.

The fee deficiency submission under 37 CFR 1.28 of $145 for the provisional application filing fee hereby accepted.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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

MAILED
MAR 31 2011
OFFICE OF PETITIONS

In re Application of	:	
Jay Dittmer	:	
Application No. 61/060,968	:	NOTICE
Filed: June 12, 2008	:	
Attorney Docket No.: 3156.269US01	:	

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**.

Status as a small entity has been changed.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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BANNER & WITCOFF, LTD
ATTORNEYS FOR CLIENT NUMBER 007131
10 SOUTH WACKER DR.
SUITE 3000
CHICAGO IL 60606

MAILED

OCT 12 2011

OFFICE OF PETITIONS

In re Application of	:	
Michelle Nichols	:	
Application No. 61/061,987	:	DECISION ON PETITION
Filed: June 16, 2008	:	
Attorney Docket No. 007131.00265	:	

This is a decision on the Petition to Expunge Parts of Original Disclosure Under MPEP § 724.05(IV) And 37 CFR § 1.183, filed July 3, 2008, which is being treated as a petition requesting that the requirement of 37 CFR 1.59(a) be waived or suspended pursuant to 37 CFR 1.183.

The petition under 37 CFR 1.183 is **DISMISSED**.

MPEP 724.05 (IV) is directed to expungement of information forming part of the original disclosure which is normally prohibited by 37 CFR 1.59(a)(2) and requires a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.59(a). 37 CFR 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations which is not a requirement of the statutes may be suspended or waived by the Commissioner.

Petitioner requests that certain material from the originally filed disclosure be expunged as this material depicts potentially confidential customer information. Specifically, petitioner notes that page 23 depicts a potentially customer account balance and other specified pages identify a particular bank name or logo.

Page 23 of the specification shows a "Deposit Lifecycle" chart that includes the legend "Bank of America" and the bank logo. There is a "funds available" box on the chart that shows two dollar amounts. The bank title and logo for Bank of America appear to be used in an exemplary manner as is the dollar amounts shown in the funds available box. Petitioner has not convincingly shown how this information constitutes confidential customer information. Further, petitioner indicates that pages 3, 7, 11, 12, 19, 23, 24, 26 and 35 identify a bank name or logo. At least pages 3 and 7 do not show any bank name or logo.

For the reasons above petitioner has not demonstrated an extraordinary situation where justice requires the suspension or waiver of 37 CFR 1.59(a).

For this reason, the petition is dismissed.

Telephone inquiries regarding this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

Cc: Banner & Witcoff, LTD
1100 13th Street N.W.
Suite 1200
Washington, D.C. 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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KASTLEHOUSE HOME COMFORT ACCESSORIES AND TOYS
P.O. BOX 25374
WINSTON-SALEM NC 27114

MAILED
DEC 07 2010
OFFICE OF PETITIONS

In re Application of	:	
Bobbie A. Bullock	:	
Application No. 61/064,146	:	ON PETITION
Filed: February 19, 2008	:	
For: KASTLEHOUSE TM HOME	:	
COMFORT ACCESSORIES AND	:	
KASTLEHOUSE TOYS	:	

This is a decision on the communication filed September 16, 2010, which is being treated as a renewed petition under the unintentional provisions of 37 CFR 1.137(b), to revive the above-identified application. This is also a decision on the request for refund filed with the above petition on September 16, 2010.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

The request for refund is Granted-in part.

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 Provisional Application mailed March 7, 2008.

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

As stated in the decision mailed February 20, 2009:

The required petition fee of $810.00 has not been received.

As to the inquiry regarding the payment of $145.00, the payment has been applied to the filing fee ($110.00) and the surcharge fee of ($25). A balance of $10.00 remains.

As to the Notice of Abandonment, the Notice was mailed to applicant to inform applicant that the application was abandoned for failure to reply to the Notice mailed March 7, 2008.

Further, even though applicant submitted an extension of time on January 2, 2009, without the fee, 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).

As to the renewed petition filed September 16, 2010, petitioner has again failed to pay the required petition fee of $810.00 (small entity). Therefore, no further consideration will be provided on the above petition, absent the required petition fee of $810.00. The application **remains abandoned**.

As to the Request for Refund:

Applicant is entitled to the excess balance of $10.00 as indicated above. The only payment received in the above application is that of $145.00 received on October 15, 2008, and applied as indicated above. Applicant request that an extension of time fee be applied to Application No. 61/282,400. However, applicant is informed that **no** extension of time fees were ever submitted with the request for extensions of time filed in the above identified application. Further, the Office will not transfer the fees paid in one application to another. Accordingly, the excess balance of $10.00 is being refunded by check to applicant.

Applicant may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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MAILED

SEP 23 2010

OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
CHRYSLER CENTER
666 Thiard Avenue, 24th Floor
New York NY 10017

In re Application of	:	
Gabriel Bitton et al.	:	
Application No. 61/067,424	:	DECISION ON PETITION
Filed: February 27, 2008	:	
Attorney Docket No. 36238-512P01US	:	

This is a decision on the renewed petition under 37 CFR 1.59(b), filed June 24, 2010, to expunge information from the above identified application.

The petition is **granted**.

Petitioner requests that documents filed in connection with a petition under 37 CFR 1.48(d), filed September 24, 2009, be expunged from the record. Petitioner states that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public.

The petition fee set forth in 37 CFR 1.17(g) was paid with the first petition filed October 23, 2009 and resubmitted with the instant renewed petition. Only one petition fee is required, the second fee submission has been refunded to petitioner's deposit account.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

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

The expunged material has been removed from the official file.

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

THE FEDDE LAW FIRM
218 ORCHARD AVE.
WEBSTER GROVES MO 63119

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Eliot Herman	:	
and Monica Schmidt	:	ON PETITION
Application No. 61/076,616	:	
Filed: June 28, 2008	:	
Atty Docket No. #HS P270609	:	

This is in response to the "PETITION UNDER 37 C.F.R. 1.182 TO CHANGE INVENTOR'S NAME," filed December 21, 2010.

For the reasons stated herein, the petition is **dismissed as unnecessary**. Nonetheless, the inventor's name has been changed in the records of the Office.

Petitioner states that inventor Schmidt's name was correctly given on the cover page of the above-identified provisional application; however, it was incorrectly set forth in the Application Data Sheet concurrently filed therewith. Further, there is no change of individual but an incorrect or incomplete name was erroneously given. Petitioner requests correction of the name from "Monica S. Schmidt" to "Monica A. Schmidt." Petitioner submits a supplemental Application Data Sheet showing this correction.

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

inventor's name is taken from the oath or declaration, or any subsequently filed application data sheet.

Receipt of the supplemental Application Data Sheet showing the correct inventor name is acknowledged. A review of the application shows that the inventor's name has already been corrected in the records of the Office. A copy of the corrected filing receipt showing the correction is enclosed.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/076,616	06/28/2008		325	#HS P270609		

CONFIRMATION NO. 9600

CORRECTED FILING RECEIPT

65429
THE FEDDE LAW FIRM
218 ORCHARD AVE.
WEBSTER GROVES, MO 63119

OC000000046089273

Date Mailed: 02/18/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Eliot M. Herman, St. Louis, MO;
Monica A. Schmidt, St. Louis, MO;

Power of Attorney: The patent practitioners associated with Customer Number 65429

If Required, Foreign Filing License Granted: 07/25/2008

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/076,616**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

PROTEIN STORAGE IN PLANTS

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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WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

MAILED
AUG 19 2010
OFFICE OF PETITIONS

In re Application of
Daniel G. Nocera, et al.
Application No. 61/084,948
Filed: July 30, 2008
Attorney Docket No.: M0925.70224US01

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 18, 2010, to revive the above-identified provisional application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed April 15, 2009. The notice set a two-month period to respond and required (1) a provisional application cover sheet under 37 CFR 1.51(c)(1), or an Application Data Sheet (ADS) identifying either the city and state or city and foreign country of the residence of each inventor; (2) the surcharge as set forth in 37 CFR 1.16(g) and the statutory basic filing fee. This decision precedes the mailing of a Notice of Abandonment. On June 18, 2010, the present petition was filed.

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

In this regard, petitioner submitted an ADS and the requisite surcharge and basic filing fee; however, the ADS is not signed in accordance with 37 CFR 1.33 and 10.18. See also 37 CFR 1.4(d) for the form of the signature.

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]

Telephone inquiries concerning this decision should 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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BOSTON, MA 02210-2206

MAILED
OCT 29 2010
OFFICE OF PETITIONS

In re Application of :
Daniel G. Nocera, et al. :
Application No. 61/084,948 : ON PETITION
Filed: July 30, 2008 :
Attorney Docket No.: M0925.70224US01 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed September 7, 2010, to revive the above-identified application.

The application became abandoned on June 16, 2009 for a failure to timely respond to a Notice to File Missing Parts mailed April 15, 2009. On June 18, 2010, a petition under 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed August 18, 2010. On September 7, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $220 filing fee, $50 surcharge and a supplemental Application Data Sheet; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay. Accordingly, the failure to timely reply to the Notice of April 15, 2009 is accepted as being unintentionally delayed.

Petitioner is reminded that subject to the provisions of 35 U.S.C. § 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Cosmic Descent, LLC.
29 Belmont Ave
Enfield CT 06082

MAILED

SEP 29 2010

OFFICE OF PETITIONS

In re Application of :
Les Okrasa :
Application No. 61/085,899 : ON PETITION
Filed: August 4, 2008 :
For: Process of Manufacture of Loft :

This is a decision on the petitions filed under 37 CFR 1.181 and 37 CFR 1.183 filed January 16, 2010.

The petition under 37 CFR 1.183 is dismissed. The petition is not accompanied by the required petition fee.
The petition under 37 CFR 1.181 is dismissed.

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

Petitioner requests that the revival of the above-identified from abandoned status, the conversion of the provisional application to a non- provisional application, and the suspension the rules to waive the petition and filing fees. Petitioner contends that the fees should be waived because applicant did not have sufficient money to pay the required fees. Petitioner insists that the Office has the capability to suspend the "rules" to allow for treatment on the merits without the benefit of the petition fee.

APPLICABLE RULES AND REGULATIONS

35 U.S.C. 41(a) (7)
(7) REVIVAL FEES. — On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, $1,500, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be $500.

§ 1.183 Suspension of rules.
In an extraordinary situation, when justice re-quires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f)

35 U.S.C. 111 Application.
PROVISIONAL APPLICATION. —
(1) AUTHORIZATION. —A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include —
(A) a specification as prescribed by the first paragraph of section 112 of this title; and
(B) a drawing as prescribed by section 113 of this title.
(2) CLAIM. —A claim, as required by the second through fifth paragraphs of section 112, shall not be required in a provisional application.
(3) FEE. —
(A) The application must be accompanied by the fee required by law.
(B) The fee may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.
(C) Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee was unavoidable or unintentional.

Petitioner's arguments have been considered but determined to not be persuasive. This application was held abandoned on October 15, 2008 because applicant failed to submit a timely reply to the August 14, 2008 Notice to File Missing Parts. As such when petitioner filed the correspondence on August 3, 2009 which was treated as a petition, the petition was dismissed on November 16, 2009. The petition to convert the application to a non-provisional application was dismissed as petitioner failed to provide the $130.00 processing fee as required under 37 CFR 1.17(i) and the petition to convert was not filed prior to the abandonment of the application. As such the application cannot be converted to a non-provisional application.

Petitioner's request that the fees are waived is dismissed. A petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

It is noted that petitioner has failed to provide the $400.00 petition fee which is required under 37 CFR 1.183. Further the "rules" which petitioner seeks waiver cannot be waived as the petition and filing fees are required by statue and thus cannot be waived.

For the reasons discussed above the petition must be dismissed.

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 regarding this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHNS HOPKINS TECHNOLOGY TRANSFER
100 N. CHARLES ST.
5TH FLOOR
BALTIMORE MD 21201

MAILED
APR 15 2011
OFFICE OF PETITIONS

In re Application:	:	
Ronald Ouwerkerk	:	
Application No. 61/088,374	:	ON PETITION
Filed: August 13, 2008	:	
Attorney Docket No. P05147-01	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed February 28, 2011.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HUFFMAN LAW GROUP, P.C.
1900 MESA AVE.
COLORADO SPRINGS CO 80906

MAILED

JAN. 18 2012

OFFICE OF PETITIONS

In re Application of	:	
Hawk Wu	:	
Application No. 61/095,032	:	DECISION ON PETITION
Filed: 09/08/2008	:	
Attorney Docket No. VIT.08-0031-US	:	

This is in response to petition under 37 CFR 1.182 and request for corrected filing receipt filed December 27, 2011.

Petitioners request that the Office correct the inventor's name from his informal name, Hawk Wu, to his formal name, Chung-Che Wu, and to issue a corrected filing receipt. A Statement of Inventor Chung-Che Wu and a $130.00 petition fee accompany the petition. Petitioners did not provide a general authorization to charge their Deposit Account for any necessary fees.

The Office notes that the current fee for consideration of a petition under 37 CFR 1.182 is $400.00. Therefore, the petition fee is insufficient in the amount of $270.00.

The Office notes that a request to correct the inventor's name will not be entertained unless accompanied by both a petition under 37 CFR 1.182 and the appropriate petition fee as set forth in 37 CFR 1.17(f). Accordingly, the petition is dismissed.

If petitioners wish to seek reconsideration, petitioners must submit a "Renewed Petition Under 37 CFR 1.182" accompanied by the balance of $270.00.

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

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

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

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

Correspondence may also be submitted electronically via EFS-Web.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HUFFMAN LAW GROUP, P.C.
1900 MESA AVE.
COLORADO SPRINGS CO 80906

MAILED

JAN 31 2012

OFFICE OF PETITIONS

In re Application of
Chung-Che Wu
Application No. 61/095,032
Filed: 09/08/2008
Attorney Docket No. VIT.08-0031-US

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.182, filed January 23, 2012, to correct the inventor's name and issue a corrected filing receipt.

Petitioners request that the Office correct the inventor's name from his informal name, Hawk Wu, to his formal name, Chung-Che Wu, and to issue a corrected filing receipt. A Statement of Inventor Chung-Che Wu accompanies the petition. Additionally, petitioners have provided the appropriate petition fee set forth in 37 CFR 1.17(f).

Accordingly, the petition under 37 CFR 1.182 is **GRANTED**.

The Office records have been updated to reflect the correction of the inventor's name as requested. A corrected filing receipt accompanies this decision.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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
61/095,032	09/08/2008		210	VIT.08-0031-US		

CONFIRMATION NO. 8167

CORRECTED FILING RECEIPT

23669
HUFFMAN LAW GROUP, P.C.
1900 MESA AVE.
COLORADO SPRINGS, CO 80906

OC000000052269190

Date Mailed: 01/30/2012

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Chung-Che Wu, Jhonghe City, TAIWAN;

Power of Attorney:
James Huffman--35549

If Required, Foreign Filing License Granted: 09/12/2008

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/095,032**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No
Title

QUICKLY RESUMING MECHANISM FOR NON-VOLATILE SLEEP STATE

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

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The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation and commercialization of new technologies. The USA offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to encourage, facilitate, and accelerate business investment. To learn more about why the USA is the best country in the world to develop technology, manufacture products, and grow your business, visit SelectUSA.gov.

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SEP 13 2010

OFFICE OF PETITIONS

WOLF GREENFIELD (Microsoft Corporation)
C/O WOLF, GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re Application of	:	
Iyigun, et al.	:	
Application No. 61/097,079	:	ON PETITION
Filed: September 15, 2008	:	
Attorney Docket No. M1103.70548US00	:	

This is a decision on the petition filed October 22, 2009, requesting that the name of the second inventor for the application be changed.

The petition is **dismissed**.

The instant petition required a payment of a fee of $400.00. The petition fee did not accompany the instant petition, although the petition states that the fee was enclosed. The renewed petition must be accompanied by the petition fee of $400.00 or an authorization to charge a deposit account for the same.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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 DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/099,567	09/24/2008	Les Okrasa	

CONFIRMATION NO. 8050

Cosmic Descent, LLC.
29 Belmont Ave
Enfield, CT 06082

Date Mailed: 09/22/2010

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **09/13/2009,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the fee required by 37 CFR 1.17(i).

It was received after the abandonment of the provisional application.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to the Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
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JOHNS HOPKINS TECHNOLOGY TRANSFER
100 N. CHARLES ST.
5TH FLOOR
BALTIMORE MD 21201

MAILED
MAY 04 2011
OFFICE OF PETITIONS

In re Application of	:	
Okamura et al.	:	
Application No. 61/106,683	:	ON PETITION
Filed: October 20, 2008	:	
Attorney Docket No. P10476-01	:	

This is a notice regarding your request, February 24, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

This application is no longer entitled to small entity status.

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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
61/114,794	11/14/2008	Arata AJIRO	336222US8X

CONFIRMATION NO. 4344

CONVERSION REQUEST

22850
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

OC000000046940915

Date Mailed: 04/05/2011

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **11/16/2009,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It was received after the expiration of twelve months after the filing date of the provisional application.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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 NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/116,633	11/20/2008	Les Okrasa	

CONFIRMATION NO. 1672

Cosmic Descent, LLC.
29 Belmont Ave
Enfield, CT 06082

Date Mailed: 09/22/2010

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **10/29/2009,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the fee required by 37 CFR 1.17(i).

It was received after the abandonment of the provisional application.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to the Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FEB 14 2011

OFFICE OF PETITIONS

EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON MA 02205

In re Application of	:	
Akerstrom, et al.	:	
Application No. 61/135,338	:	ON PETITION
Filed: July 18, 2008	:	
Attorney Docket No. 82250P(45579)	:	

This is a decision on the petition under 37 CFR 1.53(e) filed on November 23, 2010, requesting that the Office accord the above-identified provisional application a filing date of July 18, 2008.

On July 18, 2008 applicants deposited the above-identified provisional application without drawings. On August 8, 2008, the Office mailed a Notice of Incomplete Provisional Application, indicating that the application had not been accorded a filing date because the application had been deposited without drawings, and stating that the filing date would be the date of receipt of the omitted drawings.

By the instant petition, petitioner requests that the filing date of July 18, 2008 be accorded the application with no drawing figures present on filing.

A review of the provisional application papers deposited on July 18, 2010, reveals that the application contains method claims. As stated in MPEP § 601.01(f), it is the practice of the USPTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is <u>not</u> necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

As this application contains method claims, it should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g). MPEP

§ 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed, indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the Notice of Incomplete Provisional Application was sent in error. The above-identified application may be accorded a filing date of July 18, 2008, without any drawings.

Accordingly, the petition is **granted** to the extent indicated above.

The $400.00 petition fee is unnecessary and will be refunded to the Deposit Account.

This application is being forwarded to the Office of Patent Application Processing to accord the application a filing date of July 18, 2008, with "0" sheets of drawings, and to mail a corrected filing receipt.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MOTION GEAR FITNESS EQUIPMENT AND APPAREL
P.O. BOX 25374
WINSTON-SALEM, NC 27114

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Bobbie Bullock	:	
Application No. 61/136,394	:	DECISION ON PETITION
Filed: August 28, 2008	:	
Attorney Docket No. None	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 16, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is $1,620. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated. *See* 37 CFR 1.27.

Since the petition in the above-identified application was *not* accompanied by payment of the required fee, no consideration on the merits can be given to the petition until the required fee is received.

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 undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MOTION GEAR FITNESS EQUIPMENT AND APPAREL
P.O. BOX 25374
WINSTON-SALEM NC 27114

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Bobbie Bullock	:	
Application No. 61/136,394	:	REQUIREMENT FOR ADDITIONAL
Filed: August 28, 2008	:	INFORMATION
For: MOTION GEAR FITNESS EQUIPMENT	:	
AND APPAREL	:	

REQUIREMENT FOR ADDITIONAL INFORMATION

A communication was submitted to the USPTO on July 8, 2011.

The communication is not clear as to what applicant is requesting. Also, the communication is not legible to read.

A decision on communication will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit applicant to clarify the above matter.

Applicant may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, applicant is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

The response should include a cover letter entitled "Response to Requirement for Additional Information."

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

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED
OCT 25 2010
OFFICE OF PETITIONS

MUNCY, GEISSLER, OLDS & LOWE, PLLC
4000 LEGATO ROAD
SUITE 310
FAIRFAX, VA 22033

In re Application:	:	
Frederick W. Zeyfang	:	
Application No. 61/136,437	:	NOTICE
Filed: September 5, 2008	:	
Attorney Docket No. 3948-0126PUS1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission filed on August 25, 2010, 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 application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

61141094UNITED 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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DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS IN 46268

MAILED
SEP 02 2010
OFFICE OF PETITIONS

In re Application of:	:	
Cory CUI et al.	:	
Application No. 61/141,094	:	DECISION ON PETITION
Filing Date: December 29, 2008	:	
Attorney Docket No. 66638 US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed on December 23, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed February 04, 2009, which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on April 05, 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 provisional cover sheet and the fees required by the Notice, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of February 04, 2009 is accepted as having been unintentionally delayed.

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

The application is being referred to the Office of Patent Application Processing for further processing.

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

Paper No.

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

MAILED
APR 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Stanek Nick	:	
Application Number: 61/143,135	:	NOTICE
Filing or 371(c) Date: 01/07/2009	:	
Attorney Docket Number: 3156.298US01	:	

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

The Office no longer investigates or rejects original or reissue patents 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 patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

DWood

Douglas Wood
Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
DEC 09 2010
OFFICE OF PETITIONS

LUIZ CLAUDIO DE MAGALHAES
R. INCONFIDENTES, 1075/402 – SAVASSI
BELO HORIZONTE 30140-120 BR

In re Application of	:	
Padula	:	
Application No. 61/146,045	:	ON PETITION
Filed: January 21, 2009	:	
For: DEVICE FOR KINESITHERAPY AND	:	
TREATMENT OF THE OROFACIAL PAIN	:	
AND TEMPOROMANDIBULAR	:	
DISORDERS	:	

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

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts Of Provisional Application (Notice) mailed February 3, 2009. A Notice of Abandonment was mailed on October 14, 2009.

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

As to item (1), the Provisional Application Cover Sheet submitted with the petition on August 12, 2010, failed to identify applicant's residence (City and either State or Foreign Country) as required by the Notice mailed February 3, 2009. Additionally, the Provisional Application Cover Sheet submitted on August 12, 2010, is not legible to read.

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

By mail: Mail Stop PETITIONS
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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
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By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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LUIZ CLAUDIO DE MAGALHAES
R. INCONFIDENTES, 1075/402 – SAVASSI
BELO HORIZONTE 30140 -120 BR

MAILED
APR 28 2011
OFFICE OF PETITIONS

In re Application of
Padula
Application No. 61/146,045
Filed: January 21, 2009
For: DEVICE FOR KINESITHERAPY AND TREATMENT OF THE OROFACIAL PAIN AND TEMPOROMANDIBULAR DISORDERS

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed February 7, 2011 and resubmitted on February 8, 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 required provisional cover sheet (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice mailed February 3, 2009, 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 Patent Application Processing for pre-examination processing.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cc:

MAGALHAES & ASSOCIADOS, INT.
R.INCONFIDENTES, 1075/402
BELO HORIZONTE MG 30140-20
BRAZIL

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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ALSTON & BIRD LLP
PIONEER HI-BRED INTERNATIONAL, INC.
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

MAILED

JAN 11 2012

OFFICE OF PETITIONS

In re Application of	:	
Wu et al.	:	
Application No. 61/147,367	:	DECISION ON PETITION
Filed: January 26, 2009	:	
Attorney Docket No. 035718/384714	:	

This is a decision on the petition under 37 CFR 1.182, filed May 25, 2011, to change the name of inventor "Emily Wu" to – Xinli E. Wu --.

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 the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/147,367	01/26/2009		220	035718/384714		

CONFIRMATION NO. 5318

CORRECTED FILING RECEIPT

29122
ALSTON & BIRD LLP
PIONEER HI-BRED INTERNATIONAL, INC.
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

OC000000051912743

Date Mailed: 01/10/2012

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

XINLI E. WU, Johnston, IA;
MYEONG-JE CHO, Alameda, CA;
ZUO-YU ZHAO, Johnston, IA;

Power of Attorney: The patent practitioners associated with Customer Number 29122

If Required, Foreign Filing License Granted: 02/12/2009

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/147,367**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

METHODS FOR IMPROVING MONOCOT TRANSFORMATION

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

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MAILED

SEP 09 2010

OFFICE OF PETITIONS

MORGAN LAW OFFICES, PLC
4635 S. LAKESHORE DR. SUITE 131
TEMPE, AZ 85282

In re Application of
Jeffrey A. Black
Application No. 61/157,021
Filed: March 3, 2009
Attorney Docket No.: PP00565

ON PETITION

This is a decision in response to the renewed petition under 37 CFR 1.137(b), filed July 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed March 12, 2009. A Notice of Abandonment was mailed November 18, 2009. On May 7, 2010, a petition under 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed July 1, 2010. In response on July 7, 2010, the present petition was filed.

The renewed petition is found to satisfy the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a requisite filing fee and the $25 surcharge; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay. Accordingly, the failure to timely reply to the Notice of March 12, 2009 is accepted as being unintentionally delayed.

Subject to the provisions of 35 U.S.C. § 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JOHNS HOPKINS TECHNOLOGY TRANSFER
100 N. CHARLES ST.
5TH FLOOR
BALTIMORE, MD 21201

MAILED
APR 26 2011
OFFICE OF PETITIONS

In re Application of Hager et al.	:	
Application No. 61/162,007	:	Letter
Filing Date: March 20, 2009	:	
Attorney Docket No. P10692-01	:	

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed February 24, 2011.

The deficiency payment of $110 is hereby accepted.

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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Jonathan P. O"Brien, Ph.D.
Honigman Miller Schwartz & Cohn LLP
350 East Michigan Avenue
Suite 300
Kalamazoo MI 49007

MAILED

SEP 10 2010

OFFICE OF PETITIONS

In re Application of	:	
John Demattei et al.	:	
Application No. 61/162,148	:	DECISION ON PETITION
Filed: March 20, 2009	:	
Attorney Docket No. 223306/08-152 P/120747	:	

This is a decision on the Petition to Remove Documents which is being treated as a petition under 37 CFR 1.59(b), filed March 22, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitions filed under 37 CFR 1.59(b) require a petition fee set forth in §1.17(g) which is currently $200. The petition did not include the required petition fee and thus the petition cannot be considered on the merits until the fee is paid.

Petitioner's attention is drawn to MPEP 724.06 (II) for the requirements of a petition to expunge information submitted unintentionally.

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Jonathan P. O"Brien, Ph.D.
Honigman Miller Schwartz & Cohn LLP
350 East Michigan Avenue
Suite 300
Kalamazoo MI 49007

MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Application of
John Demattei et al.
Application No. 61/162,148
Filed: March 20, 2009
Attorney Docket No. 223306/08-152 P/120747

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.59(b), filed September 29, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the Request to Correct Inventorship filed March 22, 2010, be expunged from the record. Petitioner states that this request was filed in error.

The petition is deficient because there is no statement that:

> (B) the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
> (C) the information has not otherwise been made public;
> (D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted.

Petitioner is directed to MPEP 724.05(II).

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
www.uspto.gov

MICHAEL GRABERT
PO BOX 140972
IRVING TX 75014

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Michael GRABERT	:	
Application No. 61/168,566	:	DECISION ON PETITION
Filed: April 11, 2009	:	
Attorney Docket No.	:	

This is a decision on the petition, filed December 28, 2009, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely respond to the Office action of May 28, 2009, which set a two (2) month shortened statutory period for reply. Accordingly, a reply was due on or before July 28, 2009.

Petitioner asserts that a proper response to the Office action dated May 28, 2009 was mailed to the office in a timely manner. Petitioner has provided the Office with a copy of a U.S. Postal Service Certified Mail Receipt with the date of July 28, 2009. However, the U.S. Postal Service Certified Mail Receipt is not an Expressed Mail Receipt which itemizes and properly identifies the papers which are being filed.

A review of the office the records indicates that a reply was received by the Office on August 19, 2009, which made the response untimely filed. Therefore, the petition can not be granted.

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

"unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810.00 petition fee.

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

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

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

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

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

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

Thurman K. Page

Thurman Page
Petitions Examiner
Office of Petitions

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Timothy Meehan
c/o Plasmet Corporation
PO Box 1266
2345 Stevens Dr
Richland WA 99352-1266

MAILED
NOV 09 2010
OFFICE OF PETITIONS

In re Application of

Meehan, et al.

Application No. 61/169,201

Filed: September 1, 2009

Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), May 24, 2010, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to respond in a timely manner to the Notice to File Missing Parts of Provisional Application mailed September 11, 2009. The notice set a shortened period for reply of two months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). No response was received within the allowable period and the application became abandoned in November 12, 2009. A Notice of Abandonment was mailed July 7, 2010.

The provisional application cover sheet filed May 24, 2010, is noted.

Revival of a provisional application does not require payment of the petition fee, however, petitioner is required to pay a $25.00 surcharge for the late filing of the provisional application coversheet. It is noted that the amount of $810.00 for the petition fee is of record in the provisional application. The amount of $25.00 will be used to satisfy the requirement of the surcharge. The remaining amount of $785.00 will be refunded, in due course.

A provisional application may be revived so as to be pending for a period no longer than twelve months from its filing date. See 35 USC 11(b)(5). This application is now expired as a matter of law.

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

/Kenya A. Laughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JETTER & ASSOCIATES, P.A.
8295 NORTH MILITARY TRAIL
SUITE B
PALM BEACH GARDENS FL 33410

MAILED
DEC 07 2010
OFFICE OF PETITIONS

In re Application of	:	
Rajiv SINGH et al.	:	
Application No. 61/169,551	:	DECISION ON PETITION
Filed: April 15, 2009	:	
Attorney Docket No. SM90001P	:	

This is a decision on the petition under 37 CFR 1.53(e), filed June 29, 2010, to accord the original filing date.

On April 29, 2010, the Office mailed a Notice of Incomplete Provisional Application, stating that a filing date has not been accorded to the above-identified application, indicating that the application was deposited without drawings and that 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter.

Petitioner asserts that drawings were submitted at the time of filing and request that the application be accorded the original filing date of April 15, 2009. Petitioner has submitted drawings and an electronic filing receipt indicating that drawings were submitted.

A review of the Office records indicates that drawings were **not necessary** for the filing of the subject application and that the requirements under 35 USC 113 have been met.

Accordingly, this application is entitled to a filing date of April 15, 2009, and has been so accorded.

In view of the above, the petition is **GRANTED**. The petition fee of $400.00 will be credited to petitioner's deposit account.

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

This application file is being referred to the Office of Patent Application Processing.

/Thurman K. Page/
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

Paper No.

Parks IP Law LLC
1117 PERIMETER CENTER WEST
SUITE E402
ATLANTA GA 30338

MAILED
SEP 07 2010
OFFICE OF PETITIONS

In re Application of	:	
Connie Lofton	:	DECISION ON PETITION
Application No. 61/170,460	:	
Filed: April 17, 2009	:	
Atty Docket No. 1201-001	:	

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.37(b)" filed February 9, 2010.

The petition is **GRANTED**.

The above-identified provisional application became abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application mailed April 30, 2009. The Notice set a two-month period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply received and no extension of time obtained, the application became abandoned effective July 1, 2009. A courtesy Notice of Abandonment was mailed on January 8, 2010.

In response, applicant filed the instant petition, requesting revival based on unintentional delay. The petition included the required reply in the form of payment of the statutory basic filing fee and late surcharge; the required statement of unintentional delay; and the petition fee for revival pursuant to 37 CFR 1.137(b).

This petition is granted to this provisional application for the 12-month period following the filing of the provisional

application. This provisional application is not considered pending after 12 months from its filing date.

The application is being returned to the Office of Patent Application Processing for processing of the response to the Notice to File Missing Parts, payment of the required fees, filed February 9, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

VIRGINIA TECH INTELLECTUAL PROPERTIES INC.
2200 KRAFT DRIVE, SUITE 1050
BLACKSBURG VA 24060

MAILED

MAR 17 2011

OFFICE OF PETITIONS

NOTICE

In re Application of :
Davalos et al. :
Application Number: 61/171,564 :
Filing or 371(c) Date: 04/22/2009 :
Attorney Docket Number: VTIP 09-140 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on January 18, 2011.

The Office no longer investigates or rejects original or reissue patents 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 patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas Wood
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

OCT 29 2010

OFFICE OF PETITIONS

THE NATH LAW GROUP
112 South West Street
Alexandria VA 22314

In re Application of
Rotem, et al.
Application No.: 61/172,748
Filed: April 26, 2009
Attorney Docket No. 30712

ON PETITION

This is in response to the petition under 37 CFR 1.137(b) filed March 19, 2010.

The petition under 37 CFR 1.137(b) is **granted**.

A "Notice to File Missing Parts of Provisional Application" (the "Notice") was mailed by the Office on June 16, 2009, allowing a shortened period of reply of two-months from its mailing date. Extensions of time set for reply were available pursuant to 37 CFR 1.136(a). No response was received within allowed period, and the application became abandoned on August 17, 2009. A Notice of Abandonment was mailed on March 2, 2010.

The provisional coversheet and surcharge filed March 19, 2010, is noted.

It is noted that the provisional application expired April 26, 2010, by operation of law.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
DEC 16 2011
OFFICE OF PETITIONS

In re Application of	:	
James Johnston et al.	:	
Application No. 61/174,270	:	NOTICE
Filed: April 30, 2009	:	
Attorney Docket No. **50248/020001**	:	

This is a notice regarding your request filed August 24, 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
www.uspto.gov

Alston & Bird LLP/ Solazyme, Inc
Bank of America Plaza
101 South Tyson Street, suite 4000
Charlotte NC 28280

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application	:	
Scott Franklin et al.	:	
Application No. 61/174,357	:	NOTICE
Filed: April 30, 2009	:	
Attorney Docket No. 057518-395193	:	

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

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

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. 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.

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

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

MAILED
JAN 12 2012
OFFICE OF PETITIONS

In re Application of	:	
Chow, et al.	:	
Application No. 61/174,802	:	ON PETITION
Filed: May 1, 2009	:	
Attorney Docket No. **ONCOZYME-0002-V01**	:	

This is a decision on the petition under 37 CFR 1.182, filed December 22, 2011, to correct the name of the first named inventor cited on this application in USPTO records.

The petition is **granted.**

The name of the second named inventor for the above-cited application is corrected to "Chiaoli Yeh."

A corrected filing receipt is enclosed.

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
61/174,802	05/01/2009		135	ONCOZYME-0002-V01		

CONFIRMATION NO. 1168

CORRECTED FILING RECEIPT

23599
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201

OC000000051896759

Date Mailed: 01/10/2012

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Terry Chow, Anjou, CANADA;
Chiaoli Yeh, Anjou, CANADA;
David Griller, Ottawa, CANADA;

Power of Attorney:
Anthony Zelano--27969

If Required, Foreign Filing License Granted: 05/22/2009
The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/174,802**
Projected Publication Date: None, application is not eligible for pre-grant publication
Non-Publication Request: No
Early Publication Request: No
**** SMALL ENTITY ****
Title

Pentamidine Combinations for Treating Cancer

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing

of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of

State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

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

PETER W. LANG
1523 1ST STREET
KIRKLAND, WA 98033

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of
Peter W. Lang
Application No. 61/178,436
Filed: May 14, 2009
Attorney Docket No. 53468

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 4, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 18, 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 18, 2009.

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), (2) and (3).

With respect to item 1:

A review of the record reveals that petitioner did make a bonified attempt to pay the required fees as required by the Notice to File Missing Parts (Notice) mailed May 26, 2009, however, the fees were returned unpaid.

With respect to the petition:

The petition filed is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

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

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);

(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;

(3) An assignee as provided for under §3.71(b) of this chapter; or

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

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition filed August 3, 2010 is unsigned by the inventor, the petition is considered to be an improper.

With respect to item 2:

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is **$1620**. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee required fee is **$810**, which is half the amount indicated. See 37 CFR 1.27.

The petition in the above-identified application was **not** by payment of the required fee. No consideration on the merits can be given that petition until all required fee is received. If petitioner intends to file a renewed petition the required fees include $810 for the renewed petition under the unintentional standards of 37 CFR 1.137(b), the filing fee and surcharge of $270 and an additional $50 surcharge for the returned check fee, must be submitted before the application can be revived.

With respect to item 3:

The instant petition fails to contain the required statement of unintentional delay. 37 CFR 1.37(b) states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (II)(C) and (D)).]

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

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

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

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

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

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

April M. Wise
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Margareta Shahar
50/5 Dinur Street
Kefar Saba 44245 IL

MAILED

AUG 24 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of
Margareta Shahar
Application No. 61/179,732
Filed: May 20, 2009

This is in response to the communication, filed April 14, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On June 1, 2009, the Office mailed a Notice to File Missing Parts (Notice), which set a two (2) month shortened statutory period to reply. The application was held abandoned for failure to submit a timely response. On February 17, 2010, the Office mailed a Notice of Abandonment.

In the present petition, the petitioner states that the $110 basic filing fee that was required by the Notice was in fact not due because the petitioner paid the $110 on May 20, 2009 with the petitioner's American Express Card.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the file record indicates that the petitioner did submit a payment of $110 for the basic filing on the application of 61/179,737. There is no record of the $110 basic filing fee being paid in the above-identified application. Since no response to the Notice to File Missing Parts of June 1, 2009 was timely received, the application became abandoned by law. Therefore, the abandonment cannot be withdrawn at this time.

In the present petition, petitioner did not submit sufficient documentary evidence to show that a response was timely filed. Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application 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 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, 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 Terri Johnson at (571) 272-2991.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

The Law Office of Michael E. Kondoudis
888 16th Street, N.W.
Suite 800
Washington DC 20006

MAILED
DEC 03 2010
OFFICE OF PETITIONS

In re Application of	:	
Shmuel Bukshpan et al.	:	
Application No. 61/180,897	:	DECISION ON PETITION
Filed: May 25, 2009	:	
Attorney Docket No. **604-H-02-US**	:	

This is a decision on the renewed petition filed May 11, 2010, requesting a withdrawal of holding of abandonment under 37 CFR 1.181 in the above-identified application.

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

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

This application was held abandoned for failure to reply to the Notice to File Missing Parts of Provisonal Application (Notice), mailed June 3, 2009, which set a period of two (2) months for reply. A Notice of Abandonment was mailed on February 17, 2010.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner contends that the Notice of Abandonment was mailed in error since a timely reply was submitted by facsimile on July 8, 2009. 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 instant petition still lacks item (2) in that a copy of "PTO-2038 form indicating payment of $25" (form) has not been submitted. Petitioner's reference to "Exhibit D" included with the instant petition has been noted. However, "Exhibit D" does not include a copy of the form that was allegedly transmitted by facsimile on July 8, 2009. Therefore, the requested relief of withdrawing the holding of abandonment cannot be granted.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810 for a small entity**;

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

A form for filing a petition to revive an unintentionally abandoned application 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 petition fee.

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

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

By 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 JoAnne Burke at (571) 272-4584.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of :
Dagli, et al. :
Application No. 61/184,776 : ON PETITION
Filed: June 5, 2009 :
Attorney Docket No. 18796.3 :
For: THIN AND FLAT SOLAR
COLLECTOR-CONCENTRATOR

This is a decision on the petition under 37 CFR 1.137(b), filed November 29, 2010, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice to File Missing Parts of Provisional Application, mailed June 29, 2009, which set a two month shortened statutory period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a) and no reply being received in the Office, this application became abandoned on August 30, 2009. A Notice of Abandonment was mailed on March 16, 2010.

Applicants have submitted a proper reply to the June 29, 2009 Notice in the form of the $110.00 basic filing fee and a $25.00 surcharge for its late filing, a proper statement of the unintentional nature of the delay in responding to the June 29, 2009 Notice, and the $810.00 petition fee. Accordingly, the petition under 37 CFR 1.137(b) is granted.

Petitioners are reminded that a provisional application may be revived so as to be pending for a period no longer than 12 months from its filing date. This application is hereby deemed revived until midnight on June 5, 2010, when it went abandoned as a matter of law.

After the mailing of this decision, the file will be returned to the Office of Patent Application Processing for further processing.

Telephone inquiries 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

DAVIS WRIGHT TREMAINE, LLP/SEATTLE
1201 THIRD AVENUE, SUITE 2200
SEATTLE, WA 98101-3045

MAILED

JAN 21 2011

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Ken Hey :
Application No. 61/186,881 :
Filed: June 14, 2009 :
Attorney Docket No. 60433-016PR0 :

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

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply to the Notice to File Missing Parts of Provisional Application, mailed June 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 25, 2009. A Notice of Abandonment was mailed March 9, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of application data sheet and surcharge of $25, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

Petitioner is reminded that this application will not be regarded as pending under any circumstances after twelve months from its filing date of June 14, 2009. See 35 USC 119(e)(3).

This application file is being referred to the Office of Patent Application Processing (OPAP) for further pre-examination processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059. Telephone inquiries related to OPAP processing should be directed to their hotline at (271) 272-4000

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

DEC 20 2010

OFFICE OF PETITIONS

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

In re Application of	:	
Eyal Emmanuel et al.	:	
Application No. 61/187,683	:	ON PETITION
Filed: June 17, 2009	:	
Attorney Docket No. 46600	:	

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission and loss of small entity status filed November 16, 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.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

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

Your fee deficiency submission in the amount of $110, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Eyal Emmanuel et al.	:	
Application No. 61/193,141	:	ON PETITION
Filed: October 30, 2008	:	
Attorney Docket No. 45155	:	

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission and loss of small entity status filed November 16, 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.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

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

Your fee deficiency submission in the amount of $110, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HOME OFFICE INTERIOR DECOR STUDIOS
P.O Box 25374
WINSTON - SALEM NC 27114

MAILED
JAN 11 2012
OFFICE OF PETITIONS

In re Application of	:	
Bobbie Bullock	:	
Application No. 61/193342	:	ON PETITION
Filing or 371(c) Date: 11/15/2008	:	
Title of Invention:	:	
HOME OFFICE INTERIOR DECOR	:	
STUDIOS AND HOME	:	
DECOR STUDIOS	:	

This Decision is in response to the correspondence filed December 8, 2011, wherein Applicant requests this Office accord application papers filed with the present correspondence a filing date of September 24, 2009. The correspondence is properly treated as a petition under 37 CFR 1.53€.

The petition is **dismissed**.

Petitioner files the present petition and avers that application papers filed with the present petition were filed in this Office on September 24, 2009, and requests this Office accord the copy of the application papers filed with the present petition a filing date of September 24, 2009[1].

A review of the copy of the application papers filed with the present petition reveal that the application papers do not contain a Certificate of Mailing in accordance with 37 CFR 1.8, or a copy of a return-receipt postcard or Electronic Acknowledgment Receipt, or a copy of an Express Mail Mailing Label (accord 37 CFR 1.10). Nor has applicant submitted a petition fee.

Applicant is advised that the fee for a petition requesting this Office accord a filing date is currently $400.00.

Before the merits of a petition to accord an application a filing date may be considered, Petitioner must submit the petition fee.

Applicant is further advised that application papers are accorded as a filing date, the date that they are received in this Office as stated in 37 CFR 1.6 (reproduced in relevant part below), unless the papers are filed in accordance with 37 CFR 1.8 (reproduced in relevant part below) or

[1] The present petition asserts only that the application was filed on 9-2009; however, a review of the copy of the Declaration of the putatively-filed application reveals that the filing date alleged is 9-24-2009.

1.10 (reproduced in relevant part below). Applicant is also advised that the best evidence of what was filed in this Office is an applicant's return-receipt postcard in accordance with MPEP 608.01(p) (reproduced below)[2].

Petitioner is further advised that it is an applicant's responsibility to demonstrate compliance with 37 CFR 1.8, 37 CFR 1.10 or the MPEP 608.01(p), and that absent any proof of the date that the application papers were filed on a date other than the date that the application papers were received in this Office, then it is the date of receipt of the application papers (in this instance the date that the copy of the application papers were received – with the present petition on December 8, 2011 – that will be accorded as the filing date of the application papers in accordance with 37 CFR 1.6.

37 CFR 1.6, Receipt of correspondence, in relevant part states that

> (a) Correspondence received in the Patent and Trademark Office is stamped with the date of receipt except as follows:
> (1) The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted by facsimile under paragraph (a)(3) of this section, or filed electronically under paragraph (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.
> (2) Correspondence filed in accordance with § 1.10 will be stamped with the date of deposit as "Express Mail" with the United States Postal Service.

Further to this, 37 CFR § 1.10, Filing of correspondence by "Express Mail", provides that

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

[2] An acknowledgment receipt is a legal equivalent of a post card receipt described in the Manual of Patent Examining Procedure (MPEP), Section 503. See, 1315 OG 57; 72 Fed. Reg. 2770 (23 Jan 2007).

"Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

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

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

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

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

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

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

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

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

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

> (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
> (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
> (4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.
> (f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

The Manual of Patent Examining Procedure ("MPEP") advises an applicant to file a return-receipt postcard with all application papers.

The MPEP 608.01(p) provides as follows:

> If a receipt for any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. To ensure the receipt of return receipt postcards, users must either: (A) purchase already stamped postcards from the United States Postal Service (USPS) or affix postage stamps to their postcards; or (B) if a postage meter is used, ensure that the meter postmark does not show the date. Any return receipt postcard containing a dated meter postmark may not be delivered by the USPS to the address provided on the postcard.
> Users are reminded that they are solely responsible for placing the proper postage on self-addressed postcards that are submitted to the USPTO for the purpose of obtaining a receipt for correspondence being filed in the USPTO. Users should check with the USPS regarding postage and what size cards are acceptable to the USPS. Any return receipt postcard that does not contain sufficient postage or is

not acceptable may not be delivered by the USPS to the address provided on the postcard, and, if returned to the USPTO, may be discarded.
The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail.
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 the items listed thereon on the date stamped thereon by the USPTO. The identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).
The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items.

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

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

Telephone inquiries concerning *this matter* should be directed to attorney Derek Woods at (571) 272-3232. All other inquiries concerning examination procedures or status of the application should be directed to the appropriate Office[3].

/DLW/

Derek L. Woods
Attorney
Office of Petitions

[3] 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 CFR 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
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MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Ayal, et al.	:	
Application No. 61/193,830	:	NOTICE
Filed: December 29, 2008	:	
Attorney Docket No. 45326	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Bib Data Sheet

CONFIRMATION NO. 4768

SERIAL NUMBER	FILING OR 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
61/193,830	12/29/2008 RULE			45326

APPLICANTS

Sharon Ayal, Kiryat-Ekron, ISRAEL;
Eyal Emmanuel, Rechovot, ISRAEL;
Zur Granevitze, Petach-Tikva, ISRAEL;
Alex Diber, Rishon-LeZion, ISRAEL;
Basia Judith Vinocur, Rechovot, ISRAEL;
Hagai Karchi, Moshav Sitriya Doar-Na Emek Soreq, ISRAEL;
Yoav Herschkovitz, Givataim, ISRAEL;

**** CONTINUING DATA ****************************

**** FOREIGN APPLICATIONS ***********************

IF REQUIRED, FOREIGN FILING LICENSE GRANTED
** 02/03/2009

		STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
Foreign Priority claimed	☐ yes ☐ no	ISRAEL	8		
35 USC 119 (a-d) conditions met	☐ yes ☐ no ☐ Met after Allowance				
Verified and Acknowledged	Examiner's Signature Initials				

ADDRESS
67801

TITLE
Polynucleotides, polypeptides encoded thereby, and methods of using same for increasing abiotic stress tolerance and/or biomass and/or yield in plants expressing same

FILING FEE RECEIVED		
110	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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Anind K. Dey
Human-Computer Interaction Institute
Carnegie Mellon
5000 Forbes Avenue
Pittsburgh PA 15213

MAILED
FEB 17 2012
OFFICE OF PETITIONS

In re Application of	:	
Dey et al.	:	
Application No. 61/195,104	:	DECISION ON PETITION
Filed: October 3, 2008	:	PURSUANT TO
Attorney Docket No.: 08-106	:	37 C.F.R. § 1.137(A)
Title: LIFELOGGING SUPPORT FOR	:	
PEOPLE WITH EPISODIC MEMORY	:	
IMPAIRMENTS	:	

This is a decision on the petition submitted on January 31, 2012, pursuant to 37 C.F.R. § 1.137(a).

This petition is **DISMISSED**.

BACKGROUND

This application was filed on October 3, 2008. On November 21, 2008, the Office mailed a Notice of Missing Parts (first notice) to the address of record which required the basic filing fee.

On December 15, 2008, the basic filing fee was received, along with a letter.

On December 29, 2008, a second Notice of Missing Parts (second notice) was mailed, which set a shortened statutory period for reply of two months and required either a provisional application cover sheet or an Application Data Sheet (ADS). The Office further mailed a letter indicating that the first notice may be disregarded. No response to the second notice 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 March 1, 2009. A notice of abandonment was mailed on September 9, 2008.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

37 C.F.R. § 1.33(a) sets forth, *in pertinent part*:

> (a) Correspondence address and daytime telephone number. When filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing. If no correspondence address is specified, the Office may treat the mailing address of the first named inventor (if provided, see §§ 1.76 (b)(1) and 1.63 (c)(2)) as the correspondence address. The Office will direct, or otherwise make available, all notices, official letters, and other communications relating to the application to the person associated with the correspondence address.

37 C.F.R. § 1.4(c) sets forth, *in toto*:

> Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must (emphasis added) be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects

MPEP § 601.03 sets forth, *in pertinent part*:

> The required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made. Thus, the mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without mention of the fact that an address change is being made would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file record.

ANALYSIS

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

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(l);
(3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has included the petition fee.

Requirement (2) of 37 C.F.R. § 1.137(a) has been satisfied. The fourth requirement is not applicable, as a terminal disclaimer is not required.[1]

Neither the first nor the third requirement of 37 C.F.R. § 1.137(a) has not been met, as will now be pointed out.

Regarding the first requirement of 37 C.F.R. § 1.137(a), the requirement has not been satisfied because Petitioner did not submit the required reply to the Office action. The required reply is a reply which would have been sufficient to have avoided abandonment, had such reply been timely filed.[2] In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. § 1.137(a)(1) (*i.e.*, either a provisional application cover sheet or an ADS which can be entered and made of record). It is noted that a supplemental ADS was included with this petition, however the supplemental ADS cannot be entered as it has not been titled as a "Supplemental Application Data Sheet."[3]

Regarding the third requirement of 37 C.F.R. § 1.137(a), Petitioner has not established that the entire period of abandonment was unavoidable. A discussion follows.

Petitioner argues that the letter of December 15, 2008 included a change of address request. The change of address was not effectuated by the Office however, and therefore both the second notice and the notice of abandonment were sent to "the old address," which is the "general address for Carnegie Mellon University."

Petitioner further asserts that neither the second notice nor the notice of abandonment was forwarded to the University's technology transfer department, however it does not appear that Petitioner has firsthand knowledge of this assertion.

A review of the record shows that no correspondence address was specified on filing. A Provisional Application Cover Sheet was included, however the correspondence address is listed as merely "Pittsburgh, PA, 15213-3890." The header of the specification contains the street address "Human-Computer Interaction

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1 See 37 C.F.R. § 1.137(d)(1).
2 See M.P.E.P. § 711.03(c).
3 MPEP § 601.05 indicates that any ADS that is submitted to "correct, modify, or augment the original application data, the ADS, even though it is the first-filed ADS, must be titled 'Supplemental Application Data Sheet." 37 C.F.R. § 1.76(c)(2) states that "Supplemental application data sheets...must be titled 'Supplemental Application Data Sheet."

Institute, Carnegie Mellon, 5000 Forbes Avenue, Pittsburgh PA 15213," so this address was entered as the correspondence address.

The letter of December 15, 2008 has been reviewed, and it is noted that it contains two separate requests: a request to correct the inventorship and a change of address request. However, due to the fact that the change of address request was submitted as a part of the request to correct inventorship, it was not effectuated by the Office, pursuant to 37 C.F.R. § 1.4(c).

It follows that the record does not support a filing that the entire period of delay was unavoidable.

CONCLUSION

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 Pursuant to 37 C.F.R. § 1.137(a)." This is not a final agency action within the meaning of 5 U.S.C § 704.

Any subsequent filing pertaining to the abandonment of this application should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[4] hand-delivery,[5] or facsimile.[6]

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.

Alternatively, Petitioner may also file a petition pursuant to 37 C.F.R. § 1.137(b).

It is noted that two different addresses are listed on this petition, and each differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the addresses given on the petition differ from the address of record. If Petitioner desires to receive future correspondence regarding

4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
6 (571) 273-8300- please note this is a central facsimile number.

this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner at each of the two addresses on this petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[7] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions

cc: Dennis M. Carleton
Fox Rothschild LLP
625 Liberty Avenue, 29th Floor
Pittsburgh, PA 15222

Dennis M. Carleton
Fox Rothschild LLP
997 Lenox Drive, Building #3
Lawrenceville, NJ 08648

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Muncy, Geissler, Olds & Lowe, PLLC
4000 Legato Road
Suite 310
FAIRFAX VA 22033

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of :
Frederick W. Zeyfang :
Application No. 61/202,242 : NOTICE
Filed: February 9, 2009 :
Attorney Docket No. **3948-0128PUS1** :

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

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

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

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of James W. Hellwege 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, James W. Hellwege desires to be acknowledged as the attorney of record in this file, the appropriate power of attorney documents must be submitted

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARTIN D MOYNIHAN d/b/a PRTSI INC
PO BOX 16446
ARLINGTON VA 22215

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re
Emmanuel, et al.
Application No. 61/202,459
Filed: March 2, 2009
Attorney Docket No. 45546

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed November 16, 2010.

The fee deficiency submission under 37 CFR 1.28 of $245 is hereby accepted.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

MAILED
FEB 22 2011
OFFICE OF PETITIONS

Randall E. Kraft
42 Parsons Street
Norwalk OH 44857

In re Application of	:	
Randall E. Kraft	:	
Application No. 61/205,912	:	DECISION ON PETITION
Filed: January 26, 2009	:	UNDER 37 C.F.R.
Title: METHOD FOR FORMING A	:	§ 1.137(A)
REFLECTIVE SURFACE IN THE	:	
INJECTION MOLDING AND PART	:	
FORMING PROCESS	:	

This is a decision on the petition filed January 18, 2011, under 37 C.F.R. § 1.137(a), to revive the above-identified application. A duplicate copy of this petition was received on January 21, 2011.

This provisional application was filed on January 26, 2009. Pursuant to 35 U.S.C. § 111(5), a provisional application "shall be regarded as abandoned 12 months after the filing date of such application." Consequently, this provisional application became abandoned at midnight on January 26, 2010.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(l);
(3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
(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 included the petition fee along with a statement of facts which contains the assertion that he lacked the financial ability to "pay the fees required or work on the process." It is unclear what Petitioner is referring to: perhaps he is attempting to indicate that he was financially incapable of filing a non-provisional application which claims priority to this provisional application prior to the twelve-month anniversary of the filing of this provisional application?

The second requirement of Rule 1.137(a) has been met. The fourth requirement of Rule 1.137(a) is not applicable, as a terminal disclaimer is not required.[1]

The first and second requirements of Rule 1.137(a) have not been satisfied. Petitioner will note the revival of a provisional application subsequent to the expiration of the 12-month period is explicitly prohibited by 35 U.S.C. § 111(5), which sets forth, *in toto*:

> ABANDONMENT.-Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and <u>shall not be subject to revival after such 12-month period</u> (emphasis added).

It follows that this petition must be **DISMISSED**. Pursuant to 35 U.S.C. § 111(5), <u>this provisional application cannot be revived</u>, as the twelve-month period from January 26, 2009 to January 26, 2010 has passed.

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. § 1.137(a)". 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,[2] hand-delivery,[3] or facsimile.[4] Registered

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1 <u>See</u> Rule 1.137(d).
2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

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.

The Office reminds Applicant that the Office cannot waive or suspend the requirements of a statute, as the waiver or suspension of a statute is beyond the discretion or the authority of the Office.[6]

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[7]

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application.

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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 See A. F. Stoddard & Co. v. Dann, 184 U.S. App. D.C. 71, 564 F.2d 556, 1977 U.S. App. LEXIS 11815, 195 U.S.P.Q. (BNA) 97 (1977) ("Executive Branch agencies, such as the PTO, having the obligation to carry out their duties under their authorizing statutes, and if they would avoid an exercise of the powers of another Branch, must in almost every case, follow the strict provisions of the applicable statute.").
7 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).

For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Randall E. Kraft
4132 Anita Ave.
Fort Worth, TX 76109

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOBBIE BULLOCK
P.O. BOX 25374
WINSTON-SALEM NC 27114

MAILED

AUG 23 2010

OFFICE OF PETITIONS

In re Application of :
Bullock : DECISION ON PETITION
Application No. 61/206,351 :
Filed: 29 January, 2009 :
Attorney Docket No. (None) :

This is a decision on the papers filed on 28 June, 2010, and considered as a petition pursuant to 37 C.F.R. §1.183 to suspend the rules nominally, *inter alia*, "for a back dated request or petition/amendment to obtain a filing date (pursuant to 37 C.F.R. §1.53) and combine all entities associated with Elite Business Concepts," and to obtain refunds of fees previously paid and withdrawal of the holding of abandonment (pursuant to 37 C.F.R. §1.181 (no fee)).

NOTES:

Petitioner's *pro se* submission suggests a lack of familiarity with practice before the Office.

(Petitioner may wish to seek the guidance of one registered to practice before the Office, which information may be found at www.uspto.gov.)

While Petitioners need not be registered to practice before the Office (i.e., a registered practitioner), Petitioners nonetheless must comply with Rules of Practice and must be diligent in replying to actions by/from the Office.

Petitioner refers to submissions dating to 2007. However, the instant application was not filed until January 2009. Moreover, the instant application is a provisional application (*see*: The guidance in the Commentary at Manual of Patent Examining Procedure (MPEP) §201.04(b) (http://www.uspto.gov/web/offices/pac/mpep/documents/0200_201_04_b.htm#sect201.04b) and, as such, may not claim priority to any prior application.

Thus the instant application bears no relationship to any other application preceding it.

Moreover, every application is a separate application—*see, inter alia*:

- The regulations at 37 C.F.R. §1.4;
- The guidance in the Commentary at MPEP §501 (http://www.uspto.gov/web/offices/pac/mpep/documents/0500_501.htm#sect501); and
- The guidance in the Commentary at MPEP §2002.02 (http://www.uspto.gov/web/offices/pac/mpep/documents/2000_2002_02.htm#sect2002.02).

It appears that Petitioner over time has filed at least thirty-seven (37) provisional applications, as well as five (5) design applications and three (3) non-provisional utility applications. Nonetheless, it appears that:

- All of the provisional applications either have gone abandoned for failure to timely reply or have ceased to be pending at the expiration of their one- (1-) year statutory spans; and
- None of the design applications or the non-provisional utility applications have been prosecuted to issue.

Petitioner appears not to appreciate, *inter alia*, that:

- Each and all of these applications are individuals unto themselves and—in the absence of an appropriate priority claim—have no relationship to each other;
- Provisional applications cannot be amended after their filing date;
- Provisional applications have a statutory life-span limitation of one (1) year and may not claim priority to any prior application.

Thus, notwithstanding the number of applications previously filed, Petitioner *pro se* appears to be unaware of much of the statutory (35 U.S.C.) , regulatory (37 C.F.R.) and policy (MPEP) constraints on the filing and prosecution of patent applications.

For reasons that are unclear, Petitioner directed the instant petition to an individual to whom the matter was not docketed, indicating therein that he should have "the person under [his] authority to address the issue." This is not appropriate.

The petition pursuant to 37 C.F.R. §1.183 is **DISMISSED;** and the petition as considered pursuant to 37 C.F.R. §1.181is **DISMISSED**; and the petition as considered pursuant to 37 C.F.R. §1.53 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. §1.183." Any extensions of time will be governed by 37 C.F.R. §1.136(a).

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 under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

BACKGROUND

This provisional application was filed on 29 January, 2009.

On 23 February, 2009, the Office mailed a Notice of Missing Parts (statutory filing fee and surcharge for late payment), with reply due absent extension of time on or before 23 A

On 22 April, 2009, Petitioner filed a request and fee for a one- (1-) month extension of time, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

Again on 19 May, 2009, Petitioner filed a request and fee for a one- (1-) month extension of time, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

Again on 26 May, 2009, Petitioner filed a request, but this time without fee, for a one- (1-) month extension of time, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

Again on 1 June, 2009, Petitioner filed a request and fee for a one- (1-) month extension, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

On 22 June Petitioner submitted the previously unpaid filing fee and surcharge—however, Petitioner's delay in submitting a substantive reply to the 23 February, 2009, required a two- (2) month extension of time to make the reply timely, the fee for which was at that time $245.00. Petitioner had paid in error three (3) successive one- (1-) month fees, the total of which was $195.00 (Petitioner is directed to the Office website (www.uspto.gov) and the now-current fee schedule to be found there (http://www.uspto.gov/web/offices/ac/qs/ope/fee2009september15.htm#patapp), and the Office notes that, because fees are changed from time-to-time, Petitioner must go to the website to review the fees required at the time of filing/submission). Thus, Petitioner had failed to pay the proper fees for extension of time: the fees had been underpaid by $50.00.

Thereafter:

- On 22 July, 2009, Petitioner submitted copies of money orders Petitioner appears to indicate that she had tendered to the Office;

- On 4 August, 2009, the Office mailed to Petitioner a Notice of Incomplete Reply, indicating therein that while a filing date had been granted to the instant provisional application, that the reply to the 23 February, 2009, Notice was untimely; and

  —Petitioner had to request and pay for the appropriate extension of time to make the reply timely; and

  —extensions of time had to be requested/paid for until such time that the reply was complete—a schedule of the appropriate fees was included in the Notice;

- On 13 August, 2009, the Office again mailed to Petitioner a Notice of Incomplete Reply, indicating therein that while a filing date had been granted to the instant provisional application, that the reply to the 23 February, 2009, Notice was untimely; and

  —Petitioner had to request and pay for the appropriate extension of time to make the reply timely; and

  —extensions of time had to be requested/paid for until such time that the reply was complete—a schedule of the appropriate fees was included in the Notice;

- On 26 August, 2009, Petitioner appears to have submitted a copy of papers previously filed with the Office on 22 July, 2009;

- On 1 September, 2009, Petitioner submitted a request for extension of time—but submitted no fee;

- After midnight 23 September, 2009, all possible extensions of time has elapsed (*i.e.*, up to five (5) months, for which the fee (as previously indicated in the 13 August, 2009, Notice from the Office to Petitioner) was $1,175.00);

- On 4 November, 2009, the Office appears to have refunded the three (3) $65.00 payments to Petitioner, and so in that context the application would have been deemed abandoned after midnight 23 April, 2009;

- On 11 November, 2009, the Office mailed the Notice of Abandonment;

- On 24 November, 2009, Petitioner filed a petition to revive the application pursuant to 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay—but Petitioner failed to submit with the petition the required fee ($810.00);

- On 6 January, 2010, Petitioner appears to have attempted to communicate with the Office in an effort to understand what had taken place and to present elements of her appreciation of events;

- On 22 March, 2010, Petitioner appears to have attempted to communicate with the Office in an effort to understand what had taken place and to present elements of her appreciation of events;

- On 26 April, 2010, the petition to revive the application pursuant to 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay was dismissed without substantive consideration for Petitioners failure to submit with the petition the required fee ($810.00);

- On 28 June, 2010, Petitioner filed the papers considered as the instant petition.

It is noted with regard to Petitioner's request considered pursuant to 37 C.F.R. §1.181 that—as the guidance is outlined below—it appears from the facts herein that Petitioner is unable to comply with the showing requirements as set forth in the guidance in the Commentary at MPEP §711.03(c)(I).

ANALYSIS

It is noted from the outset that:

Suspension of the rules pursuant to 37 C.F.R. §1.183 may be granted in an "extraordinary situation, when justice requires."

The regulations at 37 C.F.R. §1.183 set forth the conditions required for their invocation:

§1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in §1.17(f). (Emphasis supplied.)

The facts presented on the record do not establish an extraordinary situation: Petitioner has not established sufficiently special circumstances that would require suspension of the rules in the interests of justice.

Moreover, Petitioner neither paid nor authorized a proper fee for the petition pursuant to 37 C.F.R. §1.183, or for any other petition.

The Office will not address substantively a petition absent a fee.

For this reason, and in light of Petitioner's *pro se* status, the Office for this single occasion considered the matter also in light of the regulations at 37 C.F.R. §1.181 (no fee).

To this end the Office:

- Set forth above the detailed history of the matter as it appears from the record and in light of submissions by Petitioner; and

- Noted for Petitioner the requirements under the statutes, rules/regulations and the guidance in the Commentary in the MPEP as set forth above and below.

It is noted 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, with regard to averment of timely reply, in pertinent part:

***

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]

***

The record does not evidence such a showing and it appears that Petitioner is not able to make such a showing.

Moreover, as to provisional applications, the guidance in the Commentary at MPEP. §601.019b) provides:

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[1] *See*: MPEP §711.03(c) (I)(B).

601.01(b) Provisional Applications Filed Under 35 U.S.C. §111(b) [R-3]

A provisional application will be given a filing date in accordance with 37 C.F.R. §1.53(c) as of the date the written description and any necessary drawings are filed in the Office. The filing date requirements for a provisional application set forth in 37 C.F.R. §1.53(c)parallel the requirements for a nonprovisional application set forth in 37 C.F.R. §1.53(b), except that no claim is required. Amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the provisional application.

When the specification or drawing are omitted, 37 C.F.R. §1.53(e) requires that the applicant be notified and given a time period in which to submit the missing element to complete the filing. See MPEP §601.01(f) and §601.01(g) for treatment of applications filed without drawings, or filed without all figures of drawings, respectively.

37 C.F.R. §1.53(c)(1) requires all provisional applications be filed with a cover sheet, which may be an application data sheet (37 C.F.R. §1.76) or a cover letter identifying the application as a provisional application. The Office will treat an application as having been filed under paragraph (b), unless the application is clearly identified as a provisional application. A provisional application, which is identified as such, but which does not have a complete cover sheet as required by 37 C.F.R. §1.51(c)(1) will be treated as a provisional application. However, the complete cover sheet and a surcharge will be required to be submitted at a later date in conformance with 37 C.F.R. §1.53(g).

When the provisional application does not have a complete cover sheet or the appropriate fee, the applicant will be notified pursuant to 37 C.F.R. §1.53(g) and given a time period in which to provide the necessary fee or cover sheet and to pay the surcharge as set forth in 37 C.F.R. §1.16*>(g)< in order to avoid abandonment of the application. The time period will usually be set at 2 months from the date of notification. This time period may be extended under 37 C.F.R. §1.136(a). If the filing fee is not timely paid, the Office may dispose of the provisional application. If no correspondence address has been provided, applicant has 2 months from the filing date to file the basic filing fee, cover sheet, and to pay the surcharge as set forth in 37 C.F.R. §1.16*>(g)< in order to avoid abandonment of the provisional application. Copies of a provisional application will be provided by the USPTO upon request and payment of the fee set forth in 37 C.F.R. §1.19(b) unless the provisional application has been disposed of (see 37 C.F.R. §1.53(e) and (g)).

The basic filing fee must be paid in a provisional application on filing or within the time period set forth in 37 C.F.R. §1.53(g), and the provisional application must be entitled to a filing date under 37 C.F.R. §1.53(c), if any claim for benefits under 35 U.S.C. §119(e) based on that application is made in a subsequently filed nonprovisional application. 37 C.F.R. §1.78(a)(4).

> 37 C.F.R. §1.53(e)(2) requires that any request for review of a refusal to accord an application a filing date be made by way of a petition accompanied by the fee set forth in 37 C.F.R. §1.17*>(f)< (see MPEP § 506.02). (Emphasis supplied.)

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

CONCLUSION

The petition pursuant to 37 C.F.R. §1.183 is **dismissed;** and the petition as considered pursuant to 37 C.F.R. §1.181 is **dismissed**; and the petition as considered pursuant to 37 C.F.R. §1.53 is **dismissed.**

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

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

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

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

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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. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office). See specifically, the regulations at 37 C.F.R. §10.18.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[3]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BOBBIE BULLOCK
P.O. BOX 25374
WINSTON-SALEM NC 27114

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of :
Bullock : DECISION ON PETITION
Application No. 61/206,351 :
Filed: 29 January, 2009 :
Attorney Docket No. (None) :

This is a decision on the papers filed on 7 September, 2010, apparently supplemented on 4 October, 2010, and again considered as a petition pursuant to 37 C.F.R. §1.183 to suspend the rules nominally, *inter alia*, "for refund" of fees previously paid and a petition pursuant to 37 C.F.R. §1.182 for relief otherwise not provided for to combine all entities associated with Elite Business Concepts, and for other relief—the specifics of which are not clear, save that Petitioner states that Petitioner's "acts regarding my request of dates and timing were not preceded (sic) accurate."

NOTES:

Once again it is noted that Petitioner's *pro se* submission suggests a lack of familiarity with practice before the Office.[1]

Petitioner has referred to submissions dating to 2007.

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[1] (Petitioner may wish to seek the guidance of one registered to practice before the Office, which information may be found at www.uspto.gov.)

While Petitioners need not be registered to practice before the Office (i.e., a registered practitioner), Petitioners nonetheless must comply with Rules of Practice and must be diligent in replying to actions by/from the Office.

Petitioner appears not to appreciate that requests for extensions of time:

- are not sought/purchased/obtained in successive one-month requests, but
- rather are obtained in one- (1-) month, two- (2-) month, three- (3-) month, four- (4-) month, or five- (5-) month increments—up to the appropriate maximum statutory period of reply (six (6) months, generally; and
- the cost of a three- (3-) month extension of time is not three (3) times a one- (1) month extension of time, but
- rather the cost is set forth in the Office Fee Schedule (http://www.uspto.gov/web/offices/ac/qs/ope/fee2009september15.htm#patapp).

However, the instant application was not filed until January 2009.

Moreover, the instant application is a provisional application (*see*: The guidance in the Commentary at Manual of Patent Examining Procedure (MPEP) §201.04(b) (http://www.uspto.gov/web/offices/pac/mpep/documents/0200_201_04_b.htm#sect201.04b) and, as such, may not claim priority to any prior application.

Thus the instant application bears no relationship to any other application preceding it.

Moreover, every application is a separate application—*see, inter alia*:

- The regulations at 37 C.F.R. §1.4;
- The guidance in the Commentary at MPEP §501 (http://www.uspto.gov/web/offices/pac/mpep/documents/0500_501.htm#sect501); and
- The guidance in the Commentary at MPEP §2002.02 (http://www.uspto.gov/web/offices/pac/mpep/documents/2000_2002_02.htm#sect2002.02).

It appears that Petitioner over time has filed at least thirty-seven (37) provisional applications, as well as five (5) design applications and three (3) non-provisional utility applications. Nonetheless, it appears that:

- All of the provisional applications either have gone abandoned for failure to timely reply or have ceased to be pending at the expiration of their one- (1-) year statutory spans; and
- None of the design applications or the non-provisional utility applications have been prosecuted to issue.

Petitioner appears not to appreciate, *inter alia*, that:

- Each and all of these applications are individuals unto themselves and—in the absence of an appropriate priority claim—have no relationship to each other;
- Provisional applications cannot be amended after their filing date;
- Provisional applications have a statutory life-span limitation of one (1) year and may not claim priority to any prior application.

Thus, notwithstanding the number of applications previously filed, Petitioner *pro se* appears to be unaware of much of the statutory (35 U.S.C.), regulatory (37 C.F.R.) and policy (MPEP) constraints on the filing and prosecution of patent applications.

Moreover, Petitioner has failed to submit the appropriate petition fee generally pursuant to For reasons that are unclear, Petitioner directed the instant petition to an individual to whom the matter was not docketed, indicating therein that he should have "the person under [his] authority to address the issue." This is not appropriate.

The petition pursuant to 37 C.F.R. §1.183 is **DISMISSED;** and the petition as considered pursuant to 37 C.F.R. §1.182 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. §1.183." Any extensions of time will be governed by 37 C.F.R. §1.136(a).

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

BACKGROUND

This provisional application was filed on 29 January, 2009.

On 23 February, 2009, the Office mailed a Notice of Missing Parts (statutory filing fee and surcharge for late payment), with reply due absent extension of time on or before 23 A

On 22 April, 2009, Petitioner filed a request and fee for a one- (1-) month extension of time, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

Again on 19 May, 2009, Petitioner filed a request and fee for a one- (1-) month extension of time, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

Again on 26 May, 2009, Petitioner filed a request, but this time without fee, for a one- (1-) month extension of time, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

Again on 1 June, 2009, Petitioner filed a request and fee for a one- (1-) month extension, but failed to file at that time a substantive reply to the 23 February, 2009, Notice of Missing Parts.

On 22 June Petitioner submitted the previously unpaid filing fee and surcharge—however, Petitioner's delay in submitting a substantive reply to the 23 February, 2009, required a two- (2) month extension of time to make the reply timely, the fee for which was at that time $245.00. Petitioner had paid in error three (3) successive one- (1-) month fees, the total of which was $195.00 (Petitioner is directed to the Office website (www.uspto.gov) and the now-current fee schedule to be found there (http://www.uspto.gov/web/offices/ac/qs/ope/fee2009september15.htm#patapp), and the Office notes that, because fees are changed from time-to-time, Petitioner must go to the website to review the fees required at the time of filing/submission). Thus, Petitioner had failed to pay the proper fees for extension of time: the fees had been underpaid by $50.00.

Thereafter:

- On 22 July, 2009, Petitioner submitted copies of money orders Petitioner appears to indicate that she had tendered to the Office;

- On 4 August, 2009, the Office mailed to Petitioner a Notice of Incomplete Reply, indicating therein that while a filing date had been granted to the instant provisional application, that the reply to the 23 February, 2009, Notice was untimely; and

  —Petitioner had to request and pay for the appropriate extension of time to make the reply timely; and

  —extensions of time had to be requested/paid for until such time that the reply was complete—a schedule of the appropriate fees was included in the Notice;

- On 13 August, 2009, the Office again mailed to Petitioner a Notice of Incomplete Reply, indicating therein that while a filing date had been granted to the instant provisional application, that the reply to the 23 February, 2009, Notice was untimely; and

  —Petitioner had to request and pay for the appropriate extension of time to make the reply timely; and

  —extensions of time had to be requested/paid for until such time that the reply was complete—a schedule of the appropriate fees was included in the Notice;

- On 26 August, 2009, Petitioner appears to have submitted a copy of papers previously filed with the Office on 22 July, 2009;

- On 1 September, 2009, Petitioner submitted a request for extension of time—but submitted no fee;

- After midnight 23 September, 2009, all possible extensions of time has elapsed (*i.e.*, up to five (5) months, for which the fee (as previously indicated in the 13 August, 2009, Notice from the Office to Petitioner) was $1,175.00);

- On 4 November, 2009, the Office appears to have refunded the three (3) $65.00 payments to Petitioner, and so in that context the application would have been deemed abandoned after midnight 23 April, 2009;

- On 11 November, 2009, the Office mailed the Notice of Abandonment;

- On 24 November, 2009, Petitioner filed a petition to revive the application pursuant to 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay—but Petitioner failed to submit with the petition the required fee ($810.00);

- On 6 January, 2010, Petitioner appears to have attempted to communicate with the Office in an effort to understand what had taken place and to present elements of her appreciation of events;

- On 22 March, 2010, Petitioner appears to have attempted to communicate with the Office in an effort to understand what had taken place and to present elements of her appreciation of events;

- On 26 April, 2010, the petition to revive the application pursuant to 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay was dismissed without substantive consideration for Petitioners failure to submit with the petition the required fee ($810.00);

- On 28 June, 2010, Petitioner filed the papers considered as the instant petition.

The original petition of 28 June, 2010, was dismissed on 23 August, 2010.

The instant petition was submitted, and Petitioner stated therein that the "Analization (sic) of the issues mentioned did not co-join (sic) in opinion."

Petitioner refers to multiple payments, however, in the absence of evidence of receipt of payments—e.g., a receipt card pursuant to MPEP §503 or a FAX Acknowledgement Receipt or an Electronic Acknowledgment Receipt—it is not possible to correlate Petitioner's statements with Office records.

ANALYSIS

It is noted from the outset that:

The regulations at 37 C.F.R. §1.182 provide:

§ 1.182 Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in §1.17(f).

Suspension of the rules pursuant to 37 C.F.R. §1.183 may be granted in an "extraordinary situation, when justice requires." Specifically, the regulations at 37 C.F.R. §1.183 provide:

> **§ 1.183 Suspension of rules.**
>
> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in §1.17(f).

The facts presented on the record do not establish an extraordinary situation: Petitioner has not established any special circumstances that would require suspension of the rules in the interests of justice.

Moreover, Petitioner neither paid nor authorized a proper fee for the petition pursuant to 37 C.F.R. §1.182 or §1.183 (see: to 37 C.F.R. §1.17(f)), or for any other petition.

The Office will not address substantively a petition absent a fee.

For this reason, and in light of Petitioner's *pro se* status, the Office previously considered (and, as noted in the dismissal of 23 August, 2010, "for this single occasion" (emphasis the original)) the matter also in light of the regulations at 37 C.F.R. §1.181 (no fee).

To this end the Office set forth above the detailed history of the matter as it appears from the record and in contrast to the representations of Petitioner.[2] The Office has noted for Petitioner the

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[2] Again it is noted, in light of Petitioner's earlier 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, with regard to averment of timely reply, in pertinent part:

> ***
>
> 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.

requirements under the statutes, rules/regulations and the guidance in the Commentary in the MPEP as set forth above and below.

As to provisional applications, the guidance in the Commentary at MPEP. §601.019b) provides:

> **601.01(b) Provisional Applications Filed Under 35 U.S.C. §111(b) [R-3]**
>
> A provisional application will be given a filing date in accordance with 37 C.F.R. §1.53(c) as of the date the written description and any necessary drawings are filed in the Office. The filing date requirements for a provisional application set forth in 37 C.F.R. §1.53(c)parallel the requirements for a nonprovisional application set forth in 37 C.F.R. §1.53(b), except that no claim is required. Amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the provisional application.
>
> When the specification or drawing are omitted, 37 C.F.R. §1.53(e) requires that the applicant be notified and given a time period in which to submit the missing element to complete the filing. See MPEP §601.01(f) and §601.01(g) for treatment of applications filed without drawings, or filed without all figures of drawings, respectively.
>
> 37 C.F.R. §1.53(c)(1) requires all provisional applications be filed with a cover sheet, which may be an application data sheet (37 C.F.R. §1.76) or a cover letter identifying the application as a provisional application. The Office will treat an application as having been filed under paragraph (b), unless the application is clearly identified as a provisional application. A provisional application, which is identified as such, but which does not have a complete cover sheet as required by 37 C.F.R. §1.51(c)(1) will be treated as a

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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. [2]

***

The record does not evidence such a showing and it appears that Petitioner is not able to make such a showing.

provisional application. However, the complete cover sheet and a surcharge will be required to be submitted at a later date in conformance with 37 C.F.R. §1.53(g).

When the provisional application does not have a complete cover sheet or the appropriate fee, the applicant will be notified pursuant to 37 C.F.R. §1.53(g) and given a time period in which to provide the necessary fee or cover sheet and to pay the surcharge as set forth in 37 C.F.R. §1.16*>(g)< in order to avoid abandonment of the application. The time period will usually be set at 2 months from the date of notification. This time period may be extended under 37 C.F.R. §1.136(a). If the filing fee is not timely paid, the Office may dispose of the provisional application. If no correspondence address has been provided, applicant has 2 months from the filing date to file the basic filing fee, cover sheet, and to pay the surcharge as set forth in 37 C.F.R. §1.16*>(g)< in order to avoid abandonment of the provisional application. Copies of a provisional application will be provided by the USPTO upon request and payment of the fee set forth in 37 C.F.R. §1.19(b) unless the provisional application has been disposed of (see 37 C.F.R. §1.53(e) and (g)).

The basic filing fee must be paid in a provisional application on filing or within the time period set forth in 37 C.F.R. §1.53(g), and the provisional application must be entitled to a filing date under 37 C.F.R. §1.53(c), if any claim for benefits under 35 U.S.C. §119(e) based on that application is made in a subsequently filed nonprovisional application. 37 C.F.R. §1.78(a)(4).

37 C.F.R. §1.53(e)(2) requires that any request for review of a refusal to accord an application a filing date be made by way of a petition accompanied by the fee set forth in 37 C.F.R. §1.17*>(f)< (see MPEP § 506.02). (Emphasis supplied.)

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office). See specifically, the regulations at 37 C.F.R. §10.18.

CONCLUSION

The petition as considered pursuant to 37 C.F.R. §1.182 is **dismissed;** and the petition as considered pursuant to 37 C.F.R. §1.183 is **dismissed.**

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

BOBBIE BULLOCK
P.O. BOX 25374
WINSTON-SALEM NC 27114

In re Application of	:	
Bobbie A. Bullock	:	
Application No. 61/206,351	:	DECISION ON REQUEST FOR REFUND
Filed: January 29, 2009	:	
For: ELITE BUSINESS CONCEPTS DBA	:	
KING CHROME GRILLES AND WHEELS	:	
NEW CENTO TECHNOLOGY AND AUTO	:	
CONCEPTS	:	

This is a decision on the Request For Refund filed June 11, 2011.

The request is **DISMISSED**.

It appears that applicant is requesting a fee of $130.00 to have been submitted on November 16, 2007, in the above application. However, the above application was filed on January 29, 2009. Also, the Office finance records do not show receipt of a petition fee of $130.00 paid in the above application. Therefore, the Office is unclear as to what applicant is requesting a refund of.

In view of the above, the request for refund is dismissed. The Office decision mailed January 25, 2011, outlined in detail all of the fees paid in the above application.

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

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SCHWEITZER CORNMAN GROSS & BONDELL LLP
292 MADISON AVENUE - 19th FLOOR
NEW YORK NY 10017

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Application of :
Groteluschen et al. :
Application No. 61/207,864 :
Filed: March 14, 2008 :
Attorney Docket No. 0288-059P/JAB :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 15, 2010.

The petition is **DISMISSED**.

Petitioner is being provided with a non-extendable **one (1) month** period for reply to comply with the requirements of 37 CFR 1.28.

Petitioner has submitted authorization to charge the large entity for the basic filing fee, search fee, examination fee and multiple dependent fee. However, since the application was converted from a nonprovisional application to a provisional application such fees are not required. Further the record shows the Office did not retain the fees. As such petitioner has failed to properly itemize the deficiency as required by 37 CFR 1.28 (c). The Office is in receipt of the provisional filing fee and the provisional surcharge fee both in small entity. To the extent petitioner wishes to submit the deficiency owed for those fees, a renewed petition which clarifies the fees being submitted should be presented.

The address provided on the petition differs from the correspondence address of record. If appropriate a change of address should be submitted. A courtesy copy will be provided, however all future correspondence will be mailed to the correspondence address of record.

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

By mail: Mail Stop PETITIONS
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Alexandria, VA 22313-1450

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: K & L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111-2950

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SCHWEITZER CORNMAN GROSS & BONDELL LLP
292 MADISON AVENUE - 19th FLOOR
NEW YORK NY 10017

MAILED

MAY 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Groteluschen et al.	:	
Application No. 61/207,864	:	NOTICE
Filed: March 14, 2008	:	
Attorney Docket No. 0288-059P/JAB	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed April 8, 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**.

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. If appropriate the proper power attorney documents should also be submitted.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: K & L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111-2950

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DEC 06 2011
OFFICE OF PETITIONS

Kastlehouse Home Comfort Accessories
P.O. Box 25374
Winston Salem, NC 27114

In re Application of Bobbie Bullock	:	
Application No. 61/213,425	:	Decision on Petition
Filing Date: June 5, 2009	:	
For: Kastlehouse Home Comfort	:	
Accessories and Kastlehouse Toys	:	

This is a decision on a petition filed August 29, 2011, which appears to be requesting application papers be accorded a filing date of November 24, 2009.

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 1.53(e)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The instant application was filed June 5, 2009.

The Office mailed a Notice to File Missing Parts of Provisional Application on August 12, 2009. The notice required the submission of $110 for the filing fee and a $25 surcharge.

Payment for a one-month extension of time was filed November 3, 2009.

The filing fee and surcharge were not timely submitted. As a result, the application became abandoned on November 13, 2009.

Petitioner has supplied five pages:

1. The first page is a "petition";
2. The second page is a facsimile transmission report showing 6 pages were sent to the USPTO on November 24, 2009;
3. The third page is a partially legible first page of a provisional cover sheet form (with no second page of the form included);
4. The fourth page is the first page of a declaration form (with no second page of the form included); and

5. The fifth page is a drawing, which includes the language "Document Reference # 61213425."

Based on the Document Reference number on the fifth page, the papers have been matched with the file for Application No. 61/213,425.

Petitioner appears to be asserting:

1. Six pages were successfully sent by facsimile transmission to the Office at 571-273-8300 on November 24, 2009;
2. The six pages included a provisional application; and
3. The Office has failed to issue a filing receipt based on the submission of the provisional application.

Petitioner appears to request the Office notify Petitioner of the filing date accorded to the application filed November 24, 2009.

The Office is unable to locate the six pages Petitioner asserts were filed November 24, 2009. Therefore, the "petition" is being treated as a petition to establish the application was filed November 24, 2009, and for the Office to accord the application a filing date of November 24, 2009.

In order to be grantable, a petition requesting a filing date of November 24, 2009, would need to include:

1. A petition fee of $400,[1]
2. A legible copy of the six pages filed November 24, 2009,
3. Proof the six pages were filed either by mail, by hand, or electronically on November 24, 2009.[2]

The merits of a petition will not be considered absent payment of the required $400 petition fee. The record fails to indicate Petitioner has paid the $400 fee. Therefore, the merits of the petition will not be considered at this time and the petition is dismissed.

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.[3] 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

[1] The required $400 petition fee is refundable if the petition is granted.
[2] An application may NOT be filed by facsimile transmission.
[3] 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

MARTIN D MOYNIHAN d/b/a PRTSI INC
PO BOX 16446
ARLINGTON VA 22215

MAILED
JAN 03 2011
OFFICE OF PETITIONS

In re
Judith, et al.
Application No. 61/213,457
Filed: June 10, 2009
Attorney Docket No. 46000

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed November 16, 2010.

The fee deficiency submission under 37 CFR 1.28 of $245 is hereby accepted.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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FEB 14 2011

OFFICE OF PETITIONS

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

In re Application of	:	
Ayal, et al.	:	
Application No. 61/213,577	:	NOTICE
Filed: June 22, 2009	:	
Attorney Docket No. 46603	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Bib Data Sheet

CONFIRMATION NO. 2790

SERIAL NUMBER	FILING OR 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
61/213,577	06/22/2009 RULE			46603

APPLICANTS

Sharon Ayal, Kiryat-Ekron, ISRAEL;
Eyal Emmanuel, Recovot, ISRAEL;
Zur Granevitze, Petach-Tikva, ISRAEL;
Alex Diber, Rishon-LeZion, ISRAEL;
Basia Vinocur, Rechovot, ISRAEL;
Hagai Karchi, Doar-Na Emek Soreq, ISRAEL;
Yoav Herschkovitz, givataim, ISRAEL;

**** CONTINUING DATA ****************************

**** FOREIGN APPLICATIONS ***********************

IF REQUIRED, FOREIGN FILING LICENSE GRANTED
** 07/16/2009

		STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
Foreign Priority claimed 35 USC 119 (a-d) conditions met Verified and Acknowledged	☐ yes ☐ no ☐ yes ☐ no ☐ Met after Allowance Examiner's Signature Initials	ISRAEL	8		

ADDRESS
67801

TITLE
Polynucleotides, polypeptides encoded thereby, and methods of using same for increasing abiotic stress tolerance and/or biomass and/or yield in plants expressing same

FILING FEE RECEIVED		
245	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

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Muncy, Geissler, Olds & Lowe, PLLC
4000 Legato Road
Suite 310
FAIRFAX VA 22033

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of :
Frederick W. Zeyfang :
Application No. 61/213,725 : NOTICE
Filed: July 7, 2009 :
Attorney Docket No. **3948-0135PUS1** :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Aug-10

CHARLES LINDBERGH GILLIKIN
4118 AZALEA DRIVE
MOREHEAD CITY NC 28557

MAILED
AUG 16 2010
OFFICE OF PETITIONS

In re Application of	:	
Charles Lindbergh Gillikin	:	
Application No. 61/213,846	:	ON PETITION
Filing Date: July 21, 2009	:	
For:"WIND GUARD" FOR LP AND	:	
NATURAL GAS BURNERS	:	

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

The petition is **DISMISSED**.

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

This application became abandoned on October 14, 2009, for failure to timely file a response to the Notice to File Missing Parts of Provisional (Notice) Application mailed on August 13, 2009, which set a two (2)-month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) was obtained. The Notice of Abandonment was mailed on April 20, 2010.

Petitioner asserts unavoidable delay in that the Notice mailed August 13, 2009 was never received. Specifically, petitioner states that he did not receive the Notice until April 26, 2010

for which he received copies of the Filing Receipt and Formalities Letter, as a result of conversation with the Patent Office due to the receipt of the Notice of Abandonment mailed April 20, 2010.

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. 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 § 1.17(l);
>
> (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
>
> (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

This petition lacks items (1), (2) and (3) above.

As to item (1), the required reply has not been received.

As to item (2), petitioner submitted $55.00 for the petition fee under 37 CFR 1.137(a) instead of the required fee of $270.00 at the small entity rate. Therefore, a balance of $215.00 remains. No authorization was provided to charge for the balance of $215.00.

As to item (4), 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.[1]

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort

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[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice To File Missing Parts of Provisional Application of August 13, 2009, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after August 13, 2009, to demonstrate nonreceipt of the Notice To File Missing Parts of Provisional Application. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Notice To File Missing Parts of Provisional Application, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the Notice To File Missing Parts of Provisional Application was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after August 13, 2009; the period when he would have received the Notice To File Missing Parts of Provisional Application.

In the present petition, petitioner did not submit any statements, documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the Notice To File Missing Parts of Provisional Application mailed August 13, 2009

Further, petitioner states that, "As I understand the application process, submitting a CD with the application is an option and not a requirement. It is my opinion my drawings and written descriptions will adequately depict my invention, thus the CD containing photographs is not necessary. I am officially requesting the CD be DELETED from my application, thus not considered with my application in any form." However, petitioner is encouraged to note MPEP § 506(II) which states:

No amendment, other than to make the provisional application comply with the patent status and all applicable regulations, may be made to the provisional application after the filing date of the provisional application. See 37 CFR 1.53(c).

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.[3] 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: (1) the applicant's reliance upon oral advice from Office employees; or (2) the Office's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action.[4]

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

As the showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a), the petition will be dismissed.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[5] which now provides that where the delay in

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[3] Id.

[4] See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985); see also In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994)(while the Office attempts to notify applicants of deficiencies in their responses in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their responses in a manner permitting a timely correction).

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for

reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

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

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

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

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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 required additional information where there is a question whether the delay was unintentional; and

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Encl: PTO/SB/64

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DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO, CA 92121-2133

MAILED

FEB 07 2011

OFFICE OF PETITIONS

Applicant: Michael Colin Lawrence
Provisional Application No.: 61/214,472
Filed: April 22, 2009
Title: STRUCTURE OF THE C-TERMINAL REGION OF THE INSULIN RECEPTOR α-CHAIN AND OF THE INSULIN-LIKE GROWTH FACTOR RECEPTOR α-CHAIN
Attorney's Docket No.: FBRICE1200

DECISION GRANTING PETITION

This is a decision on the "RESPONSE TO THE NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION and PETITION UNDER 37 C.F.R. § 1.183," filed August 7, 2009 (the "petition").

For the reasons set forth herein, the petition is granted.

DISCUSSION

Relevant Statutes, Regulations and Examining Procedures

37 CFR 1.52(e) states (in-part):

> (1) The following documents may be submitted to the Office on a compact disc in compliance with this paragraph:
> (i) A computer program listing (see § 1.96);
> (ii) A "Sequence Listing" (submitted under § 1.821(c)); or
> (iii) Any individual table (see § 1.58) if the table is more than 50 pages in length, or if the total number of pages of all of the tables in an application exceeds 100 pages in length, where a table page is a page printed on paper in conformance with paragraph (b) of this section and § 1.58(c).
> (2) A compact disc as used in this part means a Compact Disc-Read Only Memory (CD-ROM) or a Compact Disc-Recordable (CD-R) in compliance with this paragraph. A CD-ROM is a "read-only" medium on which the data is pressed into the disc so that it cannot be changed or erased. A CD-R is a "write once" medium on which once the data is recorded, it is permanent and cannot be changed or erased.
> (3)(i) Each compact disc must conform to the International Standards Organization (ISO) 9660 standard, and the contents of each compact disc must be in compliance with the American Standard Code for Information Interchange (ASCII). CD-R discs must be finalized so that they are closed to further writing to the CD-R.

37 CFR 1.58(b) states:

> Tables that are submitted in electronic form (§§ 1.96(c) and 1.821(c)) must maintain the spatial relationships (e.g., alignment of columns and rows) of the table elements when displayed so as to visually preserve the relational information they convey. Chemical and mathematical formulae must be encoded to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning.

37 CFR 1.125(c) states:

> A substitute specification submitted under this section must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

37 CFR 1.183 states:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

Background

37 CFR 1.52(e) provides that any individual table in excess of 50 pages in length, or all tables, if the total number of pages of all of the tables in an application exceeds 100 pages in length, may be submitted to the Office on compact disc, the contents of which must be in ASCII format. Specifically, the compact disc must meet the ISO 9660 format standards with ASCII data files as this is the only acceptable archival electronic media for submissions of tables on compact disc.

On April 22, 2009, applicant filed provisional patent application papers, accompanied by two compact discs (CDs) containing tables in non-ASCII format. On May 21, 2009, the Office mailed a "NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION FILED UNDER 37 CFR 1.53(c) - *Filing Date Granted*" ("missing parts notice"), stating that the CDs filed in the application are not in compliance with 37 CFR 1.52(e) because they contain non-ASCII files, and that the information that was submitted on the CDs will not be entered as part of

the application (*i.e.*, the application as filed does not include the information). Further, the missing parts notice states at page 2:

> [I]f applicant wishes to have the information that was submitted on the CD, or as text files via EFS-Web, entered as part of the application, applicant is required to file within TWO MONTHS from the mailing of this notice: (1) a grantable petition under 37 CFR 1.183 (showing an extraordinary situation where justice requires suspension of 37 CFR 1.52(e) or EFS-Web requirements and 37 CFR 1.52(a)(5)); and (2) a substitute specification (excluding claims), and a statement that the substitute specification includes no new matter, in compliance with 37 CFR 1.121 (b)(3) and 1.125 either on paper or via EFS-Web as PDF files (adding only the information previously submitted on the CD or as text files via EFS-Web). The two-month time period is extendable under 37 CFR 1.136(a) or (b).

Findings and Analysis

On August 7, 2009, in response to the missing parts notice, applicant filed the instant petition under 37 CFR 1.183, a substitute specification adding only the table information previously submitted on the CDs, a statement that the substitute specification includes no new matter, a request for one-month extension of time with the requisite fee, and the petition fee as set forth in 37 CFR 1.17(f).

In the instant petition under 37 CFR 1.183, petitioner seeks waiver of 37 CFR 1.52(e), to the extent that the tables, the contents of which were originally submitted in non-ASCII format on the CDs, and the contents of which have been added to the substitute specification, be entered as part of the application as filed. In support of its request for waiver of the rule, petitioner asserts that it would not be able to comply with the requirement of 37 CFR 1.58(b) to maintain the spatial relationships (*e.g.*, alignment of columns and rows) of the table elements when displayed so as to visually preserve the relational information they convey if it were to convert the table information to ASCII format.[1] Further, petitioner asserts that it submitted the table information in portable document format (PDF) on the CDs based on conversations with the Office.[2]

Petitioner further requests waiver of the 37 CFR 1.125(c) requirement that the substitute specification be submitted with markings showing all the changes relative to the immediate prior version of the specification of record; specifically, that the text of any added subject matter be shown by underlining the added text. In support of its request for waiver of the rule, petitioner asserts that submission of a copy of the substitute specification with the text added from the tables being underlined may render the added text illegible.[3] Petitioner asserts that all text beyond page 70 of the substitute specification is new text as compared to the immediate prior version of the specification of record and states that the clean version of the substitute

[1] Petition under 37 CFR 1.183 at page 2.
[2] *Id.* at pages 2-3. Petitioner is reminded that 37 CFR 1.2 states "All business with the Patent and Trademark Office should be transacted in writing. ... 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."
[3] *Id.* at page 3.

specification "includes no new matter and is merely submitted to include the information that was submitted on compact disc and expressly incorporated by reference with the specification as originally filed."[4]

The provisions of 37 CFR 1.52(e) and 37 CFR 1.125(c) may be waived under 37 CFR 1.183 where a petitioner demonstrates an extraordinary situation in which justice requires suspension of the rule. Based on the facts and circumstances in this instance, petitioner has demonstrated an extraordinary situation in which justice requires (1) suspension of 37 CFR 1.52(e), to the extent that the tables, the contents of which were originally submitted in non-ASCII format on the CDs, and the contents of which have been added to the substitute specification, be entered as part of the application as filed, and (2) suspension of the 37 CFR 1.125(c) requirement that the text of the added subject matter be underlined in the substitute specification. Thus, the instant petition under 37 CFR 1.183 is granted.

FEES

Applicant's April 22, 2009 provisional application submission included a specification of 70 pages, 8 pages of claims, a 1-page abstract, a 36-page sequence listing, and a 1-page cover sheet (a total of 116 pages). Applicant has paid the provisional application filing fee of $220.00, in addition to the provisional application size fee of $270.00 for each additional 50 sheets that exceed 100 sheets for the April 22, 2009 submission.

Applicant's August 7, 2009 substitute specification submission includes 517 pages, excluding the originally-filed 8 pages of claims, 1-page abstract, 36-page sequence listing, and 1-page cover sheet. Thus, the August 7, 2009 substitute specification includes an additional 447 pages. Accordingly, an additional application size fee of $2430.00 is due. Pursuant to the authorization on page 4 of the instant petition under 37 CFR 1.183, the additional provisional application size fee associated with entry of the August 7, 2009 substitute specification is being charged to Deposit Account No. 07-1896.

CONCLUSION

The instant petition under 37 CFR 1.183 is granted for the reasons set forth herein. Telephone inquiries regarding this communication should be directed to Nicole Dretar Haines, Legal Advisor, Office of Patent Legal Administration, at (571) 272-7717.

Brian E. Hanlon

Brian Hanlon
Director
Office of Patent Legal Administration
Office of the Associate Commissioner
for Patent Examination Policy

[4] *Id.* at pages 3-4.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SARAH BROWN
10B ANERLEY HILL UPPER NORWOOD
LONDON SE19 -2AA GB UNITED KINGDOM

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Brown, Sarah	:	
Application No. 61/214,575	:	ON PETITION
Filed: April 27, 2009	:	
Title: Secure Seat AKA: Body Support Cushion	:	

This is a decision on the petition, filed June 10, 2010, which is being treated as a petition under 37 CFR 1.181, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to timely respond to the Notice to File Missing Parts of Provisional Application, mailed May 20, 2009, which set a two (2) month shortened statutory period for reply. Accordingly, a reply was due on or before July 20, 2009.

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee.

There are two types of petitions under 37 CFR 1.181(a) – a petition to withdraw holding of abandonment based on failure to receive Office action or a petition to withdraw holding of abandonment based on evidence that a reply was timely mailed or filed. The instant petition does not claim either of the above situations has occurred.

Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

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

(1) The reply required to the outstanding Office action, unless previously filed;

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

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

A blank petition form is enclosed for petitioner's convenience.

Petitioner is reminded that a provisional application may only be pending for a period no longer than 12 months from its filing date. Accordingly, if petitioner does revive the instant application, it will be deemed revived only until April 27, 2010, when it went expired as a matter of law.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of :
SINGH, et al :
Application No. 61/214,735 :
Filed: April 28, 2009 :
Attorney Docket No. 331921-00024 :

NOTICE

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

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

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

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

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

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

Shaun Deprez
10355 FAIRVIEW LANE
CHATHAM ON N7M 5J4 CA CANADA

MAILED
AUG 04 2010
OFFICE OF PETITIONS

In re Application of	:	
SHAUN MICHAEL DUPREZ	:	
Application No.: 61/217169	:	DECISION ON
Filing or 371(c) Date: 05/29/2009	:	PETITION
Title of Invention:	:	
WHISPER LIFTER	:	

This is a decision in response to the to withdraw the holding of abandonment filed March 30, 2009. The petition is properly treated under 37 CFR 1.181 (no fee), based upon non-receipt of an Office communication.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. (Extensions of time require a fee). The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," and should only address the deficiencies noted below. 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 to File Missing Parts of Provisional Application ("Notice"), mailed June 15, 2009. The Notice set a two (2) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on August 16, 2009. A Notice of Abandonment was mailed March 4, 2010.

Petition under 37 CFR 1.181

Applicant files the present petition and states that he did not receive the Notice.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

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

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

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

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

Analysis/conclusion

Regrettably the petition is not grantable at this time. The Office requirements for granting a petition to withdraw the holding of abandonment based upon non-receipt of an Office communication has been modified. The Office requires

1) a statement from the petitioner describing the system used for recording an Office action received at the correspondence address of record. The statement should establish that the docketing system is sufficiently reliable.

2) in addition, a copy of the petitioner's record(s) required to show non-receipt of the Office action should include either a copy of the master docket (usually for a law firm), or *if no such master docket exists, the* ***petitioner should so state and provide other evidence such as, but not limited to, the following: a copy of the application file jacket;*** *incoming mail log; calendar; reminder system; or the individual docket record for the application in question.*

The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statements and/or copies of application file, where the non-received Notice would have been entered had it been received.

Finally, the change of correspondence address has been entered and made 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Brien and Julie James
PO Box 1993
Claremore OK 74018

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of :
James and James :
Application No. 61/217,324 : ON PETITION
Filed: 05/29/2009 :
Title: HAND HELD ANGER :
REPLACEMENT BLADE

This is in response to the petition under 37 CFR 1.137(b), filed March 29, 2010, to revive the above-identified application.

The petition is **dismissed**.

The Office notes:

> 35 U.S.C. 41(a)(7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.
>
> In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B)

> **will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.**

MPEP 711.03(c)(III)(B) (emphasis added).

The Office further notes that each piece of correspondence filed in an application, patent file or other proceeding in the USPTO, which requires a person's signature, must bear one of three types of signatures: (A) handwritten signature; (B) "S-signature;" or (C) Office Electronic Filing System (EFS) character coded signature. See 37 CFR 1.4(d).

The petition under 37 CFR 1.137(b) cannot be accepted and will not be treated on its merits because it lacks the required petition fee of $810.00 and the signature of both inventors. Accordingly, petitioners must file a new petition under 37 CFR 1.137(b) signed by both inventors accompanied by the required petition to revive fee for consideration by the Office of Petitions. Additionally, the Office cannot enter the request to change the correspondence address unless the appropriate form is signed by both inventors.

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) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64 and Form PTO/SB/122

UNITED STATES 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

MAR 31 2011

OFFICE OF PETITIONS

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

In re Application of	:	
Paul Smith, et al.	:	
Application No. 61/222,983	:	NOTICE
Filed: July 3, 2009	:	
Attorney Docket No.: 3156.314US01	:	

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**.

Status as a small entity has been changed.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATTERSON THUENTE CHRISTENSEN
PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

MAILED
APR 22 2011
OFFICE OF PETITIONS

In re Application of :
Wohlford et al. :
Application No. 61/222989 :
Filing or 371(c) Date: 07/03/2009 : LETTER
Attorney Docket Number: 3156.311US01 :

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

MARTIN & ASSOCIATES, LLC
P O BOX 548
CARTHAGE MO 64836-0548

MAILED
NOV 08 2010
OFFICE OF PETITIONS

In re Application of	:	
Mozdzyn	:	
Application No. 61/224,999	:	DECISION ON PETITION
Filed: July 13, 2009	:	PURSUANT TO
Attorney Docket No.:	:	37 C.F.R. § 1.137(B)
Ocular.1317	:	
Title: CAPACITIVE TOUCH	:	
SCREEN WITH A MESH ELECTRODE	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed May 12, 2010, to revive the above-identified application.

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

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed July 23, 2009, which required both a provisional application cover sheet and the surcharge associated with the late submission of the same, and set a shortened statutory period for reply of two 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 September 24, 2009. A notice of abandonment was mailed on March 30, 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.

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

With this petition, Applicant has submitted a Supplemental Application Data Sheet (ADS), the petition fee, and a statement that is being construed as the proper statement of unintentional delay. As such, requirements two and three of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

Regarding the first requirement, the requirement has not been satisfied because Petitioner did not submit the required reply to the Office action. The required reply is a reply which would have been sufficient to have avoided abandonment, had such reply been timely filed.[2] In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. § 1.137(b)(1). More specifically:

1. The surcharge that is associated with the late submission of a provisional cover sheet was not included with this petition, and a general authorization to charge any fee deficiencies to a Deposit Account has not been located in the electronic file.

---

1 See Rule 1.137(d).
2 See M.P.E.P. § 711.03(c).

2. The notice of July 23, 2009 indicated that an ADS could serve as the provisional application cover sheet. Petitioner has included a supplemental ADS with this petition, however the Supplemental ADS has not been titled as a "Supplemental Application Data Sheet."[3]

On renewed petition, Petitioner should submit both the required surcharge and a properly titled Supplemental ADS.

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. § 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C § 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[4] hand-delivery,[5] or facsimile.[6] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[7]

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.[8]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

3 MPEP § 601.05 indicates that any ADS that is submitted to "correct, modify, or augment the original application data, the ADS, even though it is the first-filed ADS, must be titled "Supplemental Application Data Sheet."
4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
6 (571) 273-8300- please note this is a central facsimile number.
7 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
8 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
JAN 24 2011
OFFICE OF PETITIONS

Paper No.

MARTIN & ASSOCIATES, LLC
P O BOX 548
CARTHAGE MO 64836-0548

In re Application of	:	
Mozdzyn	:	
Application No. 61/224,999	:	DECISION ON RENEWED
Filed: July 13, 2009	:	PETITION PURSUANT TO
Attorney Docket No.:	:	37 C.F.R. § 1.137(B)
Ocular.1317	:	
Title: CAPACITIVE TOUCH	:	
SCREEN WITH A MESH ELECTRODE	:	

This is a decision on the renewed petition pursuant to 37 C.F.R. § 1.137(b), filed November 18, 2010, to revive the above-identified application.

This renewed 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 Notice of Missing Parts (notice), mailed July 23, 2009, which required both a provisional application cover sheet and the surcharge associated with the late submission of the same, and set a shortened statutory period for reply of two 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 September 24, 2009. A notice of abandonment was mailed on March 30, 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.

An original petition pursuant to 37 C.F.R. § 1.137(b) was filed on May 12, 2010, along with a Supplemental Application Data Sheet (ADS)[1] and the petition fee. The original petition was dismissed via the mailing of a decision on November 8, 2010.

With this renewed petition, Petitioner has included the proper statement of unintentional delay, the surcharge that is associated with the late submission of a provisional cover sheet, and a properly executed and titled Supplemental Application Data Sheet.

It follows that 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.[2]

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing. Petitioner will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OPAP.

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 OPAP 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 OPAP where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

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1 The notice of July 23, 2009 indicated that an ADS could serve as the provisional application cover sheet.
2 See Rule 1.137(d).

The general phone number for OPAP is 571-272-4000. Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.[3]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

3 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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Alexandria, VA 22313-1450
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CHAIM SINAI ORBACH
144 SUNSET RD
LAKEWOOD, NJ 08701

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Chaim Sinai Orbach	:	
Application No. 61/225,190	:	DECISION ON PETITION
Filed: July 13, 2009	:	
Attorney Docket No. None	:	

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed July 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on September 24, 2009. A Notice of Abandonment was mailed on March 30, 2010.

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

The instant petition lacks item (1), the required reply in the form of the basic filing fee of $110.00, and the surcharge fee of $25.00. Accordingly, this application cannot be revived until the required reply has been submitted.

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

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

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

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

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

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

By Internet: EFS-Web[1]

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

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

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: ALAN ISREAL
KIRSCHSTEIN, ISRAEL, SCHIFFMILLER & PIERONI, P.C.
425 FIFTH AVENUE
5TH FLOOR
NEW YORK, NY 10016-2223

[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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CHAIM SINAI ORBACH
144 SUNSET RD
LAKEWOOD, NJ 08701

MAILED

NOV 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Chaim Sinai Orbach	:	
Application No. 61/225,190	:	DECISION ON PETITION
Filed: July 13, 2009	:	
Attorney Docket No. None	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed September 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed July 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on September 24, 2009. A Notice of Abandonment was mailed on March 30, 2010.

This petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Basic Filing fee of $110.00 and the Surcharge fee of $25.00 (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

A provisional application may be revived so as to be pending for a period no longer than 12 months from its filing date. This application was hereby deemed revived until July 13, 2010, when it became abandoned as a matter of law.

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. A courtesy copy of this decision is being mailed to the person signing the petition.

This matter is being referred to the Office of Patent Application Processing for retention purposes.

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

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: ALAN ISREAL
KIRSCHSTEIN, ISRAEL, SCHIFFMILLER & PIERONI, P.C.
425 FIFTH AVENUE
5TH FLOOR
NEW YORK, NY 10016-2223

UNITED STATES PATENT AND TRADEMARK OFFICE

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JULIA CHURCH DIERKER
DIERKER & ASSOCIATES, P.C.
3331 W. BIG BEAVER RD. SUITE 109
TROY MI 48084-2813

MAILED
NOV 10 2011
OFFICE OF PETITIONS

In re Application: :
Raskin et al. :
Application No. 61/227,429 : ON PETITION
Filed: July 21, 2009 :
Attorney Docket No. UMJ-201-A (UM4430) :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 21, 2010 and September 22, 2010.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED
AUG 02 2010
OFFICE OF PETITIONS

In re Application of	:	
Madan et al.	:	
Application No. 61/227633	:	ON PETITION
Filing or 371(c) Date: 00/00/0000	:	
Attorney Docket Number: 080965P1	:	

This Decision is in response to a "Petition to Withdraw Notice of Incomplete Application", filed October 29, 2009, to accord the application a filing date of July 22, 2009. The petition is properly treated under 37 CFR 1.53(e).

Background

Application papers in the above-identified application were deposited on July 22, 2009. This Office mailed a Notice of Incomplete Provisional Application (Notice) on August 3, 2009, informing Applicant that a filing date had NOT been accorded the application because the application had been deposited without drawings, and also noting that 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

The present petition

In response to the Notice, Applicant files the present petition and provides that "[t]he provisional application was uploaded via Private PAIR, and ***included a specification as prescribed by the first paragraph of 35 U.S.C. § 112 and a drawing as prescribed by 35 U.S.C. § 113***." Petition at p.1.

Petitioner provides further that "[a]ccording to 35 U.S.C. § 111, and as quoted in MPEP 201.04(b): 'The filing date of an application ***shall be*** the date on which the specification and any required drawing are received in the Patent and Trademark Office.'" Applicant asserts that the statutory section does not authorize OIPE to refuse to grant a filing date simply because a drawing was not submitted, and that in this instance (and contrary to Applicant's assertion on page one of the petition), there were no drawings to submit.

Applicant argues that the requirements of MPEP 201.04(b) were fully complied with, and the Notice of Incomplete Provisional Application was improper and should be withdrawn.

Applicable Law, Rules and MPEP

35 U.S.C. 111, Application, states:

> (b) PROVISIONAL APPLICATION. —
> (1) AUTHORIZATION. —A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include —
> (A) a specification as prescribed by the first paragraph of section 112 of this title; and
> (B) a drawing as prescribed by section 113 of this title.

The MPEP 601.01(f), Applications Filed Without Drawings, provides, in relevant part

> 35 U.S.C. 111(a) (2)(B) and 35 U.S.C. 111(b)(1)(B) each provide, in part, that an "application shall include . . . a drawing as prescribed by section 113 of this title" and 35 U.S.C. 111(a)(4) and 35 U.S.C. 111(b)(4) each provide, in part, that the "filing date. . . shall be the date on which . . . any required drawing are received in the Patent and Trademark Office." *35 U.S.C. 113 (first sentence) in turn provides that an "applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented."*
> Applications filed without drawings are initially inspected to determine whether a drawing is referred to in the specification, and if not, whether a drawing is necessary for the understanding of the invention. 35 U.S.C. 113 (first sentence).
> It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). The same practice has been followed in composition applications. Other situations in which drawings are usually not considered necessary for the understanding of the invention under 35 U.S.C. 113 (first sentence) are:
> (A) Coated articles or products : where the invention resides solely in coating or impregnating a conventional sheet (e.g., paper or cloth, or an article of known and conventional character with a particular composition), unless significant details of structure or arrangement are involved in the article claims;
> (B) Articles made from a particular material or composition : where the invention consists in making an article of a particular material or composition, unless significant details of structure or arrangement are involved in the article claims;
> (C) Laminated structures : where the claimed invention involves only laminations of sheets (and coatings) of specified material unless significant details of structure or arrangement (other than the mere order of the layers) are involved in the article claims; or
> (D) Articles, apparatus, or systems where sole distinguishing feature is presence of a particular material : where the invention resides solely in the use

of a particular material in an otherwise old article, apparatus or system recited broadly in the claims, for example:
(1) A hydraulic system distinguished solely by the use therein of a particular hydraulic fluid;
(2) Packaged sutures wherein the structure and arrangement of the package are conventional and the only distinguishing feature is the use of a particular material.
A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, not describing drawing figures in the specification, and filed without drawings will simply be processed, so long as the application contains something that can be construed as a written description.

Analysis

Office records confirm that the page one of the specification refers to Figures 1-5; however, no drawing Figure was filed with the application papers deposited with this Office on July 22, 2009. It is also noted that petitioner does not aver that drawing(s) are not necessary for an understanding of the invention.

As petitioner notes, the applicable statute states that the filing date of an application ***shall be*** the date on which the specification ***and any required drawing*** are received in the Patent and Trademark Office. As noted *supra*, 35 U.S.C. 113 (first sentence) provides that an "applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented." The applicable statute requires, in order to grant an application a filing date, a drawing where necessary for an understanding of the invention. (Emphasis supplied).

Conclusion

The petition is dismissed without prejudice. If petitioner has evidence to confirm that a drawing was filed with the application papers on July 22, 2009, or if petitioner is able to state that a drawing is not necessary for an understanding of the subject matter sought to be patented, petitioner should file a Request for Reconsideration of Petition and include the necessary evidence and/or statement.

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

/Derek L. Woods/

Derek L. Woods
Attorney
Office of Petitions

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of	:	
Madan et al.	:	
Application No. 61/227633	:	ON PETITION
Filing or 371(c) Date: 07/22/2009	:	
Attorney Docket Number: 080965P1	:	

This Decision is in response to a "Request for Reconsideration of Dismissal of Petition to Withdraw Notice of Incomplete Application", filed September 17, 2010, to accord the application a filing date of July 22, 2009. The petition is properly treated under 37 CFR 1.53(e).

The petition is **granted**.

Background

Application papers in the above-identified application were deposited on July 22, 2009. This Office mailed a Notice of Incomplete Provisional Application (Notice) on August 3, 2009, informing Applicant that a filing date had NOT been accorded the application because the application had been deposited without drawings, and also noting that 35 U.S.C. 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

The present petition

Applicant responds with the present petition and avers, *inter alia*, that drawings are not necessary for an understanding of the subject matter sought to be patented.

The application complies with the patent statute and regulations based upon applicant's assertion that the figures are not necessary for an understanding of the invention. Based upon Applicant's assertion, a filing date may be accorded the application papers deposited on July 22, 2009. Accord MPEP 601.01(f).

The petition fee is required, since the petition was not necessary to correct any PTO error.

This application is being referred to the Office of Patent Application Processing, Customer Corrections, for further processing, with the filing date of July 22, 2009, using the application papers filed on that date, and an indication that no drawings were present or required on filing.

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

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Alexandria, VA 22313-1450
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Dan Addison
Liox Power
Suite 200
129 North Hill Ave.
Pasadena CA 91106

MAILED
SEP 17 2010
OFFICE OF PETITIONS

In re Application of
Gregory Chase et al.
Application No. 61/228,512
Filing Date: July 24, 2009
Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 23, 2010, to revive the above-identified application.

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Timothy J. Oyer 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. If, Mr. Oyer 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. Oyer, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed August 21, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 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 the filing fee and surcharge fee (2) the petition fee of $810 (3) a proper statement of unintentional delay.

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

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

This application is being referred to the Office of Patent Application Processing.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Timothy J. Oyer, Ph.D.
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210--220

UNITED STATES PATENT AND TRADEMARK OFFICE

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Everett D. Robinson
Echelon IP, LLC
P.O. Box 1047
American Fork, UT 84003-1047

MAILED
SEP 20 2010
OFFICE OF PETITIONS

In re Application of :
Jeanette Lynton, et. al. :
Application No. 61/229,717 : ON PETITION
Filed: July 30, 2009 :
Attorney Docket No. 025339EDR :

This is a decision on the petition under 37 CFR 1.137(b), filed July 29, 2010, to revive the above-identified application.

The application became abandoned for failure to file a reply to the Notice to File Missing Parts of Provisional Application (Notice) mailed on August 7, 2009. A Notice of Abandonment was mailed on April 13, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $110 for the basic filing fee and the $25 surcharge; (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 Patent Application Processing for 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 Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
APR 18 2011
OFFICE OF PETITIONS

In re Application of	:	
Peter FORSELL	:	
Application No. 61/229,805	:	DECISION ON PETITION
Filed: July 30, 2009	:	
Attorney Docket No. RAM-2333-271	:	

This is a decision on the renewed petition under 37 CFR 1.82 filed September 01, 2010, in response to the Notice of Omitted Items in a Provisional Application.

On August 28, 2009, the Office mailed a Notice of Omitted Items in a Provisional Application stating that a filing dated has been accorded to the above-identified provisional application, however, some figures appear to have been omitted from the application and the figure 28(b) was describe in the specification.

Petitioner request amendment to the specification of the above –identified application.

The petitioner has provided the Office with the required petition and amendment to correct the description of drawings in the specification.

In view of above, the petition is **GRANTED**.

This application file is being referred to the Office of Patent Application Processing.

Telephone inquiries relating to this decision should be directed to Michelle R. Eason at (571) 272-4231. Telephone inquiries related to OIPE processing should be directed to their hotline at (571) 272-4100.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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GERARD GRAND
299 RIVERVIEW BLVD.
ST. CATHARINES L2T 3N3 CA

MAILED

OCT 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Gerard Grand	:	
Application No. 61/230,105	:	DECISION ON PETITION
Filed: July 31, 2009	:	
Attorney Docket No. 044 GG-154-US	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed August 13, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 14, 2009. A Notice of Abandonment was mailed on April 20, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet, the Basic Filing fee of $110.00, and the $25.00 Surcharge fee (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

A provisional application may be revived so as to be pending for a period no longer than 12 months from its filing date. This application was hereby deemed revived until July 31, 2010, when it became abandoned as a matter of law.

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

This matter is being referred to the Office of Patent Application Processing for retention purposes.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

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Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael A. Liberty et al.	:	
Application No. 61/230,508	:	NOTICE
Filed: July 31, 2009	:	
Attorney Docket No. **18160.3**	:	

This is a notice regarding your request filed August 23, 2010, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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MAILED

JAN 04 2011

OFFICE OF PETITIONS

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON, VA 22215

In re Application of Sharon Ayal, et. al. Application No. 61/231,040 Filed: August 4, 2009 Attorney Docket No. 46593	: : : : :	NOTICE

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on November 16, 2010.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**. Therefore, status as a small entity has been removed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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PETER W. LANG
1523 1ST STREET
KIRKLAND, WA 98033

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of
Peter W. Lang, et al.
Application No. 61/231,290
Filed: August 4, 2009
Attorney Docket No. 53468

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 4, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 1, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 2, 2009.

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), (2) and (3).

With respect to item 1:

A review of the record reveals that petitioner did make a bonified attempt to pay the required fees as required by the Notice to File Missing Parts (Notice) mailed September 1, 2009, however, the fees were returned unpaid.

With respect to the petition:

The petition filed is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

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

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);

(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;

(3) An assignee as provided for under §3.71(b) of this chapter; or

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

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Peter Ward Lang) was ever given a power of attorney to act on behalf of inventors Alexander Michael Tilcock and Richard Lucky Quatier, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

With respect to item 2:

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is **$1620**. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee required fee is **$810**, which is half the amount indicated. See 37 CFR 1.27.

The petition in the above-identified application was **not** by payment of the required fee. No consideration on the merits can be given that petition until all required fee is received. If petitioner intends to file a renewed petition the required fees include $810 for the renewed petition under the unintentional standards of 37 CFR 1.137(b), the filing fee and surcharge of $270 and an additional $50 surcharge for the returned check fee, must be submitted before the application can be revived.

With respect to item 3:

The instant petition fails to contain the required statement of unintentional delay. 37 CFR 1.37(b) states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a

question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (II)(C) and (D)).]

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

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

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

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

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

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

April M. Wise
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARTIN D. MOYNIHAN d/b/a PRTSI INC
PO BOX 16446
ARLINGTON VA 22215

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re
Emmanuel, et al.
Application No. 61/231,349
Filed: August 5, 2009
Attorney Docket No. 47070

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed November 16, 2010.

The fee deficiency submission under 37 CFR 1.28 of $245 is hereby accepted.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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DRW Aug-10

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AUG 05 2010
OFFICE OF PETITIONS

MORRISS OBRYANT COMPAGNI, P.C.
734 EAST 200 SOUTH
SALT LAKE CITY UT 84102

In re Application of	:	
Paulsen et al.	:	
Application Number: 61/233410	:	DECISION ON PETITION
Filed: 08/12/2009	:	
Attorney Docket Number:	:	
4655.CIRQ.PR	:	

This is a decision on the petition filed on November 9, 2009, which is treated as a petition under 37 CFR 1.53(e) requesting that the above-identified application be accorded a filing date of August 12, 2009.

The petition is **granted.**

The instant provisional application papers as filed consisted of 13 pages of written description, 1 page of abstract, 3 pages of provisional application cover sheet, and 5 pages containing text and drawings on the same pages. On September 8, 2009, however, the Office of Patent Application Processing sent a Notice stating that the application had been deposited without drawings and that the filing date would be the date of receipt of the missing drawings.

In reply, the present petition was filed on November 9, 2009. Petitioner asserts that the drawing figures were contained in the specification.

A review of the Image File Wrapper reveals that the 5 pages coded as "APPENDIX" in the Image File Wrapper include text and drawing figures.

Pursuant to 35 USC 111(b)(1)(A);(B), in order to obtain a filing date, a application must provide the specification required by 35 USC 112 ¶ 1, and a drawing as prescribed by 35 USC 113. All conditions for obtaining a filing date in this provisional application were clearly met on August 12, 2009.

Under the facts of this case, this provisional application is entitled, for a filing date, to the date of receipt of the specification (13 pages of written description and 5 pages containing text and drawing figures on the same pages). There is no explicit requirement that precludes the obtaining of a filing date for a provisional application when the specification and drawings are, as here, not separated.

The application will be processed using on the application papers present on August 12, 2009. The two (2) sheets of drawings filed on November 9, 2009 will not be used for processing.

It is noted that petitioner has provided a copy of Figure 1, which was omitted from the application papers as filed. Petitioner is reminded that no amendment, other than to make the provisional application comply with the patent statute and all applicable regulations may be made to a provisional application after the filing date of the provisional application.[1]

The Notice of September 8, 2009, was mailed in error and is vacated.

No petition fee is due. The petition fee has been credited to counsel's credit card.

This provisional application is being referred to the Office of Patent Application Processing (OPAP) for further processing with a filing date of August 12, 2009.

Telephone inquiries should be directed to the undersigned at 571-272-3231. Inquiries related to OPAP processing should be directed to OPAP at 571-272-4000.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] See 37 CFR 1.53(c).

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 Donelson Bearman, Caldwell & Berkowitz, PC
920 Massachusetts Ave, NW
Suite 900
Washington DC 20001

MAILED

SEP 17 2010

OFFICE OF PETITIONS

In re Application of :
Phillipe MSIKA :
Application No. 61/235,728 : ON PETITION
Filed: August 21, 2009 :
Attorney Docket No. 2912956-035000 :

This is in response to the renewed petition under 37 CFR 1.59(b), filed July 16, 2010, to expunge information submitted under MPEP 724.05(II).

The petition is **GRANTED.**

Petitioner requests that the 24 pages of specification and 4 pages of claims inadvertently filed August 25, 2009 be expunged from the application file as they are not part of the original application. Petitioner states that 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 information in question has been determined by the undersigned to not be material to the examination of the instant application.

In a paper file, the unintentionally submitted exhibits could, but not necessarily would, have been physically removed from the file wrapper and returned to applicant. In the IFW realm the corresponding action(s) is to close the document and also remove such from the listing of "Public[ly available] Documents." It is agreed that it would be appropriate in this instance to close the information that was erroneously filed in the above identified application, and also remove such from the listing of publicly available documents for this Image File Wrapper (IFW).

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

In view of the above, the specification and claims filed August 25, 2009 will be removed from the file.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-7099.

David Bucci
Petitions Examiner
Office of Petitions

Cc: Baker Donelson Bearman, Caldwell & Berkowitz, PC
555 Eleventh Street, N.W.
Sixth Floor
Washington, DC 20004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Eli Raitport
5302 15th Avenue
Brooklyn, NY 11219

MAILED

SEP 16 2010

OFFICE OF PETITIONS

In re Application of Raitport :
Application No. 61/236,506 :
Filing Date: August 24, 2009 :
For: Aircraft-Bicycle :

Decision on Petition

This is a decision in response to the renewed petition filed April 19, 2010, under 37 C.F.R. § 1.181 requesting waiver of all fees for the instant application.

The petition is **dismissed**.

On March 23, 2010, the Office mailed a decision dismissing a petition filed November 4, 2009. The decision stated,

> Petitioner's request for the waiver of the filing fee appears to be based on an incorrect assumption the Office has the discretion to waive the filing fee.
>
> The filing fee is required by statute. [footnote omitted.] The Office lacks the authority to waive a fee set forth in a statute unless a statutory exemption is applicable. However, a statutory exemption permitting the waiver of the filing fee does not exist.[1] Therefore, the Office is *required* by law to collect the filing fee.
>
> For the preceding reasons, the requirement for the submission of the filing fee is not waived.
>
> The Office need not determine if the Office has the discretion to waive the $50 surcharge in view of the fact the issue appears moot because Petitioner has not alleged, if the surcharge is waived, Petitioner will be able to pay the remainder of the fees.

The instant renewed petition does not argue or establish the fees at issue are not required by statute and the instant renewed petition does not argue or establish the Office has the authority to waive statutorily required fees. Therefore, the petition is dismissed for the reasons discussed in the prior decision.

[1] Statutory exemptions include 35 U.S.C. § 41(e) which allows waiver of some fees owed by departments or agencies of the federal government and 35 U.S.C. § 41(i)(3) which allows waiver of some fees charged by the Office for access to public automated search systems. Neither or the exemptions applies to the instant case.

The renewed petition requests the renewed petition and the original petition be forwarded to Congress if the petition is not granted. However, petitioner has failed to cite any authority demonstrating such action by the Office is warranted or appropriate in this case. Therefore, the Office will not forward the renewed petition and the original petition to Congress.

Although the Office will not petition or contact any member of Congress on behalf of the inventor, this decision does not limit petitioner's right to petition or contact any member of Congress. Petitioner has the right to send copies of either petition to members of Congress. As a courtesy, the Office notes petitioner's representative in the House of Representatives is Jerrold Nadler and the senators for New York are Kirsten E. Gillibrand and Charles E. Schumer.

The prior decision informed petitioner the application would become abandoned unless petitioner submitted the required filing fee, surcharge, and payment for a five-month extension of time by April 12, 2010. These fees were not filed by April 12, 2010. Therefore, since an extension of time was never obtained, the application became abandoned on November 13, 2009,[2] as a result of petitioner's failure to file a reply to the Notice to File Missing Parts mailed September 11, 2009.

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

[2] November 11, 2009, was a federal holiday. Therefore, petitioner could have filed a reply timely as late as November 12, 2009, without payment for an extension of time.

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P.O. Box 1450
Alexandria, VA 22313-1450
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MORGAN, LEWIS & BOCKIUS LLP (SF)
One Market, Spear Street Tower, Suite 2800
San Francisco CA 94105

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SEP 14 2010

OFFICE OF PETITIONS

In re Application of
Rampyari Walia
Application No. 61/238,146
Filing Date: August 29, 2009
Attorney Docket No. **02761-5001-PR**

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 21, 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 Provisonal Application (Notice), mailed October 5, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 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 a provisional cover sheet and surcharge, (2) the petition fee of $810 (3) a proper statement of unintentional delay.

A review of the file record indicates that the power of attorney to attorneys/agents associated with Customer Number 53400 has been revoked by the applicants of the patent application on August 18, 2010. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

This application is being referred to the Office of Patent Application Processing.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Wesley B. Ames
7031 Los Vientos Serenos
Escondido, CA 92029

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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GRACE J. FISHEL
2200 WEST PORT PLAZA DRIVE
SUITE 202
ST. LOUIS, MO 63146

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of
Alan W. Schaefer
Application No. 61/239,306
Filed: September 2, 2009
Attorney Docket No. SCH 1740

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181 (no fee) filed July 16, 2010, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **dismissed**.

The above application was held abandoned for failure to file a reply to the Notice to File Missing Parts of Provisional Application mailed September 15, 2009. A Notice of Abandonment was mailed on May 26, 2010.

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

Petitioner states, "In response to a notice of abandonment dated May 26, 2010, enclosed is copy of a provisional application cover sheet which was prepared but not filed. Also, enclosed is a copy of a response mailed on September 23, 2009 supplying the missing paper." Petitioner further states, "that the missing correspondence was sent by first class mail, postage prepaid, to the Commissioner for Patents...on September 23, 2009."

Petitioner should note that a Certificate of Mailing under 37 CFR 1.8 is not effective if it does not accompany/itemize the papers that are being certified as mailed. Therefore, the present petition cannot be granted.

MPEP 512 [R-8] Certificate of Mailing or Transmission, Section I PROCEDURE BY APPLICANT states in part:

> (A) The certification requires a signature. Specifically, if the certification appears on a paper that requires a signature, two signatures are required, one for the paper and one for the certification. Although not specifically required by 37 CFR 1.8, it is preferred that the certificate be signed by the applicant, assignee, or registered practitioner.
>
> (B) When possible, the certification should appear on a portion of the paper being submitted. However, if there is insufficient space to make the certification on the same paper, the certification should be on a separate sheet securely attached to the paper.
>
> (C) When the certification is presented on a separate sheet, that sheet must (1) be signed and (2) fully identify and be securely attached to the paper it accompanies. The required identification should include the application number and filing date of the application as well as the type of paper being filed, e.g., reply to rejection or refusal, Notice of Appeal, etc. An unsigned certification will not be considered acceptable. Moreover, without the proper identifying data, a certification presented on a separate sheet will not be considered acceptable if there is any question or doubt concerning the connection between the sheet and the paper filed.*> For submissions by the U.S. Postal Service or facsimile transmissions, if< the sheet should become detached from the paper and thereafter not associated with the appropriate file, evidence that this sheet was received in the Office can be supported by submitting a copy of a postcard receipt specifically identifying this sheet and the paper and by submitting a copy of the sheet as originally mailed. Attention is directed to MPEP § 503 relative to the use of postcards as receipts. >For submissions via EFS-Web, evidence that this sheet was received in the Office can be supported by submitting a copy of an electronic acknowledgement receipt specifically identifying this sheet and the paper and by submitting a copy of the sheet as originally submitted. See MPEP § 502.05.<

In view of the above, it is strongly recommended that petitioner file a petition to revive under 37 CFR 1.137(b) and pay the petition fee of $810. The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Any request for reconsideration of this decision 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, and documentation to this number should be addressed to the Office of Petitions.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO. To expedite consideration, petitioner may wish to contact the undersigned once the renewed petition under 37 CFR 1.137(b) has been filed.

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
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GRACE J. FISHEL
2200 WEST PORT PLAZA DRIVE
SUITE 202
ST. LOUIS, MO 63146

MAILED

JAN 04 2011

OFFICE OF PETITIONS

In re Application of	:	
Alan W. Schaefer	:	
Application No. 61/239,306	:	DECISION ON PETITION
Filed: September 2, 2009	:	
Attorney Docket No. SCH 1740	:	

This is a decision on the petition under 37 CFR 1.137(b) filed September 30, 2010, to revive the above-identified application.

In response to the decision mailed September 23, 2010, petitioner submits the present petition.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Provisional Cover Sheet and the $25 surcharge; (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 Patent Application Processing for 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 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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SEP 28 2010

OFFICE OF PETITIONS

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

In re Application of	:	
Joel M. Linden et al.	:	
Application No. 61/240,544	:	NOTICE
Filed: September 8, 2009	:	
Attorney Docket No. **1036.110PRV**	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES 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 Bessinger
22 Dutchells Copse
Horsham RH12 -5PD
GB UNITED KINGDOM

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of
Lisa Barabara Bessinger
Application No. 61/240,740
Filed: September 9, 2009

ON PETITION

This is in response to the communication, filed July 8, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment, under 37 CFR 1.181(No Fee).

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On September 28, 2009, the Office mailed a Notice to File Missing Parts, which set a two month shortened statutory period to reply. The application became abandoned on November 29, 2009, for failure to submit a timely response to the Notice to File Missing Parts. On June 10, 2010, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to nonreceipt of the Notice to File Missing Parts. Specifically, petitioner states that the Notice of Missing Parts of September 28, 2009, was never received and that "all mail which is received at the above address is put in a safe area, sorted and answered as appropriate."

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the Notice to File Missing Parts and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains

files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice of File Missing Parts of September 28, 2009, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after September 28, 2009, to demonstrate nonreceipt of the Notice of File Missing Parts. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Office action, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the Notice to File Missing Parts action was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after September 28, 2009; the period when he would have received the Notice to File Missing Parts.

In the present petition, petitioner did not submit any statements, documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the Notice to File Missing Parts. Therefore, the petition to withdraw the holding of abandonment is **dismissed**. A copy of the Notice to File Missing Parts accompanies this decision for petitioner's convenience.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application 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) , pay the $810.00 petition fee, and include therewith the response required by the Notice to File Missing parts dated September 28, 2009.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, 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 Terri Johnson at (571) 272-2991.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement; and a copy of the Notice to File Missing Parts dated September 28, 2009.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/240,740	09/09/2009	Lisa Barabara Bessinger	

CONFIRMATION NO. 1740

FORMALITIES LETTER

87772
Lisa Bessinger
22 Dutchells Copse
Horsham, RH12 5PD
UNITED KINGDOM

OC000000037965451

Date Mailed: 09/28/2009

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The provisional application cover sheet under 37 CFR 1.51(c)(1), which may be an application data sheet (37 CFR 1.76), is required identifying:
  - either city and state, or city and foreign country, of the residence of each inventor.

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- To avoid abandonment, a surcharge (for late submission of filing fee or cover sheet) as set forth in 37 CFR 1.16(g) of **$25** for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this notice.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **$25** for a small entity
- **$25** Surcharge.

Replies should be mailed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.
https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at http://www.uspto.gov/ebc.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

/mduong/

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

ELEY LAW FIRM CO.
7870 OLENTANGY RIVER RD
SUITE 311
COLUMBUS OH 43235

MAILED
OCT 06 2011
OFFICE OF PETITIONS

In re Application: :
Johnson et al. :
Application No. 61/241,430 : ON PETITION
Filed: September 11, 2009 :
Attorney Docket No. E58537.036 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 15, 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 inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ELEY LAW FIRM CO.
7870 OLENTANGY RIVER RD
SUITE 311
COLUMBUS OH 43235

MAILED

OCT 06 2011

OFFICE OF PETITIONS

In re Application of:	:	
Scott Johnson et al.	:	
Application No. 61/241,436	:	NOTICE
Filed: September 11, 2009	:	
Attorney Docket No. E58537.037	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 15, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

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

This file is being forwarded to Files Repository.

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

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BISHOP & DIEHL, DIEHL, LTD.
1750 EAST GOLF ROD
SUITE 390
SCHAUMBURG IL 60173

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Application of	:	
AMBROSE, et al	:	
Application No. 61/242,315	:	NOTICE
Filed: September 14, 2009	:	
Attorney Docket No. 001027 P0016	:	

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

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

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

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

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

C. JAMES BUSHMAN
5851 SAN FELIPE
SUITE 975
HOUSTON TX 77057

MAILED

AUG 24 2010

OFFICE OF PETITIONS

In re Application of :
Beasley, et al. :
Application No. 61/243,258 : DECISION
Filed/Deposited: 17 September, 2009 :
Attorney Docket No. Microsul-2 :

This is a decision on the petition filed on 2 July, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition 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 under 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 under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that

guidance in the effort to satisfy the showing requirements (statements, supporting documentation and a copy of the reply).

Petitioner failed to make the showing required.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly, to the Notice to File Missing Parts mailed on 21 October, 2009, with reply due absent extension of time on or before 21 December, 2009.

The application went abandoned by operation of law after midnight 21 December, 2009.

The Office mailed a Notice of Abandonment on 28 June, 2010.

On 2 July, 2010, Petitioner filed a petition a petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, timely reply on 4 November, 2009—Petitioner indicates that he was un-attentive to his application and submitted papers into the wrong application. However, Petitioner failed to make the showing as required (described below) and provide a copy of the averred reply.

Accordingly, Petitioner failed to satisfy the showing requirement, as discussed below. Petitioner is directed to the appropriate guidance (MPEP §711.03(c)(I)). To prevail herein on a petition pursuant to 37 C.F.R. §1.181Petitioner **must** comply with that guidance.

With regard to a 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 reply:

***

> [The regulations at] 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]

***

In the instant matter, Petitioner appears not to comply with and/or otherwise satisfy these requirements.

Should Petitioner wish to revive the application: Petitioner must 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)

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

[1] *See*: MPEP §711.03(c) (I)(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]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner must properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c).

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Petitioner's failure to file timely such a petition may be considered *indicia* delay other than that which is unintentional.

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[3]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

Cosmic Descent, LLC.
Box 1624
Vernon CT 06066

MAILED
MAY 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Les Okrasa	:	
Application No. 61/245,543	:	DECISION ON PETITION
Filed: September 24, 2009	:	PURSUANT TO
Title: COSM ENTERTAINMENT	:	37 C.F.R. § 1.137(A)
SYSTEM	:	

This is a decision on the petition submitted on April 25, 2011, pursuant to 37 C.F.R. § 1.137(a).

This petition is **DISMISSED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed October 8, 2009, which set a shortened statutory period for reply of two months and required the basic filing fee, a provisional application cover sheet (or an Application Data Sheet) and the surcharge associated with the late submission of the same. 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 December 9, 2009. A notice of abandonment was mailed on June 17, 2010.

Petition fee requirement:

The fee for filing a petition to revive an unavoidably abandoned application under 37 C.F.R. § 1.137(a) is set forth in 37 C.F.R. § 1.17(l) as being $270 for a small entity and $540 for a large entity. With this petition, Petitioner has not submitted any fees, and an authorization to charge any fee deficiency to a Deposit Account has not been located in the electronic file.

The payment of the required petition fee in full is a prerequisite to the filing of a petition to revive pursuant to 37 C.F.R. § 1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. § 711.03(c)(III)(B), which sets forth, *in toto*:

> 35 U.S.C. 41(a)(7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived (emphasis added).
>
> In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

The phrase "unless the petition is filed under [35 U.S.C.] 133 or 151" signifies that petitions to revive filed on the basis of "unavoidable" delay (under 35 U.S.C. 133 or 151) are a subset of petitions to revive filed on the basis of unintentional delay. That is, "unavoidable" delay and "unintentional" delay are not alternatives; "unavoidable" delay is the epitome of "unintentional" delay. Any petition to revive an abandoned application or lapsed patent must meet the minimal "unintentional" delay threshold, and an applicant need only pay the fee specified in 37 CFR 1.17(l) (rather than the fee specified in 37 CFR 1.17(m)) if the petition is also accompanied by an adequate showing that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a), was unavoidable.

It follows that this petition cannot be considered on the merits.

If reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.137(a)." This is not a final agency action within the meaning of 5 U.S.C § 704.

Any subsequent filing pertaining to the abandonment of this application should indicate 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]

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.

Alternatively, Petitioner may wish to consider filing a petition pursuant to 37 C.F.R. § 1.137(b), which carries a significantly lower standard. Should Petitioner wish to file pursuant to 37 C.F.R. § 1.137(b), the associated fee would be $810 for a small entity. Petitioner may download information about this petition here:
http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Jonathan P. O''Brien, Ph.D.
Honigman Miller Schwartz & Cohn LLP
350 East Michigan Avenue
Suite 300
Kalamazoo MI 49007

MAILED

SEP 02 2010

OFFICE OF PETITIONS

In re Application of	:	
John Demattei et al.	:	
Application No. 61/246,303	:	DECISION ON PETITION
Filed: September 28, 2009	:	
Attorney Docket No. 223306/08-152P2/128545	:	

This is a decision on the Petition to Remove Documents which is being treated as a petition under 37 CFR 1.59(b), filed March 22, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitions filed under 37 CFR 1.59(b) require a petition fee set forth in §1.17(g) which is currently $200. The petition did not include the required petition fee and thus the petition cannot be considered on the merits until the fee is paid.

Petitioner's attention is drawn to MPEP 724.06 (II) for the requirements of a petition to expunge information submitted unintentionally.

Telephone inquiries concerning this communication 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

Jonathan P. O''Brien, Ph.D.
Honigman Miller Schwartz & Cohn LLP
350 East Michigan Avenue
Suite 300
Kalamazoo MI 49007

MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Application of
John Demattei et al.
Application No. 61/246,303
Filed: September 28, 2009
Attorney Docket No. 223306/08-152P2/128545

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.59(b), filed September 29, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the Request to Correct Inventorship filed March 22, 2010, be expunged from the record. Petitioner states that this request was filed in error.

The petition is deficient because there is no statement that:

> (B) the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
> (C) the information has not otherwise been made public;
> (D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted.

Petitioner is directed to MPEP 724.05(II).

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES 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.

KALOW & SPRINGUT LLP
488 MADISON AVENUE
19TH FLOOR
NEW YORK NY 10022

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Stebben	:	
Application No. 61/246,533	:	DECISION ON PETITION
Filed: September 29, 2009	:	PURSUANT TO
Attorney Docket No.:	:	37 C.F.R. § 1.137(B)
PRESS40003-US	:	
Title: SYSTEM AND METHOD FOR	:	
PRODUCING INTEGRATED, CROSS-	:	
PLATFORM ACCESS AND LINKAGE	:	
BETWEEN ONLINE AND OFFLINE	:	
CONTENT, ADVERTISING AND THIRD-	:	
PARTY APPLICATIONS	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed September 15, 2010, to revive the above-identified application.

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

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed October 9, 2009, which required a provisional application cover sheet and a $25 surcharge associated with the late filing of the same. The notice set a shortened statutory period for reply of two 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 December 10, 2009. A notice of abandonment was mailed on June 17, 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 the petition fee, a Supplemental Application Data Sheet, the surcharge that is associated with the late submission of a provisional application cover sheet, and the proper statement of unintentional delay.

Requirements (2) and (3) 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 first requirement of Rule 1.137(b) has not been satisfied because Petitioner did not submit the required reply to the Office action. The required reply is a reply which would have been sufficient to have avoided abandonment, had such reply been timely filed.[2] In order for the application to be revived, Petitioner must submit a reply which satisfies 37 C.F.R. § 1.137(b)(1). More specifically, the notice of October 9, 2009 indicated that an Application Data Sheet (ADS) could be submitted in lieu of a provisional application cover sheet. Petitioner has included a supplemental ADS with this petition, however the Supplemental ADS has not been titled as a "Supplemental Application Data Sheet."[3]

On renewed petition, Petitioner should submit a properly titled and executed Supplemental ADS.

---

1 See Rule 1.137(d).
2 See M.P.E.P. § 711.03(c).

3 MPEP § 601.05 indicates that any ADS that is submitted to "correct, modify, or augment the original application data, the ADS, even though it is the first-filed ADS, must be titled "Supplemental Application Data Sheet."

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. § 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C § 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[4] hand-delivery,[5] or facsimile.[6] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[7]

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.[8]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
6 (571) 273-8300: please note this is a central facsimile number.
7 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
8 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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Paper No.

MAILED
JUN 03 2011
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KALOW & SPRINGUT LLP
488 MADISON AVENUE
19TH FLOOR
NEW YORK NY 10022

In re Application of Stebben Application No. 61/246,533 Filed: September 29, 2009 Attorney Docket No.: PRESS40003-US Title: SYSTEM AND METHOD FOR PRODUCING INTEGRATED, CROSS-PLATFORM ACCESS AND LINKAGE BETWEEN ONLINE AND OFFLINE CONTENT, ADVERTISING AND THIRD-PARTY APPLICATIONS	DECISION ON RENEWED PETITION PURSUANT TO 37 C.F.R. § 1.137(B)

This is a decision on the renewed petition pursuant to 37 C.F.R. § 1.137(b), filed February 4, 2011, to revive the above-identified application.

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

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed October 9, 2009, which required a provisional application cover sheet and a $25 surcharge associated with the late filing of the same. The notice set a shortened statutory period for reply of two 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 December 10, 2009. A notice of abandonment was mailed on June 17, 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.

An original petition pursuant to 37 C.F.R. § 1.137(b) was filed on September 15, 2010, along with the petition fee, a Supplemental Application Data Sheet, the surcharge that is associated with the late submission of a provisional application cover sheet, and the proper statement of unintentional delay. The original petition was dismissed via the mailing of a decision on December 6, 2010, which indicated that requirements (2) and (3) of Rule 1.137(b) have been met and that the fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1] The decision further indicated that the first requirement of Rule 1.137(b) has not been satisfied because Petitioner did not submit the required reply to the Office action: Petitioner included a supplemental ADS with the petition, however the Supplemental ADS has not been titled as a "Supplemental Application Data Sheet."[2] On the second page of the decision, the following text appeared: "[o]**n renewed petition, Petitioner should submit a properly titled and executed Supplemental ADS.**" Emphasis included.

With this renewed petition, Petitioner has included a properly titled Supplemental ADS. However, <u>this Supplemental ADS cannot be accepted, as it has not been executed</u>. Petitioner will note that an ADS filed with the application is not required to be signed unless the ADS includes a nonpublication request. 37

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1 <u>See</u> Rule 1.137(d).
2 MPEP § 601.05 indicates that any ADS that is submitted to "correct, modify, or augment the original application data, the ADS, even though it is the first-filed ADS, must be titled "Supplemental Application Data Sheet."

C.F.R. §1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 C.F.R. §1.27(c)(2)(ii), filed in the application must be signed by an appropriate party. Therefore, a supplemental ADS filed after the filing of an application must be signed in accordance with 37 C.F.R. § 1.33(b).

On second renewed petition, Petitioner should submit a properly titled and executed Supplemental ADS.

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 "Second Renewed Petition Under 37 C.F.R. § 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C § 704.

The second renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[3] hand-delivery,[4] or facsimile.[5] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[6]

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.[7]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
4 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
5 (571) 273-8300: please note this is a central facsimile number.
6 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
7 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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Paper No.

MAILED
SEP 30 2011
OFFICE OF PETITIONS

KALOW & SPRINGUT LLP
488 MADISON AVENUE
19TH FLOOR
NEW YORK NY 10022

In re Application of Stebben Application No. 61/246,533 Filed: September 29, 2009 Attorney Docket No.: PRESS40003-US Title: SYSTEM AND METHOD FOR PRODUCING INTEGRATED, CROSS-PLATFORM ACCESS AND LINKAGE BETWEEN ONLINE AND OFFLINE CONTENT, ADVERTISING AND THIRD-PARTY APPLICATIONS	DECISION ON SECOND RENEWED PETITION PURSUANT TO 37 C.F.R. § 1.137(B)

This is a decision on the second renewed petition pursuant to 37 C.F.R. § 1.137(b), filed September 23, 2011, to revive the above-identified application.

This second renewed 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 Notice of Missing Parts (notice), mailed October 9, 2009, which required a provisional application cover sheet and a $25 surcharge associated with the late filing of the same. The notice set a shortened statutory period for reply of two 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 December 10, 2009. A notice of abandonment was mailed on June 17, 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.

An original petition pursuant to 37 C.F.R. § 1.137(b) was filed on September 15, 2010, along with the petition fee, a Supplemental Application Data Sheet, the surcharge that is associated with the late submission of a provisional application cover sheet, and the proper statement of unintentional delay. The original petition was dismissed via the mailing of a decision on December 6, 2010, which indicated that requirements (2) and (3) of Rule 1.137(b) have been met and that the fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1] The decision further indicated that the first requirement of Rule 1.137(b) has not been satisfied.

A renewed petition pursuant to 37 C.F.R. § 1.137(b) was filed on February 4, 2011, and was dismissed via the mailing of a decision on June 3, 2011.

With this second renewed petition, Petitioner has included a properly titled and executed Supplemental ADS as well as a two-month extension of time so as to make timely this response.

It follows that the first requirement of Rule 1.137(b) has been satisfied.

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing. Petitioner will receive appropriate

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1 See Rule 1.137(d).

notifications regarding the fees owed, if any, and other information in due course from OPAP.

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 OPAP 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 OPAP where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status**.

The general phone number for OPAP is 571-272-4000. Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.[2]

Paul Shanoski
Senior Attorney
Office of Petitions

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 any further action(s) of Petitioner.

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APR 25 2011
OFFICE OF PETITIONS

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

In re Application of :
LEANDRE LASFARGUES, et al. :
Application No. 61/246,559 : ON PETITION
Filed: September 29, 2009 :
Attorney Docket No. 348543US41PROV :

This is in response to the petition to "expunge and have returned/destroyed papers inadvertently efiled in the USPTO EFS," in the above-identified application, filed October 8, 2010, which is being treated as a petition under 37 CFR 1.59.

The petition is **DISMISSED.**

Petitioner states that "an inaccurate English translation was inadvertently filed. The inaccurate English translation was efiled September 9, 2010 (Time Stamp 17:26:55 and EFS ID: 8387205)." It is further stated that "[t]he incorrectly filed English translation in fact belongs to the utility application number 12/878,790 and not this provisional application and should not be part of this provisional application record."

37 CFR 1.59 states:

> (a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.
> (2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
> (b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

In the instant case, petitioner filed a provisional application under 35 U.S.C. 111(b) which formed an original disclosure. An expungement of the translation of the originally filed specification would, in effect, be an expungement of a part of the original disclosure. 37 CFR 1.59(a) precludes the expungement of a part of original disclosure. Accordingly, the petition is dismissed.

It is also noted that the petitioner has not provided adequate reasons for waiving the requirement set forth in MPEP § 724.05 II, factor (D), that requires a commitment on the part of the petitioner to retain the information sought to be expunged for the period of any patent with regard to which such information is submitted. Petitioner should note that any consideration of a request for a waiver of a requirement, that is not part of the statutes, will only be undertaken under the provisions of 37 CFR 1.183.

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

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET
SUITE 1600
PORTLAND OR 97204

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of	:	
Mark Publicover	:	
Application No. 61/246,932	:	DECISION ON PETITION
Filed: September 29, 2009	:	
Attorney Docket No. 4859-85960-02	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 22, 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 Provisional Application mailed October 14, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 15, 2009. A Notice of Abandonment was mailed June 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 a provisional application cover sheet and $25 surcharge, (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 the Office of Patent Application Processing for appropriate action in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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
61/246,932	09/29/2009	Mark W. Publicover	4859-85960-02

CONFIRMATION NO. 9002

CONVERSION REQUEST

OC000000047598128

24197
KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET
SUITE 1600
PORTLAND, OR 97204

Date Mailed: 05/11/2011

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **03/28/2011,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the fee required by 37 CFR 1.17(i).

It was received after the expiration of twelve months after the filing date of the provisional application.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
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Paper No.

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

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Bevirt	:	
Application No. 61/247,102	:	DECISION ON PETITION
Filed: September 30, 2009	:	PURSUANT TO
Attorney Docket No. 1157-US-1P	:	37 C.F.R. § 1.137(B)
Title: LIGHTWEIGHT VERTICAL	:	
TAKE-OFF AND LANDING AIRCRAFT	:	
AND FLIGHT CONTROL PARADIGM	:	
USING THRUST DIFFERENTIALS	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed November 19, 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 Notice of Missing Parts (notice), mailed November 2, 2009, which set a shortened statutory period for reply of two 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 January 3, 2010. A notice of abandonment was mailed on July 12, 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 the petition fee, the basic filing fee, a provisional application cover sheet along with the surcharge for the late submission of the same, and the proper statement of unintentional delay.

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

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing. Petitioner will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OPAP.

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 OPAP 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 OPAP where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

The general phone number for OPAP is 571-272-4000. Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.[2]

/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 any further action(s) of Petitioner.

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CARGILL, INCORPORATED
P.O. Box 5624
MINNEAPOLIS MN 55440-5624

MAILED

DEC 08 2011

OFFICE OF PETITIONS

In re Application of	:	
Nana et al.	:	
Application No.: 61/247646	:	DECISION ON REQUEST
Filing or 371(c) Date: 10/01/2009	:	UNDER 37CFR 5.25
Attorney Docket Number:	:	
E00030USP1	:	

Title of Invention: **CONFECTIONERY PRODUCTS CONTAINING ERYTHRITOL**

This is a decision on the "Petition for Retroactive Foreign Filing License Under 37 CFR § 5.25," filed October 15, 2011, for a retroactive foreign filing license. The Supplemental Request is properly treated as a renewed petition under 37 CFR 5.25.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within **60 DAYS** 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]". In the absence of any response within 60 days of the mailing date of this decision, such dismissal will be made final and a final action under 35 U.S.C. 185 will be taken.

The present petition

Applicants file the present petition and provide that the material submitted in the present application was submitted to the European Patent Office ("EPO) on 05-Oct-2009, and that it first came to Applicants' attention in September 2010 that the proscribed foreign filing may have been filed prior to having been granted a foreign filing license for the present application. Upon diligent investigation, petitioner provides that he did discover that the EPO application was indeed filed four (4) days before a foreign filing license was granted. Applicant provides that the EPO application was filed erroneously and without deceptive intent.

Applicable Law, Rules and MPEP

37 CFR § 5.25 provides:

(a) A petition for retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14(a), and shall include:
(1) A listing of each of the foreign countries in which the unlicensed patent application material was filed,
(2) The dates on which the material was filed in each country,
(3) A verified statement (oath or declaration) containing:
(i) An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,
(ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and
(iii) An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and
(4) The required fee (§ 1.17(g) of this chapter).

(b) The explanation in paragraph (a) of this section must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

Statements of error must be supported by fact. They should not merely be conclusory but must include how and why the error occurred, as in reissue practice. See, for example, cases like *Site Microsurgical Systems Inc., v. Surgin Surgical Instruments, Inc.* 32 USPQ2d 1161, 1171. (The mere conclusion that the error was made through oversight in drafting by the patent attorney, without more, falls short of what the regulation requires).

In addition, the above explanation (37 CFR 5.25(a)(3)(iii) must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by all those persons responsible for or having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing.

Analysis

The petition fails to provide facts as to the nature of the error. Here, Applicant provides that the material submitted in the present application was submitted to the European Patent Office ("EPO) on 05-Oct-2009, and that it first came to Applicants' attention in September 2010 that the proscribed foreign filing may have been filed prior to having been granted a foreign filing license for the present application. However, Applicant does not state how the error came to his

attention. Further to this, the showing of facts as to the nature of the error should include statements by all those persons responsible for or having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing.

Conclusion

Accordingly, the provisions of 37 CFR 5.25 not having fully been met, the petition is DISMISSED, and in the absence of any response within 60 days of the mailing date of this decision, such dismissal will be made final and a final action under 35 U.S.C. 185 will be taken. Extensions of time are available under 37 CFR 1.136(a).

Telephone inquiries concerning this matter should be directed to Attorney Derek Woods at (571) 272-3232.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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SCHLUMBERGER OILFIELD SERVICES
200 GILLINGHAM LANE
MD 200-9
SUGAR LAND TX 77478

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of	:	
David Alumbaugh et al.	:	
Application No. 61/248,145	:	DECISION ON PETITION
Filed: October 2, 2009	:	
Attorney Docket No. 23.0712	:	

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

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 October 20, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 21, 2009. A Notice of Abandonment was mailed June 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a surcharge fee of $50, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly the fees 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 August 5, 2010. Inquires regarding the status of the application should be directed to the Office of Patent Application Processing at 571-272-4000.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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FOLEY & LARDNER LLP
975 PAGE MILL ROAD
PALO ALTO CA 94304

MAILED
DEC 15 2010
OFFICE OF PETITIONS

In re
Choi, et al.
Application No. 61/248,226
Filed: October 2, 2009
Attorney Docket No. 060933-5200

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed October 4, 2010.

The fee deficiency submission under 37 CFR 1.28 of $110 for the provisional application basic filing fee is hereby accepted.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE, SUITE 100
SAN DIEGO, CA 92130-2040

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Denis DRYGIN, et *al.*	:	
Application No. 61/248,270	:	DECISION ON PETITION TO
Filed: October 2, 2009	:	WITHDRAW FROM RECORD
Attorney Docket No. **532233005800**	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 3, 2010.

The request is **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 Leslie A. Robinson 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 communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by 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: **DENIS DRYGIN**
14125 VIA ALISAL
SAN DIEGO, CA 92128

UNITED STATES PATENT AND TRADEMARK OFFICE

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Elizabeth Logan
36 Lovett Lane
N. Chelmsford MA 01863

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Elizabeth Logan	:	
Application No. 61/248,440	:	ON PETITION
Filed: October 3, 2009	:	
	:	

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 **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 Provisional Application (Notice), mailed October 26, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 27, 2009. The Notice of Abandonment was mailed July 7, 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) & (3).

Item 1:

The reply that was required by the Missing Parts Notice of October 26, 2009 is incomplete. The $25 surcharge was not submitted herewith petition.

Item 3:

The statement of delay is not acceptable because the signature line on the petition was left unsigned.

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

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

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

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

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

Terri Johnson

Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
SEP 27 2010
OFFICE OF PETITIONS

Elizabeth Logan
36 Lovett Lane
N. Chelmsford MA 01863

In re Application of	:	
Elizabeth Logan	:	
Application No. 61/248,440	:	DECISION ON PETITION
Filed: October 3, 2009	:	
	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed September 3, 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 Provisional Application (Notice), mailed October 26, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 27, 2009. The 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) the reply in the form of a provisional application cover sheet, and $25 surcharge, (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 the Office of Patent Application Processing for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Jonathan P. O"Brien, Ph.D.
Honigman Miller Schwartz & Cohn LLP
350 East Michigan Avenue
Suite 300
Kalamazoo MI 49007

MAILED

SEP 02 2010

OFFICE OF PETITIONS

In re Application of	:	
John Demattei et al.	:	
Application No. 61/248,565	:	DECISION ON PETITION
Filed: October 5, 2009	:	
Attorney Docket No. 223306/08-152	:	
P3/128547		

This is a decision on the Petition to Remove Documents which is being treated as a petition under 37 CFR 1.59(b), filed March 22, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitions filed under 37 CFR 1.59(b) require a petition fee set forth in §1.17(g) which is currently $200. The petition did not include the required petition fee and thus the petition cannot be considered on the merits until the fee is paid.

Petitioner's attention is drawn to MPEP 724.06 (II) for the requirements of a petition to expunge information submitted unintentionally.

Telephone inquiries concerning this communication 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
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Jonathan P. O''Brien, Ph.D.
Honigman Miller Schwartz & Cohn LLP
350 East Michigan Avenue
Suite 300
Kalamazoo MI 49007

MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Application of
John Demattei et al.
Application No. 61/248,565
Filed: October 5, 2009
Attorney Docket No. 223306/08-152
P3/128547

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.59(b), filed September 29, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the Request to Correct Inventorship filed March 22, 2010, be expunged from the record. Petitioner states that this request was filed in error.

The petition is deficient because there is no statement that:

> (B) the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
> (C) the information has not otherwise been made public;
> (D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted.

Petitioner is directed to MPEP 724.05(II).

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WESLEY B. AMES
7031 LOS VIENTOS SERENOS
ESCONDIDO CA 92029

MAILED
NOV 15 2010
OFFICE OF PETITIONS

In re Application of :
Naveed Aslam :
Application No. 61/249,605 : DECISION ON PETITION
Filed: October 8, 2009 :
Attorney Docket No. CARB.08.01 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 8, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed November 5, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 6, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the basic filing fee and $25 surcharge, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Petitioner is reminded subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

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

This application is being referred to the Office of Patent Application Processing for further processing.

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
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DRW Aug-10

WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS IN 46204-5137

MAILED

AUG 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Mosier et al.	:	
Application Number: 61/251059	:	ON PETITION
Filed: 10/13/2009	:	
Attorney Docket Number: 007024-000596	:	

This is a decision in reference to the petition, filed on January 6, 2010, which is treated as a petition to accord the above-identified application a filing date of October 13, 2009.

The petition is **GRANTED**.

The application was filed on October 13, 2009, without drawings. Accordingly, on November 6, 2009, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on January 6, 2010, the subject petition was filed. Petitioners assert that "drawings, to the extent omitted, were not necessary to an understanding of the invention under 35 USC Section 113."

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure,

directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on October 13, 2009, contain at least one process claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of a process or method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on November 6, 2009, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of October 13, 2009, without drawings as a part of the original disclosure. As no petition fee is due, the fee payment of $400.00 with the subject petition will be refunded to counsel.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to October 13, 2009, and for an indication in Office records that no (0) drawings were present on filing.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED

OCT 08 2010

OFFICE OF PETITIONS

JENNIFER L. BALES
MOUNTAIN VIEW PLAZA
1520 EUCLID CIRCLE
LAFAYETTE CO 80026-1250

In re Application of	:	
Valeriy MAISOTSENKO, et al	:	
Application No. 61/251,104	:	ON PETITION
Filed: October 13, 2009	:	
Attorney Docket No. 102.126	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 30, 2010, to revive the above-identified application.

The petition is **DISMISSED.**

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed November 9, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 10, 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).

With respect to item (2): The Notice mailed November 9, 2009, required a surcharge payment of $25. Since the required fee was not submitted with the petition filed August 30, 2010, the petition cannot be accepted as being in compliance with 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. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted

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.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JENNIFER L. BALES
MOUNTAIN VIEW PLAZA
1520 EUCLID CIRCLE
LAFAYETTE CO 80026-1250

MAILED
DEC 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Valeriy MAISOTSENKO, et al	:	
Application No. 61/251,104	:	DECISION ON PETITION
Filed: October 13, 2009	:	
Attorney Docket No. I02.126	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 8, 2010, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed November 9, 2009. The Notice set a period for reply of **two (2) months** from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 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 statement of clarification; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

The Office acknowledges the Power of Attorney filed December 8, 2010, however, it has not been accepted. Please see the Notice mailed December 13, 2010.

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

All other inquires should be directed to the Office of Data Management at (571) 272-4200.

This application is being referred to the Office of Data Management for further pre-examination 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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BASF CORPORATION
CARL-BOSCH-STRASSE 38
LUDWIGSHAFEN D6705-6
GERMANY

MAILED
FEB 10 2011
OFFICE OF PETITIONS

In re Application of Ivor Bull	:	
Application No. 61/251,350	:	Decision on Petition
Filing Date: October 14, 2009	:	
Attorney Docket No. PF62647	:	

This is a decision on the petition under 37 CFR 1.181 filed August 20, 2010, which requests the Office withdraw the holding of abandonment.

The petition is **granted.**

Facts

The application was filed October 14, 2009.

The Office mailed a Notice of Omitted Item(s) in a Provisional Application on November 9, 2009. The notice stated Figures 4, 5, and 6 described in the specification appeared to be omitted and gave Applicants two options:

1. File a petition within two months of the mailing date of the notice in order to establish Figures 4, 5, and 6 were filed November 9, 2009, or
2. Accept the application as filed by not filing a petition.

The November 9, 2009 notice did not state the application would become abandoned if a reply was not filed in response to the notice.

The Office did not receive a response to the November 9, 2009 notice.

The Office mailed a Notice of Abandonment on July 21, 2010. The notice stated the application was abandoned because the Office never received a response to the November 9, 2009 notice.

A petition to withdraw the holding of abandonment was filed August 20, 2010. A second petition was filed September 21, 2010. The second petition is essentially a copy of the first petition, which includes minor changes such as a different heading. Copies of the second petition were filed November 2, 2010, and November 4, 2010.

Discussion

The petition asserts the application is not abandoned. The Office agrees with the assertion.

Notices of omitted items mailed in *nonprovisional* applications explicitly state a failure to respond to the notice will result in the abandonment of the application. As a result, a failure to reply to a notice of omitted items mailed in a nonprovisional application will result in the abandonment of the application.

Notices of omitted items mailed in *provisional* applications do *not* state a failure to respond to the notice will result in the abandonment of the application and a failure to reply to such a notice will not result in the abandonment of the application.

The instant case involves a notice of omitted items mailed in a provisional application. The notice did not state a failure to respond to the notice would result in the abandonment of the application. In other words, Applicants were not required to respond to the notice to avoid abandonment of the application.

In view of the prior discussion, the application is not abandoned and the Notice of Abandonment and the holding of abandonment are hereby withdrawn.

Issues Involving Powers of Attorney and Declarations

Papers filed in the instant case during the time period from August 20, 2010, to November 4, 2010, include:

A. A declaration which includes a power of attorney and seeks to change the address of record,
B. A power of attorney signed by two individuals as directors of BASF SE,
C. A certificate under 37 CFR 3.73(b), and
D. A copy of an assignment from Bilge Yilmaz to BASF SE.

The instant application was filed without a cover sheet and the application data sheet identifies Ivor Bull as an inventor of record. Therefore, the only inventor currently of record is Ivor Bull.

The power of attorney and request to change the address of record filed with the declaration is not signed by Ivor Bull. Instead, the document is signed by Bilge Yilmax, who is not the inventor of record. Therefore, the power of attorney is improper.

A power of attorney signed by two individuals, as directors of BASF SE, is also improper. The power of attorney signed by the individuals is improper because the certificate under 37 CFR 3.73(b) filed in this case fails to indicate an assignment has ever been recorded for the instant application.

In view of the previous discussion, none of the powers of attorney previously filed will be entered and the address of record remains the address associated with Customer No. 29137.

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

The Office of Patent Application Data Processing will be informed of the instant decision and will take any steps necessary to complete the processing of the instant application.

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: Ashley I. Pezzner
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
PO Box 2207
Wilmington, DE 19899

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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BARNES & THORNBURG, LLP
11 SOUTH MERIDIAN STREET
INDIANAPOLIS, IN 46204
SAN DIEGO, CA. 92130

MAILED

SEP 16 2010

OFFICE OF PETITIONS

In re Application of	:	
John Alan BOBEY et al	:	
Application No. 61/251,518	:	ON PETITION
Filed: October 14, 2009	:	
Attorney Docket No. 7175-209596	:	

This is a decision on the petition filed under 37 CFR 1.182, filed January 28, 2010, to correct (a) the misspelling of the inventor's first name and last name from Eddy Harper to Edward Harber; (b) the miss-spelling of the inventor's first name, middle initial and last name from Steve Waiter to Stephen J. Wiater; and (c) the city of residence for inventor Stephen J. Wiater from Chicopee to Southwick.

The petition is **GRANTED**.

Petitioner request that two names of the inventors be formalized, and the correction of the city residence for one of the inventor.

A review of the original assignment data filed and recorded at **Reel 03597** and **Frame 0607**, indicates the information requested would be an accurate correction to the record. Hence the petition is granted.

Telephone inquiries regarding this decision should 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
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
61/251,518	10/14/2009		220	7175-209596		

CONFIRMATION NO. 7568

CORRECTED FILING RECEIPT

69781
BARNES & THORNBURG, LLP
11 SOUTH MERIDIAN STREET
INDIANAPOLIS, IN 46204

OC000000043505038

Date Mailed: 09/15/2010

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

John Alan Bobey, Daniel Island, SC;
Edward Harber, Portland, OR;
Stephen J. Wiater, Southwick, MA;

Power of Attorney:
Carli Stewart--51058

If Required, Foreign Filing License Granted: 10/26/2009
The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/251,518**
Projected Publication Date: None, application is not eligible for pre-grant publication
Non-Publication Request: No
Early Publication Request: No
Title

Three-Dimensional Layer for a Garment of a HFCWO System

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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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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D BOMMI BOMMANNAN
2251 GRANT ROAD, SUITE B
LOS ALTOS CA 94024

MAILED
AUG 17 2010
OFFICE OF PETITIONS

In re Application of :
Gregory B. Lawless et al :
Application No. 61/252,122 : ON PETITION
Deposited: October 15, 2009 :
Attorney Docket No. RPTS-002P :

This is in response to the " RESPONSE TO NOTICE OF INCOMPLETE PROVISIONAL APPLICATION" filed February 19, 2010, requesting that the above-referenced application be accorded a filing date of October 15, 2009. This petition is being treated pursuant to 37 CFR 1.53(e)(2)[1].

Application papers in the above-identified application were deposited on October 15, 2009. However, on November 9, 2009, the Office of Patent Application Processing mailed applicants a "Notice of Incomplete Nonprovisional Application," notifying applicants that the application papers had not been accorded a filing date because the application was deposited without drawings. In response, applicants timely filed this petition and asserts that drawings were submitted on filing the above application.

Petitioner's arguments and evidence have been considered. However, a review of the application confirms that, as filed, the application contained at least one method claim. MPEP 601.01(f) provides that:

> It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

Thus, pursuant to § 601.01(f), a drawing is not considered essential for a filing date. The instant application is entitled to a filing date without drawings present in the application.

Accordingly, the Office should have granted the application a filing date and mailed a Notice of Omitted Items instead of a Notice of Incomplete Nonprovisional Application. As stated in

[1] Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

MPEP 601.01(g) under the section entitled, "Application Entitled to a Filing Date," applicant may submit an amendment to include the inadvertently omitted portion of the drawing(s) pursuant to 37 CFR 1.57(a):

> [i]f an application was filed on or after September 21, 2004, and contains a claim under 37 CFR 1.55 for priority of a prior-filed foreign application, or a claim under 37 CFR 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application that was present on the filing date of the application, and the omitted portion of the drawing(s) was inadvertently omitted from the application and is completely contained in the prior-filed application[.]

Please note that no petition is required and that the amendment must comply with 37 CFR 1.57(a) and 37 CFR 1.121. See MPEP § 201.17. Any amendment to include the inadvertently omitted drawing(s) will be considered by the examiner.

To the extent the instant petition requests a filing date of October 15, 2009, with no drawings present in the application, the petition is **GRANTED**.

Given the basis for granting this petition, no petition fee is required.

Pursuant to this decision, the application will be referred to Office of Patent Application Processing for:

- **correction of the filing date to October 15, 2009**;
- **for indication in Office records, as appropriate, that "0" sheets of drawings were present on filing** and
- **for issuance of a filing receipt.**

Applicants should submit an amendment to consider the drawings filed with the petition on February 19, 2010. The amendment will be determined by the examiner.

Telephone inquiries concerning this matter may be directed to Karen Creasy at (571) 272-3208.

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

Uwe Hinrichsen
11 NE 15th Ave
Pompano Beach FL 33060

MAILED
DEC 14 2010
OFFICE OF PETITIONS

In re Application of	:	
Uwe Hinrichsen	:	
Application No. 61/252,338	:	DECISION ON PETITION
Filed: October 16, 2009	:	

This is a decision on the petition, filed September 27, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

The application was held to have gone abandoned for failure to reply in a timely manner to the Notice to File Missing Parts mailed, January 4, 2010 (Notice), which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. A Notice of Abandonment was mailed September 22, 2010.

The petitioner states that he included a copy of the electronic acknowledgement receipt which includes the inventor's mailing address and phone number.

The Notice required the applicant to submit: (a) The provisional application cover sheet under 37 CFR 1.51 (c)(1), which may be an application data sheet (37 CFR 1.76), identifying: either city and state, or city and foreign country, of the residence of each inventor; and (b) a surcharge of $50 for late submission of the item noted in (a). A review of the file record (including the "original electronic acknowledgment receipt" filed with the instant petition) indicates that no reply to the Notice mailed January 4, 2010 was received in the application. Therefore, the application became abandoned, by law, on March 5, 2010.

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

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an

"unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

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

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

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

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

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

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

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

Enclosed: Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b), Form PTO/SB/64

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NEW RIVER VALLEY INTELLECTUAL PROPERTY LAW
P.O. BOX 10944
BLACKSBURG VA 24062

MAILED

JUL 18 2011

OFFICE OF PETITIONS

In re Application:	:	
Davalos et al.	:	
Application No. 61/252,445	:	ON PETITION
Filed: October 16, 2009	:	
Attorney Docket No. VTIP 09-140	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 13, 2011.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1122B
4417 LANCASTER PIKE
WILMINGTON DE 19805

MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Ying Wang	:	
Application No. 61/252,808	:	DECISION ON PETITION
Filed: October 19, 2009	:	
Attorney Docket No. UC0942USPRV	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 8, 2010, to revive the above-identified application and the petition under 37 CFR 1.182, filed October 8, 2010, to expedite processing of the petition to revive.

The petition to expedite is **GRANTED**.

The requisite $400.00 fee for the petition to expedite processing under 37 CFR 1.182 submitted October 8, 2010 has been accepted.

The petition to revive is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed November 18, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 19, 2010. A Notice of Abandonment was mailed on July 27, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet and the $50.00 Surcharge fee, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

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OCT 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Ying Wang	:	
Application No. 61/252,812	:	DECISION ON PETITION
Filed: October 19, 2009	:	
Attorney Docket No. UC0943USPRV	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 8, 2010, to revive the above-identified application and the petition under 37 CFR 1.182, filed October 8, 2010, to expedite processing of the petition to revive.

The petition to expedite is **GRANTED**.

The requisite $400.00 fee for the petition to expedite processing under 37 CFR 1.182 submitted October 8, 2010 has been accepted.

The petition to revive is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed November 19, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 20, 2010. A Notice of Abandonment was mailed on July 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet and the $50.00 Surcharge fee, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

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JOHN RYZNIC
FLORIDA TURBINE TECHNOLOGIES, INC.
1701 MILITARY TRAIL, SUITE 110
JUPITER FL 33458-7887

MAILED
NOV 30 2010
OFFICE OF PETITIONS

In re Application of :
Owen, et al. :
Application No. 61/253,258 :
Filed: 20 October, 2009 :
Attorney Docket No: F822P :

DECISION

This is a decision on the petition filed on 19 July, 2010, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **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.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

It appears that Petitioner has not satisfied the requirements pursuant to the regulations at 37 C.F.R. §1.137(b).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

The Applicant failed to reply timely and properly to the Notice to File Missing Parts (coversheet and surcharge) mailed on 3 November, 2009, with reply due absent extension of time on or before 3 January, 2010.

The application went abandoned by operation of law after midnight 3 January, 2010.

The Office mailed the Notice of Abandonment on 13 July, 2010.

On 19 July, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b) with fee, only a partial reply in the form of the provisional application coversheet, but no surcharge as indicated as required in the Notice of Missing Parts, and Petitioner made a statement of unintentional delay.

At this writing the requirements under the Rule have not been satisfied.

*The deficiency **must** be overcome on any renewed petition.*

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS

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).

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[2],[3]

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 not been satisfied.

CONCLUSION

The instant petition under 37 C.F.R. §1.137(b) is **dismissed**.

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

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

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

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

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[2] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[3] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[4] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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FLORIDA TURBINE TECHNOLOGIES, INC.
1701 MILITARY TRAIL, SUITE 110
JUPITER FL 33458-7887

MAILED
JAN 31 2011
OFFICE OF PETITIONS

In re Application of :
Owen, et al. :
Application No. 61/253,258 :
Filed: 20 October, 2009 :
Attorney Docket No: F822P :

DECISION

This is a decision on the petition filed on 7 December, 2010, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

The Applicant failed to reply timely and properly to the Notice to File Missing Parts (coversheet and surcharge) mailed on 3 November, 2009, with reply due absent extension of time on or before 3 January, 2010.

The application went abandoned by operation of law after midnight 3 January, 2010.

The Office mailed the Notice of Abandonment on 13 July, 2010.

On 19 July, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b) with fee, only a partial reply in the form of the provisional application coversheet, but no surcharge as indicated as required in the Notice of Missing Parts, and Petitioner made a statement of unintentional delay. The petition was dismissed on 30 November, 2010.

On 7 December, 2010, Petitioner re-advanced his petition pursuant to 37 C.F.R. §1.137(b) (with fee previously paid) and supplemented his reply in the form of the surcharge (in addition to the previously submitted provisional application coversheet), and Petitioner made a statement of unintentional delay.

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 also, 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 Office of Patent Application Processing (OPAP) 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 OPAP in response to this decision. It is noted that all inquiries with regard to status need be directed to the OPAP 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 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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WILMINGTON, DE 19805

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OFFICE OF PETITIONS

In re Application of
Eric Maurice Smith
Application No. 61/254,843
Filed: October 26, 2009
Attorney Docket No.: UC0917USPRV

ON PETITION

This is a decision in response to the petition under 37 CFR 1.182, filed October 18, 2010, requesting expedited consideration of the simultaneously filed petition to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition under 37 CFR 1.182 is **GRANTED**. A decision on the petition under 37 CFR 1.137(b) follows.

A review of the record discloses that the application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed November 23, 2009. The notice set a two-month period to respond and required (1) a provisional application cover sheet under 37 CFR 1.51(c)(1), or an Application Data Sheet (ADS) identifying either the city and state or city and foreign country of the residence of each inventor and (2) the surcharge as set forth in 37 CFR 1.16(g) of $50. A Notice of Abandonment was mailed on August 6, 2010. On October 18, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a provisional application cover sheet and the $50 surcharge; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

Accordingly, the petition under 37 CFR 1.137(b) is **GRANTED**.

Subject to the provisions of 35 U.S.C. § 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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WILMINGTON DE 19805

MAILED
OCT 15 2010
OFFICE OF PETITIONS

In re Application of	:	
Daniel Lecloux	:	
Application No. 61/255,920	:	DECISION ON PETITION
Filed: October 29, 2009	:	
Attorney Docket No. UC0989USPRV	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 11, 2010, to revive the above-identified application and the petition under 37 CFR 1.182, filed October 11, 2010, to expedite processing of the petition to revive.

The petition to expedite is **GRANTED**.

The requisite $400.00 fee for the petition to expedite processing under 37 CFR 1.182 submitted October 11, 2010 has been accepted.

The petition to revive is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed November 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 24, 2010. A Notice of Abandonment was mailed on August 5, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet and the $50.00 Surcharge fee, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

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OCT 15 2010

OFFICE OF PETITIONS

In re Application of	:	
Daniel Le Cloux	:	
Application No. 61/255,951	:	DECISION ON PETITION
Filed: October 29, 2009	:	
Attorney Docket No. UC0990USPRV	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 11, 2010, to revive the above-identified application and the petition under 37 CFR 1.182, filed October 11, 2010, to expedite processing of the petition to revive.

The petition to expedite is **GRANTED**.

The requisite $400.00 fee for the petition to expedite processing under 37 CFR 1.182 submitted October 11, 2010 has been accepted.

The petition to revive is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed November 18, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 19, 2010. A Notice of Abandonment was mailed on July 27, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet and the $50.00 Surcharge fee, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

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WILMINGTON DE 19805

MAILED
OCT 15 2010
OFFICE OF PETITIONS

In re Application of	:	
Daniel Le Cloux	:	
Application No. 61/255,965	:	DECISION ON PETITION
Filed: October 29, 2009	:	
Attorney Docket No. UC0991USPRV	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 11, 2010, to revive the above-identified application and the petition under 37 CFR 1.182, filed October 11, 2010, to expedite processing of the petition to revive.

The petition to expedite is **GRANTED**.

The requisite $400.00 fee for the petition to expedite processing under 37 CFR 1.182 submitted October 11, 2010 has been accepted.

The petition to revive is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed November 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 24, 2010. A Notice of Abandonment was mailed on August 6, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet and the $50.00 Surcharge fee, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

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WILMINGTON DE 19805

MAILED
OCT 15 2010
OFFICE OF PETITIONS

In re Application of	:	
Daniel Le Cloux	:	
Application No. 61/255,975	:	DECISION ON PETITION
Filed: October 29, 2009	:	
Attorney Docket No. UC0992USPRV	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 11, 2010, to revive the above-identified application and the petition under 37 CFR 1.182, filed October 11, 2010, to expedite processing of the petition to revive.

The petition to expedite is **GRANTED**.

The requisite $400.00 fee for the petition to expedite processing under 37 CFR 1.182 submitted October 11, 2010 has been accepted.

The petition to revive is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice) mailed November 20, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 21, 2010. A Notice of Abandonment was mailed on July 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Cover Sheet and the $50.00 Surcharge fee, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay.

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

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4417 LANCASTER PIKE
WILMINGTON, DE 19805

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DEC 03 2010

OFFICE OF PETITIONS

In re Application of :
Daniel Le Cloux :
Application No. 61/256,012 :
Filed: October 29, 2009 :
Attorney Docket No.: UC0982USPRV :

ON PETITION

This is a decision in response to the petition under 37 CFR 1.182, filed October 18, 2010, requesting expedited consideration of the simultaneously filed petition to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition under 37 CFR 1.182 is **GRANTED**. A decision on the petition under 37 CFR 1.137(b) follows.

A review of the record discloses that the application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed November 20, 2009. The notice set a two-month period to respond and required (1) a provisional application cover sheet under 37 CFR 1.51(c)(1), or an Application Data Sheet (ADS) identifying either the city and state or city and foreign country of the residence of each inventor and (2) the surcharge as set forth in 37 CFR 1.16(g) of $50. A Notice of Abandonment was mailed on July 28, 2010. On October 18, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a provisional application cover sheet and the $50 surcharge; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

Accordingly, the petition under 37 CFR 1.137(b) is **GRANTED**.

Subject to the provisions of 35 U.S.C. § 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Commissioner for Patents
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INGURAN LLC
22575 STATE HIGHWAY 6 SOUTH
NAVASOTA TX 77868

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application:
Kjelland et al.
Application No. 61/256,893
Filed: October 30, 2009
Attorney Docket No. ST-10

ON PETITION

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

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

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

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

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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United States Patent and Trademark Office
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K&L GATES LLP
1900 MAIN STREET, SUITE 600
IRVINE, CA 92614-7319

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Application of :
Izadyar et al. :
Application No. 61/258,535 : ON PETITION
Filed: November 5, 2009 :
Attorney Docket No. 1951314-00061 :

This is a decision on the petition under 37 CFR 1.182, filed, November 3, 2010, to correct the name of inventor "Faiborz Izadyar" to – Fariborz Izadyar –.

The petition is **DISMISSED** as being moot.

Petitioner contends that the inventor's name was incorrectly spelled due to a typographical error; specifically, the inventor's given name "Fariborz" was inadvertently spelled as Faiborz. When a typographical or transliteration error in the spelling of an inventor's name is discovered during pendency of an application, a petition is not required; therefore the petition filed November 3, 2010, is not necessary.

A Corrected Filing Receipt with the proper spelling of the inventor's last name is enclosed.

Any questions concerning this matter may be directed to Alicia Kelley at (571) 272-6059.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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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
61/258,535	11/05/2009		245	1951314-00061		

CONFIRMATION NO. 6347

CORRECTED FILING RECEIPT

45200
K&L Gates LLP
1900 MAIN STREET, SUITE 600
IRVINE, CA 92614-7319

OC000000046720350

Date Mailed: 03/24/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Fariborz Izadyar, Irvine, CA;
Joel Marh, Honolulu, HI;
Chad Maki, Huntington Beach, CA;
Jason Pacchaiarotti, Irvine, CA;
Thomas Ramos, Pomona, CA;
Kyle Howerton, Irvine, CA;
Jadelind Wong, Saratoga, CA;
Marnie Olmstead, Solvang, CA;
Johnny Yung-Chiong Chow, Danshui Township, TAIWAN;

Power of Attorney:
Michelle Bergman--54124

If Required, Foreign Filing License Granted: 11/23/2009

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/258,535**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

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

Title

GERMLINE STEM CELL BANKING SYSTEM AND RESTORATION OF REPRODUCTIVE CAPACITY

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The

date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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ALEXANDRIA, VA 22313-1450
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Paper No.

Gil Wasserman
3 Karlibach st.
Tel Aviv
ISRAEL

MAILED

NOV 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Oren Netzer	:	DECISION ON PETITION
Application No. 61/259,256	:	
Filed: November 9, 2009	:	
Title: REAL TIME ONLINE AD BLOCKING	:	

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.37(b)" filed September 21, 2010.

The petition is **GRANTED**.

The above-identified provisional application became abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application sent November 20, 2009. The Notice set a two-month period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply received and no extension of time obtained, the application became abandoned effective January 21, 2010. A courtesy Notice of Abandonment was sent on July 29, 2010.

In response, applicant filed the instant petition, requesting revival based on unintentional delay. The petition included the required reply in the form of provisional application patent cover sheet which identified the city and state, city and foreign country, and residence of the inventors and payment of the late surcharge; the required statement of unintentional delay; and the petition fee for revival pursuant to 37 CFR 1.137(b).

This petition is granted to this provisional application for the 12-month period following the filing of the provisional application. This provisional application is not considered pending after 12 months from its filing date (November 9, 2009).

The application is being returned to the Office of Patent Application Processing for processing of the response to the Notice to File Missing Parts, filed September 21, 2010.

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

Gil Wasserman
3 Karlibach st.
Tel Aviv
ISRAEL

MAILED
JAN 13 2011
OFFICE OF PETITIONS

In re Application of	:	
Oren Netzer	:	DECISION ON PETITION
Application No. 61/259,256	:	
Filed: November 9, 2009	:	
Title: REAL TIME ONLINE AD BLOCKING	:	

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.37(b)" filed September 21, 2010.

The petition is **GRANTED**.

The above-identified provisional application became abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application sent November 20, 2009. The Notice set a two-month period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply received and no extension of time obtained, the application became abandoned effective January 21, 2010. A courtesy Notice of Abandonment was sent on July 29, 2010.

In response, applicant filed the instant petition, requesting revival based on unintentional delay. The petition included the required reply in the form of provisional application patent cover sheet which identified the city and state, city and foreign country, and residence of the inventors and payment of the late surcharge; the required statement of unintentional delay; and the petition fee for revival pursuant to 37 CFR 1.137(b).

This petition is granted to this provisional application for the 12-month period following the filing of the provisional application. This provisional application is not considered pending after 12 months from its filing date (November 9, 2009).

The application is being returned to the Office of Patent Application Processing for processing of the response to the Notice to File Missing Parts, filed September 21, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

cc: Kevin D. McCarthy
1920 Liberty Building - 424 Main Street
Buffalo, New York 14202

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF TECHNOLOGY COMMERCIALIZATION
3225 ARCH STREET, GROUND FLOOR
PHILADELPHIA, PA 19104

MAILED

MAR 23 2011

OFFICE OF PETITIONS

In re Application of	:	
Jon BLOOMFIELD, *et al.*	:	
Application No. 61/259,296	:	DECISION ON PETITION
Filed: November 9, 2009	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. **3DL-newest**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 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 Notice to File Missing Parts of Nonprovisional Application (Notice), mailed November 20, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 21, 2011.

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

The instant petition lacks item (1), the supplemental provisional application cover sheet under 37 CFR 1.51(c)(1), identifying either the city and state, or city and foreign country of the residence for each inventor.

Petitioner is advised that the petition fee of $1620, basic filing fee of $220 and surcharge fee of $50 could not be charged to petitioner's deposit account 07-2320, as instructed, due to insufficient funds in the 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. For petitioner's convenience, a change of correspondence address form has been enclosed.

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 Monica A. Graves at (571) 272-7253.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **ROBERT O. GROOVER**
P.O. BOX 802889
DALLAS, TX 75380

Enclosure: Change of Correspondence Address PTO/SB/122

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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BOX 293748
LEWISVILLE, TX 75029

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Jon BLOOMFIELD, et *al.*	:	
Application No. 61/259,296	:	DECISION ON PETITION
Filed: November 9, 2009	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. **3DL-396P**	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed November 20, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 21, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a supplemental provisional application cover sheet, basic filing fee of $220 and surcharge fee of $50, (2) the petition fee of $1620; and (3) an adequate statement of unintentional delay.

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 Patent Application Processing for appropriate action in the normal course of business on the reply received April 13, 2011.

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

Gordon D. Kinder
2231 Delamere Dr.
Cleveland OH 44106

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Nathaniel T. Smith	:	
Application No. 61/259,661	:	DECISION ON PETITION
Filed: November 10, 2009	:	
Attorney Docket No. SMIT P 0934	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 17, 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 Notice to File Missing Parts of Non-Provisional Application (Notice), mailed November 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on January 24, 2010. A Notice of Abandonment was mailed August 3, 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), no reply has been received to the Notice to File Missing Parts mailed October 24, 2008. A provisional cover sheet was not submitted with the petition. Refer to Form No. PTO/SB/16.

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

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

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Gordon D. Kinder
2231 Delamere Dr.
Cleveland OH 44106

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of	:	
Nathaniel T. Smith	:	
Application No. 61/259,661	:	DECISION ON PETITION
Filed: November 10, 2009	:	
Attorney Docket No. SMIT P 0934	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed November 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-Provisional Application (Notice), mailed November 23, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on January 24, 2010. A Notice of Abandonment was mailed August 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 provisional application cover sheet and a $25 surcharge fee, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the provisional application cover sheet and fee 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 November 3, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BRAD BUTTERFIELD
2494 S. DERBY ST.
SLC UT 84119

MAILED
JAN 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Brad BUTTERFIELD	:	
Application No. 61/260,359	:	ON PETITION
Filed: November 11, 2009	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 23, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed December 2, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 3, 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 (2).

With respect to item (1) The Notice dated December 2, 2009, required the submission of the basic filing fee and the required surcharge, which totaled $270. Since petitioner is claiming small entity, a total of $135 is due.

With respect to item (2): Petitioner submitted a fee of $220 with the petition filed December 23, 2010. The current petition fee under the provisions of 37 CFR 1.137(b) for a small entity is $810, an additional fee of $590 is due. Petitioner should submit a total of $725 with any renewed petition. No consideration on the merits can be given until the required fee deficiency is remitted.

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.

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

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

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

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

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

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

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

cc: BRAD BUTTERFIELD
3553 PHEASANT RUN CIR #4
ANN ARBOR, MI 48108

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAY 09 2011

OFFICE OF PETITIONS

BRAD BUTTERFIELD
3553 PHEASANT RUN CIR #4
ANN ARBOR MI 48108

In re Application of Brad Butterfield Application No. 61/260,359 Filed: November 11, 2009 For: SOLAR-POWERED UV-C LED STERILIZATION DEVICE, SYSTEM AND METHOD	:	DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed May 4, 2011.

The request is **DISMISSED**.

Applicant files the above request for refund and states that "...I overpaid my provisional patent application fee corresponding to the amounts listed below. I wish to request a refund of the difference or have applied to my non-provisional application fees."

However, applicant was noted in the decision mailed January 21, 2011, the below:

"With respect to item (1) The Notice dated December 2, 2009, required the submission of the basic filing fee and the required surcharge, which totaled $270. Since petitioner is claiming small entity, a total of $135.00 is due.

With respect to item (2): Petitioner submitted a fee of $220.00 with the petition filed December 23, 2010. The current petition fee under the provisions of 37 CFR 1.137(b) for a small entity is $810, an additional fee of $590 is due. Petitioner should submit a total of $725 with any renewed petition. No consideration on the merits can be given until the required fee deficiency is remitted."

As indicated on the petition filed December 23, 2010, **in box 1**, the $220.00 is to be applied to the petition fee.

In view of the above, the request for refund is dismissed because applicant was notified above that a deficiency of $725.00 was due. $590.00 ($810.00-$220.00) (petition fee) and $135.00 for the surcharge and basic filing fee ($590.00 + $135.00 = $725.00).

Applicant is advised that the Office will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

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

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DITTHAVONG, MORI & STEINER, PC
918 PRINCE STREET
ALEXANDRIA, VA 22314

MAILED
SEP 28 2010
OFFICE OF PETITIONS

In re Application of
Maulik sailor, et al.
Application No. 61/260,777
Filed: November 12, 2009
Attorney Docket No. P3636US00

DECISION ON PETITION

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

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-provisional Application (Notice), mailed December 1, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 2, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an application data sheet with fees, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Office of Patent Application Processing at their hotline 571-272-4000.

This application is being referred to the Office of Patent Application Processing for appropriate action by the Examiner in the normal course of business on the reply received August 12, 2010.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHALKER FLORES, LLP
2711 LBJ FRWY
SUITE 1036
DALLAS TX 75234

MAILED
MAR 24 2011
OFFICE OF PETITIONS

In re Application of
Chun Huh et al.
Application No. 61/262,037
Filed: November 17, 2009
Attorney Docket No. UTAU:1271

ON PETITION

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission and loss of small entity status filed February 10, 2011.

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

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

Your fee deficiency submission in the amount of $110, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE, SUITE 100
SAN DIEGO, CA 92130-2040

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of

David M. RYCKMAN, et *al.*
Application No. 61/263,638
Filed: November 23, 2009
Attorney Docket No. **532233005500**

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 3, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted forwarding correspondence address information for the application. The request to change the correspondence address of record is not acceptable as the requested address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 CFR 3.71.

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

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

The Office will also no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 7253. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ISENBRUCK BÖSL HÖRSCHLER WICHMANN LLP
PATENTANWÄLTE
EASTSITE ONE
SECKENHEIMER LANDSTRAßE 4
MANNHEIM 68163 DE GERMANY

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Domke, et al.	:	
Application No. 61/264,846	:	ON PETITION
Filed: November 30, 2009	:	
Attorney Docket No. B09/0671AUSPRO	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed November 9, 2010.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely reply to the Notice to File Missing Parts, mailed January 5, 2010. This Notice set an extendable period for reply of two months for applicants to submit the $220 statutory basic filing fee and the $50 surcharge for its late filing. No fees having been received, the application became abandoned on March 6, 2010. The Office mailed a Notice of Abandonment on September 20, 2009.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of the statutory basic filing fee and late surcharge.

The application is being forwarded to the Office of Patent Application Processing for pre-examination processing.

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

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

Patrick M. Dwyer PC
4320 Burke Avenue N
Seattle WA 98103

MAILED
APR 18 2011
OFFICE OF PETITIONS

In re Application of	:	
Hiorshi Hagiya	:	
Application No. 61/265,321	:	DECISION ON PETITION
Filed: November 30, 2009	:	
Attorney Docket No. SHUPIP.P004b	:	

This is a decision on the petition, filed February 2, 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 respond to the Notice to File Missing Parts (Notice) mailed December 9, 2009, which set a two (2) month shortened statutory period for reply. Accordingly, a reply was due on or before February 9, 2010.

Petitioner states that a timely reply was faxed via certificate of facsimile on February 9, 2010, which included the following papers: provisional application filing fee of $110, surcharge of $25 and the inventor's name, residence and mailing address and citizenship. It is also noted that the reply, included an acceptable assertion of small entity status, thereby rendering the fee of $135 included therewith sufficient to satisfy the fees required by the Notice mailed December 9, 2009. Petitioner has submitted a copy of the previously faxed correspondence, which bears a certificate of facsimile dated February 9, 2010, which would have rendered the reply timely if received.

The file record does not include the originally transmitted papers. Copies of the papers sent by facsimile on April 20, 2010, were received by the Office and are included in the file record. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or

after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Notice to File Missing Parts mailed December 9, 2009 is hereby withdrawn.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been transmitted by facsimile on February 9, 2010.

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 with petition.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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U S ARMY RESEARCH LABORATORY
ATTN: RDRL-LOC-I
2800 POWDER MILL RD
ADELPHI, MD 20783-1197

MAILED
DEC 22 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael Gerhold, et al.	:	
Application No. 61/265,441	:	DECISION ON PETITION
Filed: December 1, 2009	:	
Attorney Docket No. ARL-08-62	:	

This is a decision on the petition, filed November 1, 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 filed under 37 CFR 1.181 is **DISMISSED**.

This application was held abandoned for failure to reply to the Notice to File Missing Parts of Non-provisional Application (Notice) mailed January 5, 2010, which set a two (2) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 21, 2010.

Petitioner asserts that the Office action dated January 5, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy items 2 and 3 of the above-stated requirements.

Petitioner has failed to submit a statement from the practitioner attesting to the fact that a search of the filed jacket and docket records indicates that the Office action was not received nor did he provide a copy of the docket record where the non-received Office action would have been entered had it been received and referenced in the practitioner's statement.

Accordingly, absent the required evidence to establish non-receipt of the Office action of January 5, 2010, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

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

The petition filed under 37 CFR 1.137(b) 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 January 5, 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 March 6, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a reply, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to April M. Wise at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Office of Patent Application Processing at their hotline 571-272-4000.

This application is being referred to the Office of Patent Application Processing for pre-examination processing of the reply received December 1, 2010.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE, SUITE 100
SAN DIEGO, CA 92130-2040

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of

Mustapha HADDACH, et *al.*
Application No. 61/266,801
Filed: December 4, 2009
Attorney Docket No. **532233006000**

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 3, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted forwarding correspondence address information for the application. The request to change the correspondence address of record is not acceptable as the requested address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 CFR 3.71.

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

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

The Office will also no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 7253. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

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

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LAW OFFICE OF DALE B. HALLING
3595 FOUNTAIN BOULEVARD SUITE A2
COLORADO SPRINGS, CO 80910

MAILED

OCT 29 2010

OFFICE OF PETITIONS

In re Application of	:	
Debra D. Saunders	:	
Application No.: 61/267,183	:	ON PETITION
Filed: December 7, 2009	:	
Attorney Docket No.: PRV0901P	:	

This is a decision in response to the petition, filed September 8, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed December 17, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on February 18, 2010.

Petitioner asserts that the Notice of December 17, 2009 was not received. In support petitioner submits a copy of his computerized docket record for February 2010.

A review of the written record indicates no irregularity in the mailing of the Notice on December 17, 2009, 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.

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would

include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar, reminder system, or the individual docket record for the application in question.

The instant petition does not establish non-receipt of the Notice in compliance with the procedures set for at MPEP 711.03(c). Specifically, the petition does not describe the system used for recording an Office action received at the correspondence address of record and there is no statement establishing the reliability of the docketing system. Absent the required evidence to establish non-receipt of the Notice of December 17, 2009, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

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

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

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

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

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

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

By Internet: EFS-Web[1]

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Jan-11

RAJ ABHYANKER, P.C.
1580 WEST, EL CAMINO REAL, SUITE 8
MOUNTAIN VIEW CA 94040

MAILED
JAN 04 2011
OFFICE OF PETITIONS

In re Application of	:	
Santosh Kumar	:	
Application Number: 61/267492	:	ON PETITION
Filing Date: 12/08/2009	:	
Attorney Docket Number:	:	
00091.00003PRV	:	

This is a decision on the petition, filed on October 25, 2010, styled as a petition under 37 CFR 1.137(a), which, in the absence of the required petition fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.[1]

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. **This time period is not extendable.**[2]

This application became abandoned on February 25, 2010, for failure to timely file a response to the Notice to File Missing Parts of Provisional Application, mailed on December 24, 2009, which set a two (2)-month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on September 3, 2010.

Petitioner asserts unavoidable delay in that the Notice to File Missing Parts of Provisional Application was never received. Specifically, petitioner asserts that "There was another provisional patent #61/263,388 with a similar attorney docket

[1] In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).
[2] 37 CFR 1.181(f).

number (SK-0004, similar to docket number UST-0004) for this patent application."

As stated above, in the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.[3]

A review of the record indicates no irregularity in the mailing of the Notice to File Missing Parts of Provisional Application (Notice) mailed on December 24, 2009, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice mailed on December 24, 2009 was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice mailed on December 24, 2009 was not in fact received.

MPEP 711.03(c) states:

> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).
>
> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include,

[3] See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

> but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> (emphasis added)

The showing of record is insufficient to warrant withdrawal of the holding of abandonment. In this regard, petitioner has presented no evidence to substantiate a claim of non-receipt of the Notice. In the absence of a showing that the Notice mailed on December 24, 2009, was not received, the petition to withdraw the holding of abandonment must be dismissed.

With regard to petitioner's assertion that another application filed by petitioner had a similar docket number, the basis of petitioner's argument is unclear. Petitioner must identify why

the delay should be considered unavoidable in any renewed petition.

As the showing of record does not merit withdrawal of the holding of abandonment, the petition will be dismissed.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[4] which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

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

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

---

[4] A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. 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 required additional information where there is a question whether the delay was unintentional; and

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

Petitioner should note that effective October 2, 2008, the fee for filing a petition under 37 CFR 1.137(b) (small entity) is $810.00.

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
401 Dulany Street
Alexandria, VA 22314

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/64
Privacy Act Statement

UNITED STATES 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 2 1 2010

OFFICE OF PETITIONS

Algenol Biofuels, Inc.
28100 Bonita Grande Drive
Suite 200
Bonita Springs FL 34135

In re Application of	:	
Ronald R. Chance et al.	:	
Application No. 61/267,968	:	DECISION ON PETITION
Filed: December 9, 2009	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-Provisional Application (Notice), mailed January 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 March 8, 2010. A Notice of Abandonment was mailed September 22, 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 surcharge fee of $25 and a basic filing fee of $110, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the fees are accepted as being unintentionally delayed.

The Notice to File Missing parts also requested that a late filing surcharge fee was also due. The fee of $25 (small entity rate) will be charged to petitions deposit account as authorized.

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 September 29, 2010. Inquires regarding the status of the application should be directed to the Office of Patent Application Processing at 571-272-4000.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Brooks Douglas Younce
5170 W. Monroe Concord Rd.
West Milton OH 45383

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of :
Brooks Younce :
Application No. 61/268,956 :
Filed: June 17, 2009 :
Attorney Docket No. :

ON PETITION

This is in response to the communication, filed April 7, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On July 17, 2009, the Office mailed a Notice to File Missing Parts (Notice), which set a two month shortened statutory period to reply. The application became abandoned on September 18, 2009, for failure to submit a timely response to the Notice to File Missing Parts (Notice). On March 26, 2010, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to nonreceipt of the Notice. Specifically, petitioner states that he suspects the mail carrier to have mis-delievered the letter.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the

correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice of July 17, 2009, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after July 17, 2009, to demonstrate nonreceipt of the Notice. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Office action, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the Notice was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after July 17, 2009; the period when he would have received the Notice.

In the present petition, petitioner did not submit any statements, documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the Notice. Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application 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.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through

Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, 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 JoAnne Burke at (571) 272-4584.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

Enclosures: (1) Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.
(2) Copy of the Notice mailed originally on July 17, 2009.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/268,956	06/17/2009	Brooks Younce	

CONFIRMATION NO. 6460

FORMALITIES LETTER

Brooks Douglas Younce
5170 W. Monroe Concord Rd.
West Milton, OH 45383

OC000000036915061

Date Mailed: 07/17/2009

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The compact disc filed in the application contain non-ASCII files. If a directory of the compact disc could be printed, it is attached and the non-ASCII files are marked on the directory. Applicant is required to submit: (1) a replacement compact disc containing all of the files listed in the specification in ASCII format, and a duplicate copy of the replacement compact disc, in compliance with 37 CFR 1.52(e); (2) a statement that the two compact discs are identical; and (3) a statement that the replacement compact disc contains no new matter (see 37 CFR 1.52(e)(4)).
- Only a single copy of each compact disc was submitted. Applicant is required to submit: (1) a replacement compact disc and a duplicate copy of the replacement compact disc that are labeled "COPY 1 REPLACEMENT" and "COPY 2 REPLACEMENT",respectively, with the creation date, in compliance with 37 CFR 1.52(e); (2) a statement that the two compact discs are identical, in compliance with 37 CFR 1.52(e)(4); and (3) a statement that the compact disc contains no new matter (see 37 CFR 1.52(e)(4)).
- Applicant submitted either: (1) a compact disc (CD) that is **not** in compliance with 37 CFR 1.52(e); or (2) the application electronically via EFS-Web with a text file (non-PDF format) containing information that is required to be in PDF format (see below and 37 CFR 1.52(a)(5)).

  Since EFS-Web is a PDF-based filing system, all EFS-Web submissions are required to be in PDF format unless otherwise indicated. Only the following types of information are permitted to be submitted either on a CD or as text files via EFS-Web, if such files are in compliance with the American Standard Code of Information Interchange (ASCII):
  1. A computer program listing (see 37 CFR 1.96);
  2. A sequence listing (submitted under 37 CFR 1.821-1.825); or
  3. Any individual table (see 37 CFR 1.58) if the table is more than 50 pages in length, or if the total number of pages of all of the tables in an application exceeds 100 pages in length, wherein a table page is a page printed on paper in conformance with 37 CFR 1.52(b) and 37 CFR 1.58(c).

Accordingly, the information that was submitted on the CD, or as text files via EFS-Web, will not be entered as part of the application. Thus, the application as filed (the original disclosure) does not include the information.

If the specification of the application contains a reference to the CD and the files contained on the CD, or the text files, applicant is required to file a substitute specification (excluding claims) deleting the reference, and a statement that the substitute specification includes no new matter, in compliance with 37 CFR 1.121(b)(3) and 1.125, within TWO MONTHS from the mailing of this notice to avoid abandonment of the application. The two-month time period is extendable under 37 CFR 1.136(a) or (b).

Alternatively, if applicant wishes to have the information that was submitted on the CD, or as text files via EFS-Web, entered as part of the application, applicant is required to file within TWO MONTHS from the mailing of this notice: (1) a grantable petition under 37 CFR 1.183 (showing an extraordinary situation where justice requires suspension of 37 CFR 1.52(e) or EFS-Web requirements and 37 CFR 1.52(a)(5)); and (2) a substitute specification (excluding claims), and a statement that the substitute specification includes no new matter, in compliance with 37 CFR 1.121(b)(3) and 1.125 either on paper or via EFS-Web as PDF files (adding only the information previously submitted on the CD or as text files via EFS-Web). The two-month time period is extendable under 37 CFR 1.136(a) or (b).

Replies should be mailed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.
https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at http://www.uspto.gov/ebc.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

/spathammavong/

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

Doc Code: PET.OP
Document Description: Petition for Review by the Office of Petitions

PTO/SB/64 (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor: _____

Application No.: _____ Art Unit: _____

Filed: _____ Examiner: _____

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

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

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

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

1. Petition Fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.

☐ Other than small entity-fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

☐ has been filed previously on _____.
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 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: Mail Stop Petition, 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

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $_____for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. 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. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

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.

Signature	Date
Type or Printed name	Registration Number, If applicable
Address	Telephone Number
Address	

Enclosures:

☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

Privacy Act Statement

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

SEP 09 2010

OFFICE OF PETITIONS

MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581336
MINNEAPOLIS, MN 55458-1336

In re Application of :
Shuyi Li, et al :
Application No. 61/271,005 : DECISION GRANTING PETITION
Filed: July 17, 2009 :
Attorney Docket No.: 275.00210160 :

This is a decision in response to the petition filed July 14, 2010, requesting that the above-identified application be accorded a filing date of July 16, 2009, instead of the presently accorded date of July 17, 2009. The petition is properly being treated under the provisions of 37 CFR 1.10(c).

Petitioner submits that "this petition is filed promptly after becoming aware that the Office has accorded a filing date other than the USPS deposit date" and requests the earlier filing date on the basis that the application was purportedly deposited with the U. S. Postal Service (USPS) as Express Mail on July 16, 2009. While petitioner indicates that a true copy of the Express Mail Label is not available, petitioner provides, *inter alia*, a copy of the USPS Track & Confirm restoration record for Express Mail Label No. EH 223408629 US. The same Express Mail receipt number appears of the original transmittal letter found in the file. It is noted that the Track & Confirm restoration document corroborates acceptance of the "Express Mail" package in question, inasmuch as it reveals that Label Number EH22 3408 629U S was Processed through Sort Facility AUSUSTA GA 30901 on July 16, 2009 at 4:58pm.

In view of the above, the evidence is convincing that the Express Mail package was entrusted to the USPS on July 16, 2009 and that this application is entitled to a filing date of July 16, 2009.

The petition is **GRANTED**.

The application is being referred to the Office of Patent Application Processing (OPAP) to correct the filing date to **July 16, 2009** and issue a corrected filing receipt.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to OPAP processing should be directed to their hotline at (571) 272-4000.

Sherry D. Brinkley

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Aug-10

SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE FL 32614

MAILED
AUG 06 2010
OFFICE OF PETITIONS

In re Application of	:	
Daya et al.	:	
Application Number: 61/271292	:	ON PETITION
Filed: 7/20/2009	:	
Attorney Docket Number:	:	
DAY.100PT	:	
	:	

This is a decision on the petition filed on October 19, 2009, under 37 CFR 1.53(e), requesting that the above-identified provisional application, including 15 sheets containing drawings, be accorded a filing date of July 20, 2009.

The petition is **GRANTED**.

On July, 20, 2009, the application was deposited. The application papers included, *inter alia*, 42 pages of specification (40 pages of written description and (2) pages containing claims), 1 page containing an abstract, 38 pages of appendix, and 15 sheets of drawings.

On August 17, 2009, a Notice of Incomplete Provisional Application was mailed, stating that the application had not been accorded a filing date because the application had been deposited without drawings

On October 19, 2009, the subject petition was filed. Petitioner asserts that 15 sheets of drawings were filed with the original application papers. Petitioner requests that the application, including the 15 sheets of drawings, be accorded a filing date of July 20, 2009.

A review of the record reveals that the 15 sheets of drawings were received on July 20, 2009, but were not properly coded in the Image File Wrapper (IFW).

Therefore, the application, including 15 sheets of drawings, is entitled to a filing date of July 20, 2009.

The Office apologizes for the inconvenience and regrets any delay in the processing of the application.

In view of the above, the petition is granted. No petition fee is due. The $400.00 petition fee paid will be refunded to counsel's deposit account.

The application is being referred to the Office of Patent Application Processing for further processing with a filing date of **July 20, 2009**, using the application papers filed on that date, and for an indication in Office records that 15 sheets of drawings were present on filing.

Telephone inquiries should be directed to the undersigned at 571-272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MICHAEL DE ANGELI
60 INTREPID LANE
JAMESTOWN, RI 02835

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of
George R. Mayer
Application No. 61/272,490
Filed: September 29, 2009
Attorney Docket No. Maxtech-291

DECISION ON PETITION

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

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 November 3, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 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 a reply, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Office of Patent Application Processing at their hotline 571-272-4100.

This application is being referred back to the Office of Patent Application Processing for pre-examination processing of the reply received August 2, 2010.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON, VA 22215

MAILED
FEB 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Vinocur et al.	:	
Application No. 61/272764	:	
Filing or 371(c) Date: 10/30/2009	:	LETTER
Attorney Docket Number: 47554	:	

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
OCT 08 2010
OFFICE OF PETITIONS

In re Application of :
Nobuyuki Negoro, et al. :
Application No. 61/272,980 : ON PETITION
Filed: November 30, 2009 :
Attorney Docket No.: PR09_1928A :

This is a decision in response to the "Petition Under 37 CFR 1.182" filed January 27, 2010, requesting specification of the above-identified application be amended to replace a blurry page 393 with a clear page 393.

The petition is **DISMISSED**.

Applicant is responsible for the proper form of his own application. While it is unfortunate that one of the pages is not as applicant intended, the fact remains that the page included in the record is the page received on filing. As noted in MPEP 601.01(b), amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the provisional application.

In view of the relatively low filing fee for provisional applications, and the desire of the USPTO to minimize the processing of provisional applications, the USPTO will not grant petitions under 37 CFR 1.182 to accept omitted/replacement page(s) or drawing(s) and, thereafter, accord an application filing date as of the date of such submission in provisional applications. The applicant should simply file a new completed provisional application. MPEP 601.01(d).

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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
12/500,431	07/09/2009	ALLEN GUTWIRTH	

CONFIRMATION NO. 2291

CONVERSION REQUEST

Allen Gutwirth
8875 COSTA VERDE BLVD
SAN DIEGO, CA 92122

OC000000042898388

Date Mailed: 08/04/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/05/2009,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,706.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
12/819,190	06/19/2010	Kanstantin Chernych	ProfiteroRegexProviPatent

CONFIRMATION NO. 9510

CONVERSION REQUEST

OC000000042975470

AIR MAIL
Dmitry Vysotski
1 The Elm ParkView Stepaside
Dublin, 18
IRELAND

Date Mailed: 08/10/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **07/23/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,707.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
12/772,230	05/02/2010	Robin Bornoff	10667-REG1/TLE

CONFIRMATION NO. 3399

CONVERSION REQUEST

OC000000043188768

58377
MENTOR GRAPHICS CORP.
PATENT GROUP
8005 SW BOECKMAN ROAD
WILSONVILLE, OR 97070-7777

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/06/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,708.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
12/799,429	04/23/2010	Todd Allen Bland	

CONFIRMATION NO. 7817

CONVERSION REQUEST

81993
Todd Allen Bland
13708 Frederick Avenue
Omaha, NE 68138

OC000000043189427

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/02/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,709.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
12/802,539	06/08/2010	Stephen Ellsworth Montgomery	

CONFIRMATION NO. 2973

STEPHEN ELLSWORTH MONTGOMERY
1344 WESTMORELAND DR.
BATON ROUGE, LA 70806

CONVERSION REQUEST

OC000000043189707

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/05/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,710.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
12/821,461	06/23/2010	Michael Andrew Bernstein	

CONFIRMATION NO. 3998

CONVERSION REQUEST

Michael Bernstein
14815 Oldham Drive
Orlando, FL 32826

OC000000043189908

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/02/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,711.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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 NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/826,358	06/29/2010	Junwei Hou	041Y-153263

CONFIRMATION NO. 3228

CONVERSION REQUEST

OC000000043190269

73260
SHEPPARD MULLIN RICHTER & HAMPTON LLP
12275 El Camino Real
Suite 200
San Diego, CA 92130

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **07/16/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,712.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

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
12/616,730	11/11/2009	VICTOR GRUBSKY	16LP-146388

CONFIRMATION NO. 3134

CONVERSION REQUEST

30764
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
12275 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130

OC000000043203670

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **07/16/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,713.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
12275 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130

MAILED

JUN 20 2011

OFFICE OF PETITIONS

In re Application of	:	
Grubsky et al.	:	
Application No. 61/275,713	:	DECISION ON PETITION
Filed: November 11, 2009	:	PURSUANT TO
Attorney Docket No. 16LP-146388	:	37 C.F.R. § 1.137(B)
Title: X-RAY IMAGING SYSTEM AND	:	
METHOD	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed March 23, 2011, 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 Notice of Missing Parts (notice), mailed August 24, 2010, which set a shortened statutory period for reply of two 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 October 25, 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 the petition fee, the basic filing fee along with the surcharge for the late submission of the same, the fee for the filing of a specification and drawings in excess of 100 pages, and the proper statement of unintentional delay.

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

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of Application No. PCT/US10/46377.

Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.[2]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

1 See Rule 1.137(d).

2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for 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	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/787,473	05/26/2010	Sydney FINEGOLD	111828.0162

CONFIRMATION NO. 4668

CONVERSION REQUEST

OC000000043203767

27557
BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

Date Mailed: 08/24/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/06/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,714.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/822,002	06/23/2010	Vivek Raghunathan	16113-2400001

CONFIRMATION NO. 4945

26192
FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

CONVERSION REQUEST

OC000000043724724

Date Mailed: 09/28/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **09/07/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,715.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/580,747	10/16/2009	Kirk D. Fowers	68936.001432

CONFIRMATION NO. 1023

CONVERSION REQUEST

OC000000043732005

21967
HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Date Mailed: 09/27/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **09/17/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,716.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/580,747	10/16/2009	Kirk D. Fowers	68936.001432	1023

21967 7590 09/21/2010
HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER

ART UNIT	PAPER NUMBER
1615	

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.

Copied from 12580747 on 09/28/2010

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

Fowers et al.	:
Serial No.: 12/580,747	: CONVERSION TO PROVISIONAL
Filed: October 16, 2009	:
Attorney Docket No.: 68936.001432	:

This is in response to applicants' request, filed September 17, 2010, to convert this application to a provisional application.

The petition is **GRANTED**.

Should there be any questions regard the conversion process please contact Janice Tippitt at 703-756-1477.

Should there be any questions with regard to this letter please contact Marianne C. Seidel by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0584 or by facsimile transmission at Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

Copied from 12580747 on 09/28/2010

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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
12/562,653	09/18/2009	Kirk D. Fowers	68936.001402

CONFIRMATION NO. 4671

CONVERSION REQUEST

OC000000043732441

21967
HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Date Mailed: 09/27/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **09/17/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,717.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/562,653	09/18/2009	Kirk D. Fowers	68936.001402	4671

21967 7590 09/21/2010
HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER
MARSCHEL, ARDIN H

ART UNIT	PAPER NUMBER
1614	

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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United States Patent and Trademark Office
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SEP 2 1 2010

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

Fowers et al.	:
Serial No.: 12/562,653	: CONVERSION TO PROVISIONAL
Filed: September 18, 2009	:
Attorney Docket No.: 68936.001402	:

This is in response to applicants' request, filed September 17, 2010, to convert this application to a provisional application.

The petition is **GRANTED**.

Should there be any questions regard the conversion process please contact Janice Tippitt at 703-756-1477.

Should there be any questions with regard to this letter please contact Marianne C. Seidel by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0584 or by facsimile transmission at Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

Copied from 12562653 on 09/28/2010

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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
12/800,968	05/26/2010	Robert Charles McManus	

CONFIRMATION NO. 8202

CONVERSION REQUEST

Robert C. McManus
85 Locke Heights Road
Bangor, PA 18013

OC000000043861698

Date Mailed: 10/05/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **08/20/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,718.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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 NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/692,409	01/22/2010	Gregory N. Gehrich	MEDHS.006A

CONFIRMATION NO. 1836

CONVERSION REQUEST

OC000000044204608

20995
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Date Mailed: 10/27/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **09/03/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,719.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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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
12/610,126	10/30/2009	Laurence D. Bell	072801-1150

CONFIRMATION NO. 9784

CONVERSION REQUEST

88984
FOLEY & LARDNER LLP
975 PAGE MILL ROAD
Palo Alto, CA 94304

OC000000045058990

Date Mailed: 12/20/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **10/21/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,720.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/953,753	11/24/2010	Daniel S. Homa	OPS4-51474-US/OSY0033US

CONFIRMATION NO. 4063

CONVERSION REQUEST

OC000000045059360

44639
CANTOR COLBURN LLP- BAKER HUGHES INCORPORATED
20 Church Street
22nd Floor
Hartford, CT 06103

Date Mailed: 12/21/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **12/15/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,721.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/877,078	09/07/2010		P1240US00

CONFIRMATION NO. 2510

CONVERSION REQUEST

OC000000045076043

AIR MAIL
39500
Anglehart et al.
Suite 258
393 St-Jacques
Montreal, QC H2Y 1N9
CANADA

Date Mailed: 12/22/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **12/17/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,722.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
12/632,518	12/07/2009	Elisabeth CARROLL	DIA-001.01

CONFIRMATION NO. 3950

CONVERSION REQUEST

OC000000045104581

25181
FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON, MA 02110

Date Mailed: 12/23/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **12/06/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,723.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/632,518	12/07/2009	Elisabeth CARROLL	DIA-001.01	3950

25181 7590 12/13/2010
FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON, MA 02110

EXAMINER
GUSSOW, ANNE

ART UNIT	PAPER NUMBER
1643	

NOTIFICATION DATE	DELIVERY MODE
12/13/2010	ELECTRONIC

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

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

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

Patent@foleyhoag.com

Copied from 12632518 on 12/22/2010

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

DEC 1 3 2010

FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON MA 02110

Elisabeth Carroll	:
Serial No.: 12/632,518	: CONVERSION TO PROVISIONAL
Filed: December 7, 2009	:
Attorney Docket No.: DIA-001.01	:

This is in response to applicants' request, filed December 6, 2010, to convert this application to a provisional application.

The petition is **GRANTED**.

Should there be any questions regard the conversion process please contact Janice Tippitt at 703-756-1477.

Should there be any questions with regard to this letter please contact Marianne C. Seidel by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0584 or by facsimile transmission at Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

Copied from 12632518 on 12/22/2010

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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
12/907,917	10/19/2010	Brett William Degner	APL1P773/P10198US1

CONFIRMATION NO. 2855

CONVERSION REQUEST

62464
BEYER LAW GROUP LLP
P.O. BOX 1687
CUPERTINO, CA 95015-1687

OC000000045110636

Date Mailed: 12/23/2010

DECISION GRANTING REQUEST TO CONVERT TO PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(2) received in the U.S. Patent and Trademark Office on **12/22/2010,** to convert the above-identified application to a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c).

The request is granted.

The application will be processed in the Office of Patent Application Processing (OPAP) as a provisional application under 35 U.S.C. 111(b) and 37 CFR 1.53(c), including the assignment of a new provisional application number.

The provisional application number is **61/275,724.** The filing receipt for the provisional application number will be mailed to the applicant by OPAP in due course.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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

MAILED

AUG 02 2010

OFFICE OF PETITIONS

TIPS GROUP
C/O INTELLEVATE LLC
P. O. BOX 52050
MINNEAPOLIS MN 55402

In re Application of	:	
Tom BREKKA et al.	:	
Application No. 61/276,230	:	DECISION ON PETITION
Filed: September 08, 2009	:	
Attorney Docket No. QD.0117	:	

This is a decision on the petition under 37 CFR 1.182 filed December 22, 2009, in response to the Notice to File Missing Parts of Provisional Application.

The petition is **DISMISSED**.

On October 15, 2009 the Office mailed a Notice to File Missing Parts of Provisional Application indicating that Figures 16 and 17 were missing and that a provisional application cover sheet identifying the either city and state, or city and foreign country, of the residence of each inventor.

A review of the Office records indicates that figures 16 and 17 were not received upon filing.

Petitioner has submitted figures 16 and 17 with the petition; however the provisional application cover sheet has not been provided. Therefore, the petition cannot be granted at this time.

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

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

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

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

Any questions concerning this matter may 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

TIPS GROUP
C/O INTELLEVATE LLC
P. O. BOX 52050
MINNEAPOLIS MN 55402

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Tom BREKKA et al.	:	**CORRECTED**
Application No. 61/276,230	:	DECISION ON PETITION
Filed: September 08, 2009	:	
Attorney Docket No. QD.0117	:	

This is a decision on the petition under 37 CFR 1.182 filed December 22, 2009, in response to the Notice to File Missing Parts of Provisional Application.

The decision mailed August 02, 2010 is hereby vacated.

The petition is **GRANTED.**

On October 15, 2009 the Office mailed a Notice to File Missing Parts of Provisional Application indicating that Figures 16 and 17 were missing and that a provisional application cover sheet identifying the either city and state, or city and foreign country, of the residence of each inventor.

Petitioner has submitted the provisional application cover sheet and figures 16 and 17 with the petition on December 22, 2009.

Any questions concerning this matter may be directed to Michelle R. Eason at (571) 272-4231.

This application is being referred to the Office of Patent Application Processing.

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

MAILED
OCT 06 2010
OFFICE OF PETITIONS

INNOVAPREP LLC
ANDY PAGE
132 EAST MAIN STREET
DREXEL MO 64742

In re Application of	:	
Andrew E. PAGE, et al	:	
Application No. 61/276,737	:	ON PETITION
Filed: January 6, 2009	:	
Attorney Docket No. 2000 (THPM)	:	

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

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed October 21, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 22, 2009.

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

With respect to item (1): The Notice mailed October 21, 2009, required the filing of a substitute specification deleting the reference to the compact disc (CD) and the files contained on the CD, or the text files and a statement that the substitute specification includes no new matter, in compliance with 37CFR 1.121(b)(3) and 1.125. Further, on the first page, last paragraph of the Notice, petitioner was given an alternative option. Since the reply filed July 19, 2010, did not properly respond to the Notice, the petition cannot be considered proper under 37 CFR 1.137(b) and cannot be granted.

With respect to item (3): The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states:

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

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);

(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;

(3) An assignee as provided for under §3.71(b) of this chapter; or

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

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Andrew E. Page) was ever given a power of attorney to act on behalf of inventors Zachary A. Packingham, David S. Alburty and Alec Douglas Adolphson, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

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.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MOAZZAM & ASSOCIATES, LLC
7601 LEWINSVILLE ROAD
SUITE 304
MCLEAN VA 22102

MAILED

DEC 27 2010

OFFICE OF PETITIONS

In re Application of :
Andrew E. PAGE, et al :
Application No. 61/276,737 : DECISION ON PETITION
Filed: September 17, 2009 :
Attorney Docket No. INVP-103-PRO :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 3, 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 Provisional Application (Notice), mailed October 21, 2009. The Notice set a period for reply of **two (2) months** from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 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 a statement of clarification; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Petitioner's statement of clarification is acknowledged by the Office, however, the Office of Data Management must make the final determination as to whether the statement complies with the requirements of the Notice dated October 21, 2009.

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

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

All other inquires should be directed to the Office of Data Management at (571) 272-4200.

This application is being referred to the Office of Data Management for further pre-examination 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
www.uspto.gov

ZACHARY DEMKO
31B SAINT JAMES AVE.
SOMERVILLE, MA 02144

MAILED
AUG 16 2010
OFFICE OF PETITIONS

In re Application of
Zachary Demko
Application No. 61/276,984
Filed: September 18, 2009
Attorney Docket No. GSN-P0025-090918

DECISION ON PETITION

This is a decision on the petition, filed July 19, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to reply to the Notice to File Missing Parts (Notice) mailed October 8, 2009, which set a two (2) month shortened statutory period for reply. A Notice of Abandonment was mailed on June 18, 2010.

Petitioner asserts that the Office action dated October 8, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of the above-stated requirements. In this regard, the documentation presented as supported evidence of proof of non-receipt is illegible and therefore inadmissible.

Accordingly, absent the required evidence to establish non-receipt of the Office action of October 8, 2009, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

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

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

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

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

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

Alexandria, VA 22314

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

Telephone inquiries concerning this decision should be directed to April M. Wise at (571) 272-1642.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MAILED

FEB 28 2011

OFFICE OF PETITIONS

Ronnie Manns
1623 Hulin St.
Rockford IL 61102

In re Application of	:
Manns	: DECISION ON PETITION
Application No. 61/277,079	:
Filed: September 21, 2009	:
For: MANNS AUTOMATIC TEST GRADER	:

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

The petition is DISMISSED.

The application became abandoned December 10, 2009 for failure to timely submit a proper reply to the Notice mailed October 9, 2009. Notice of Abandonment was mailed June 22, 2010.

As noted in 35 USC 111(b)(5), "upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period."

However, a provisional application may be abandoned prior to 12 months from its filing date for failure to reply to an Office requirement (e.g., failure to submit the filing fee and/or cover sheet). Applicant may petition to have an abandoned provisional application revived as a pending provisional application for a period of no longer than 12 months from the filing date of the provisional application where the delay was unavoidable or unintentional. It would be permissible to file a petition for revival later than 12 months from the filing date of the provisional application but only to revive the application for the 12-month period following the filing of the provisional application. Thus, even if the petition were granted to establish the pendency up to the end of the 12-month period, the provisional application would not be considered pending after 12 months from its filing date.

To the extent that applicant seeks revival of the instant application for continuity purposes, the petition is subject to dismissal for failure to remit the required petition fee, currently $810.00 for a small entity.

Any request for reconsideration of this matter must be submitted within TWO MONTHS of the mailed date indicated above. The period of time for seeking reconsideration is subject to extension of time pursuant to 37 CFR 1.136(a).

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

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

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

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

RONNIE MANNS
1623 HULIN ST.
ROCKFORD, IL 61102

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Ronnie Manns	:	
Application No. 61/277,079	:	DECISION ON REQUEST FOR REFUND
Filed: September 21, 2009	:	
For: MANNS AUTOMATIC TEST GRADER	:	

This is a decision on the communication filed March 10, 2011, which is being treated as a Request For Refund.

The request is **DISMISSED**.

Applicant request a refund of the fees totaling $135.00 submitted on November 19, 2010. However, applicant is encouraged to note **MPEP 607.02** which states:

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).

37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee.

In view of the above, the request for refund is dismissed.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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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DUANE C. BLAKE
67 STERLING ROAD
WESTWOOD MA 02090

MAILED
NOV 08 2010
OFFICE OF PETITIONS

In re Application of	:	
David MacDougall	:	
Application No. 61/278,524	:	DECISION ON PETITION
Filed: October 6, 2009	:	
Attorney Docket No. DAC-001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 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 Notice to File Missing Parts of Nonprovisional Application (Notice), mailed November 13, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 14, 2010. The Notice of Abandonment was mailed July 22, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $270 fee, (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 the Office of Patent Application Processing for appropriate action on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Bridgelux, Inc. c/o Novak
Druce + Quigg LLP
1000 Lousiana Street,
Fifty- Third Floor
Houston TX 77002

MAILED
JAN 10 2011
OFFICE OF PETITIONS

In re Application:	:	
Alex Shaikevitch et al.	:	
Application No. 61/278,575	:	NOTICE
Filed: October 7, 2009	:	
Attorney Docket No. 20079.0005.PZUS00	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 29, 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.

The fee deficiency payment of $110 will be charged 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.

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

cc: Michael S. Garrabrants
Novak Druce & Quigg, LLP
555 Mission Street, 34th Street
San Francisco, CA 94105

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ronnie Manns
1210 28th Street
Rockford IL 61108

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Application of	:	
Ronnie Manns	:	
Application No. 61/279,287	:	ON PETITION
Filed: October 19, 2009	:	
Attorney Docket No.	:	

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

The petition is **DISMISSED AS MOOT**.

The application was filed October 19, 2009. As noted in 35 USC 111(b)(5), "*upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.*" As no request for conversion of the instant application to a non-provisional application was timely made, the instant application became abandoned at midnight on October 19, 2010, through operation of law.

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

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

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

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

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

JoAnne Burke
Petitions Examiner
Office of Petitions

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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Law Office of Scott C Harris Inc
PO Box 1389
Rancho Santa Fe CA 92067

MAILED
DEC 03 2010
OFFICE OF PETITIONS

In re Application of :
Bailey, et al. :
Application No. 61/280,941 : ON PETITION
Filed: November 10, 2009 :
Attorney Docket No. CIT-07Event :
For: SEQUENTIAL HARDWARE EVENT PROCESSOR WITH VIDEO EVENT COMPRESSION AND RECALL

This is a decision on the petition under 37 CFR 1.137(b), filed September 30, 2010, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice to File Missing Parts of Provisional Application, mailed November 25, 2009, which set a two month shortened statutory period for reply. No proper extensions of time having been obtained pursuant to 37 CFR 1.136(a), this application became abandoned on January 26, 2010. A Notice of Abandonment was mailed on August 4, 2010.

Applicants have submitted a proper reply to the November 25, 2009 Notice in the form of the basic filing fee and surcharge for its late filing, an acceptable statement of the unintentional nature of the delay in responding to the November 25, 2009 Notice, and the $810.00 petition fee. Accordingly, the petition under 37 CFR 1.137(b) is granted.

Regarding the statement of delay: The statement of unintentional delay was not signed by a person who would have been in a position of knowing that the delay in filing a timely response was unintentional. In the event that practitioner has no knowledge that the delay was in fact unintentional, practitioner should make a reasonable inquiry to ascertain that, in fact, the delay was unintentional. If practitioner discovers that the delay was intentional, practitioner must so notify the Office.

Applicants submitted a $1,175.00 extension of time fee on July 15, 2010. An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the

$1,175.00 extension of time fee submitted on July 15, 2010 was submitted subsequent to the expiration of the maximum extendable period for reply, this fee is unnecessary and will be refunded via a treasury check that will be scheduled shortly.

After the mailing of this decision, the file will be returned to the Office of Patent Application Processing for further processing.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHRISTOPHER J. CAPELLI, ESQ.
2 SIZANNE LANE
CHAPPAQUA, NY 10514

MAILED
DEC 20 2010
OFFICE OF PETITIONS

In re Application of
Daniel Kaminsky
Application No. 61/281,114
Filed: November 12, 2009
Attorney Docket No. DK.102

DECISION ON PETITION

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

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed December 2, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 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 reply, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Office of Patent Application Processing at their hotline 571-272-4000.

This application is being referred to the Office of Patent Application Processing for pre-examination processing of the reply received November 1, 2010.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARTIN D. MOYNIHAN D/B/A PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

MAILED
JAN 13 2011
OFFICE OF PETITIONS

In re Application:	:	
Granevitze et al.	:	
Application No. 61/282,183	:	ON PETITION
Filed: December 28, 2009	:	
Attorney Docket No. 47534	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 16, 2010.

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

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

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

This provisional application expired December 29, 2010 and is no longer entitled to small entity status.

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

Bobbie A. Bullock
P.O. Box 25374
Winston-Salem NC 27114

MAILED

JUL 05 2011

OFFICE OF PETITIONS

In re Application of :
Bobbie Bullock :
Application No. 61/282,400 :
Filed: February 1, 2010 :
Title: KASTLEHOUSE HOME COMFORT:
ACCESSORIES ROLLER BASKETS, THE:
PLASTIC BAG STUFFER, THE ROMO :
RUNNING MOTION CYCLE. THE :
DISPOSABLE TRAVEL TOOTHBRUSH, :
THE PAMPERES LAUNDRY HAMPER :
BATHROOM ESSENTIALS TOOTHPASTE/:
BRUSH HOLDERS :

DECISION ON PETITION

This is a decision on the PETITION filed September 13, 2010, which includes a request for the original filing date of the Non-Provisional/filing date of application, November 24, 2009. This is also a response to the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed January 27, 2011.

The request for the original filing date of November 24, 2009 is **dismissed**. As discussed below, the application filing date is February 1, 2010.

The petition for revival is **dismissed without consideration on the merits**.

This application is not entitled to a filing date of November 24, 2009. Application papers in the above-identified provisional application were deposited on February 1, 2010. By law, 35 U.S.C. 111(b)(4), the filing date of a provisional application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office. In this instance, the specification and drawings for

the above-identified provisional application were first deposited in this application on February 1, 2010. As such, this provisional application is entitled to a filing date of February 1, 2010. Further, this provisional application is not entitled to the benefit of an earlier filing date. The law, 35 U.S.C. 111(b)(7), further provides that a provisional application shall not be entitled to the right of priority of any other application under section 119 or 365(a) of this title or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c) of this title.

Petitioner has not submitted evidence of the filing of an application on November 24, 2009.

35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 C.F.R. § 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 C.F.R. § 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. § 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 C.F.R. § 1.17(l) or 1.17(m), regardless of whether the petition under 37 C.F.R. § 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 C.F.R. § 1.137 lacking the requisite petition fee.

In this instance, withdrawal of the holding of abandonment is not warranted. Accordingly, as the petition does not include payment of the fee required by 37 CFR 1.137(b), the petition must be dismissed.

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

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application:	:	
Christiansson et al.	:	
Application No. 61/282,973	:	ON PETITION
Filed: May 3, 2010	:	
Attorney Docket No. 12090-000058/US/PS1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 17, 2010.

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

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

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

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Stephen Mosby
430 Sixteenth St.
Arcadia FL 34266

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of
Mosby
Application No. 61/283,143
Filed: November 30, 2009
For: SINGLE - FAN BLADE THAT DOES NOT OSOHATE BACK AND FOURTH - UP OR DOWN BUT CURGUHATES A CORRIT OF AIR - FROM - THE FRONT - AND REAR BY A STATIONARY FAN BLADE

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) filed September 22, 2011.

The petition is DISMISSED.

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

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unavoidable delay or to accept an unavoidably delayed payment of a fee for issuing a patent. In this instance, the small entity fee required by law currently is $310.00.

The instant petition lacks the required fee. Accordingly, the petition has not been addressed on the merits.

Any renewed petition must be accompanied by the required petition fee.

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) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

Elite Business Concepts/
King Chrome Grilles
P.O. Box 25374
Winston Salem NC 27116

MAILED

MAY 3 1 2011

OFFICE OF PETITIONS

In re Application of :
Bobbie Bullock :
Application No. 61/283,859 :
Filed: December 9, 2009 :
Title: ELITE BUSINESS CONCEPTS:
AND KING CHROME GRILLES NEW :
AUTO TECHNOLOGY. THE EXTERNAL :
VIDEO DISPLAY, AUTO D-SLIDE :
CALCULATOR, AUTO FOOT MASSAGER:
FULL FRONT VIEW DESIGNS :

DECISION ON PETITION

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)" filed January 27, 2011.

The petition is **DISMISSED without consideration on the merits**.

Any request for reconsideration must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(b)."

35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 C.F.R. § 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 C.F.R. § 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory

prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. § 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 C.F.R. § 1.17(l) or 1.17(m), regardless of whether the petition under 37 C.F.R. § 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 C.F.R. § 1.137 lacking the requisite petition fee.

Withdrawal of the abandonment of this application, pursuant to 37 CFR 1.181, does not appear to be warranted. Thus, the petition fee is required to consider revival. Petitioner has not paid the $810 petition fee. The Office does not have the authority to waive this fee. As payment of the full petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of an abandoned application and petitioner has not made such a payment, the petition must be dismissed without consideration on the merits under § 1.137.

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAR 10 2011
OFFICE OF PETITIONS

WILLIAM T. FRITZEL
774 25 3/4 ROAD
GRAND JUNCTION, CO 81505

In re Application of	:	
William T. Fritzel	:	
Application No. 61/284,388	:	DECISION ON PETITION
Filed: December 14, 2009	:	
Attorney Docket No. None	:	

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

The petition is **DISMISSED.**

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

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed September 11, 2008. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on November 11, 2008. A Notice of Abandonment was mailed on May 18, 2009. In response, on June 22, 2009, the present petition was filed.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks items (1) , (2) and (3).

In regards to item (1) – Petitioner failed to submit the $110 filing fee and $25 surcharge required under 37 CFR 1.16(g).

In regards to item (2) – The $270.00 petition fee was not paid.

In regards to item (3) -- There is no showing of record that establishes to the satisfaction of the Director that the delay was unavoidable within the meaning of 35 U.S.C. § 151 and 37 CFR 1.137(a). *See* MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay. Petitioner simply states that because of "a large amount of different letter carriers that are contracted through the U.S. Postal Service," the Notice was possibly delivered to the wrong address.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional instead of filing a renewed petition under 37 CFR 1.137(a).

Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

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

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

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

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

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

By internet: EFS-Web[1]

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

Sherry D Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Secure Teq Corporation
1 Connector Road
Andover MA 01810

MAILED

JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of	:	
Lynch et al.	:	
Application No.: 61/284446	:	DECISION ON
Filing or 371(c) Date: 12/18/2009	:	PETITION
Title of Invention: METHOD AND PROCESS	:	
FOR MITIGATION AND RESPONSE FROM	:	
AIRBORNE CONTAMINANT DETECTION	:	
UTILIZING A WORKFLOW ENGINE	:	

This is a decision in response to the "Petition to Revive Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a), filed October 27, 2010.

This Petition is hereby **dismissed**.

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

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed January 19, 2010. The Notice set a two (2) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on March 20, 2010. A Notice of Abandonment was mailed October 7, 2010.

The present petition

Applicant files the present petition and asserts that the Notice was not received. No documentary evidence save the petition and Applicant's statement has been filed in support of Applicant's assertion.

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 item (**3**).

As to item (**3**), applicant is advised that the statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application <u>must be signed</u> 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) <u>All of the applicants (§ 1.41(b)) for patent</u>, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all of the applicants, the petition may not entered, and the merits of the petition may not be addressed.

A properly executed petition is required.

The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary signatures.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

David A. Frijouf, Esquire
Frijouf, Rust & Pyle, P.A.
201 East Davis Boulevard
Tampa FL 33606

MAILED

AUG 05 2010

OFFICE OF PETITIONS

In re Application of	:	
Noel Rosa	:	
Application No. 61/284815	:	
Filing or 371(c) Date: 12/23/2009	:	DECISION
Attorney Docket Number: 2009-0158	:	ON PETITION

This is a decision on the "Petition to Correct Filing Date of Patent Application Under 37 CFR 1.10(d)," filed March 3, 2010, requesting that the above-identified application be accorded a filing date of December 23, 2009, rather than the presently accorded filing date of December 26, 2009.

The petition is **granted**.

Applicant alleges that the application was deposited in Express Mail service on December 23, 2009. In support of this assertion, Applicant files a copy of Express Mail Mailing Label, No. EV843945565US, which contains a United States Postal Service ("USPS") date stamp, which Petitioner avers "correctly includes a partial stamped "date in" of Deccember 23, 2009. Petitioner also includes a copy of an Express Mail Corporate Account Mailing Statement which indicates that Express Mail Mailing Label, No. EV843945565US was deposited on December 23, 2009.

Applicable Law, Rules and MPEP

37 CFR 1.10(d) provides that

> [a]ny person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
> (1) The petition is filed promptly after the person becomes aware that the Office

> has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
> (3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Emphasis supplied.

Analysis and conclusion

A review of Express Mail Label No. EV843945565US reveals that it contains a USPS date stamp; however, the date stamp is illegible save the number 23.

The MPEP cautions that

> correspondence should be deposited directly with an employee of the USPS *to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked*, and that persons dealing indirectly with the employees of the USPS (such as by depositing correspondence in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. *On petition, the failure to obtain an "Express Mail" receipt with the "date-in" clearly marked may be considered an omission that could have been avoided by the exercise of due care*, as discussed below. While the Office strongly urges direct deposit of "Express Mail" correspondence in order to obtain a legible copy of the "Express Mail" mailing label, parties are not precluded from using "Express Mail" drop boxes, but do so at their own risk.

(Emphasis supplied).

As to the copy of the Express Mail Corporate Account Mailing Statement, Petitioner does not aver, nor does a review of the Express Mail Corporate Account Mailing Statement provide, that the Express Mail Corporate Account Mailing Statement came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As such, the evidence provided by Petitioner fails to demonstrate that the application was deposited Express Mail on December 23, 2009.

U.S. Postal Service Track & Confirm

A review of the U.S. Postal Service Track & Confirm for Express Mail Mailing Label, No. EV843945565US shows that Express Mail Mailing Label No. EV843945565US was accepted for delivery by the USPS on December 23, 2009.

In view of the above, the petition is **granted**.

This application file will be forwarded to the Office of Patent Application Processing for

1. correction of the filing date to December 23, 2009, and

2. for the mailing of a corrected filing receipt.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: copy of U.S. Postal Service Track & Confirm

Woods, Derek

From: U.S._Postal_Service_ [U.S._Postal_Service@usps.com]
Sent: Saturday, July 31, 2010 11:32 AM
To: Woods, Derek
Subject: U.S. Postal Service Track & Confirm email Restoration - EV84 3945 565U S

This is a post-only message. Please do not respond.

derek woods has requested that you receive this restoration information for Track & Confirm as listed below.

Current Track & Confirm e-mail information provided by the U.S. Postal Service.

Label Number: EV84 3945 565U S

Service Type: Express Mail(R)

Shipment Activity	Location	Date & Time
Delivered	ALEXANDRIA VA 22313	12/28/09 6:58am
Arrival at Pick-Up-Point	ALEXANDRIA VA 22313	12/25/09 9:38am
Arrival at Unit	DULLES VA 20102	12/25/09 6:34am
Processed through Sort Facility	DULLES VA 20101	12/24/09 10:32pm
Processed through Sort Facility	TAMPA FL 33630	12/23/09 11:54pm
Acceptance	TAMPA FL 33630	12/23/09 11:17pm

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at http://www.usps.com/shipping/trackandconfirmfaqs.htm

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JUN 28 2011

OFFICE OF PETITIONS

K&L GATES LLP
1900 MAIN STREET SUITE 600
IRVINE CA 92614-7319

In re Application of	:	
Harrington, et al.	:	
Application No. 61/285,121	:	ON PETITION
Filed: December 9, 2009	:	
Attorney Docket No. 1958464.00005	:	

This is in response to the "REQUEST TO CORRECT APPLICANT NAME IN PROVISIONAL APPLICATION", filed June 8, 2011, which is properly treated as a petition under 37 CFR 1.182.

The petition is **GRANTED**.

Office records have been changed to reflect the change in the inventor's name from "Vangelis Hytopoulos" to "Evangelos Hytopoulos".

The $400 fee required for a petition under 37 CFR 1.182 has been charged to Deposit Account No. 50-3207, as authorized.

Telephone inquiries regarding 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

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

VIRGINIA TECH INTELLECTUAL PROPERTIES INC.
2200 KRAFT DRIVE, SUITE 1050
BLACKSBURG VA 24060

MAILED

FEB 25 2011

OFFICE OF PETITIONS

In re Application:	:	
Davalos et al.	:	
Application No. 61/285,618	:	ON PETITION
Filed: December 11, 2009	:	
Attorney Docket No. VTIP-163-PRO	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 18, 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 provisional application expired December 12, 2010 and is no longer entitled to small entity status.

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

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

MAILED
OCT 26 2010
OFFICE OF PETITIONS

BROOKHAVEN SCIENCE ASSOCIATES/
BROOKHAVEN NATIONAL LABORATORY
BLDG. 490C - P.O. BOX 5000
UPTON NY 11973

In re Application of	:	
Raymond P. Conley, et al.	:	
Application No. 61/286,273	:	DECISION ON PETITION
Filed: December 14, 2009	:	
Attorney Docket No. BSA 10-	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 29, 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 Provisional Application, mailed January 13, 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 March 14, 2010. The Notice of Abandonment was mailed September 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Provisional Application Cover Sheet and $25 surcharge, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,175 extension of time fee submitted on October 15, 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 Terri Johnson at (571) 272-2991.

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.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HANLEY, FLIGHT & ZIMMERMAN, LLC
150 S. WACKER DRIVE
SUITE 2100
CHICAGO, IL 60606

MAILED

SEP 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Eric Brian Shain, et al.	:	
Application No. 61/287,966	:	ON PETITION
Filed: December 18, 2009	:	
Attorney Docket No.: None	:	

This is a decision in response to the petition filed July 28, 2011, under the provisions of 37 CFR 1.182 to expedite consideration of a concurrently filed petition for a filing date pursuant to 37 CFR 1.53.

The petitions are **GRANTED**.

The above-identified application was filed on December 18, 2009. On December 20, 2010, new provisional application papers were filed. Thereafter, on July 28, 2011, the present petition was filed. Petitioner requests that the application papers filed on December 20, 2010 be accepted as a new provisional application and assigned an application number and a filing date. Petitioner explains that, while a new provisional application was intended on December 20, 2010, counsel inadvertently selected "existing application" instead of "new application" when filing the application electronically.

Since it is now clear that petitioner intended to file a new provisional application on December 20, 2010, the request is granted.

The application is being referred to the Office of Patent Application Processing (OPAP) for removing the application papers associated with the filing on December 20, 2010 from the present application. Thereafter, a new provisional application number will be assigned to the papers with a filing date of December 20, 2010. Notification of the new application number will be provided by the OPAP in the form of a filing receipt

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at OPAP should be directed to their hotline at (571) 272-4000.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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SRI INTERNATIONAL
333 RAVENSWOOD AVENUE
MENLO PARK, CA 94025

MAILED
FEB 17 2011
OFFICE OF PETITIONS

In re Application of	:	
Harsha Prahlad, et al.	:	
Application No. 61/288,231	:	NOTICE
Filed: December 18, 2009	:	
Atty Docket No.: US-6023-2P	:	

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**.

Status as a small entity has been changed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
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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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

MAILED

FEB 02 2011

OFFICE OF PETITIONS

In re Application:	:	
Christiansson et al.	:	
Application No. 61/288,416	:	ON PETITION
Filed: December 21, 2009	:	
Attorney Docket No. 12090-000053/US/PS1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 20, 2010.

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

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

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

This provisional application expired December 22, 2010 and is no longer entitled to small entity status.

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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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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COHEN, PONTANI, LIEBERMAN & PAVANE LLP
551 FIFTH AVENUE
SUITE 1210
NEW YORK NY 10176

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of	:	
Robert Bowyer et al.	:	
Application No. 61/288,628	:	DECISION ON PETITION
Filed: December 21, 2009	:	
Attorney Docket No. 5789-141P	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-Provisional Application (Notice), mailed January 12, 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 March 13, 2010. A Notice of Abandonment was mailed September 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a provisional application cover sheet and a $50 surcharge fee, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly the provisional application cover sheet and fee 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 October 19, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET, N.W.
SUITE 1100
WASHINGTON, DC 20006

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of:	:	
N/A	:	
Application No. 61/290,085	:	DECISION ON PETITION
Filed: December 24, 2009	:	
Attorney Docket No. 16403-00034-USPR	:	

This is a decision on the petition, filed October 29, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed January 21, 2010.

Petitioner asserts that the Notice dated January 21, 2010, was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

(1) A statement from 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.

(2) A statement from the practitioner 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.

The petition does not comply with item (3) above. Specifically, the master docket does not show all replies docketed from the mail date of the nonreceived Notice, but rather when the Notice should have been replied to.

In accordance with 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): 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.

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

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

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

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET, N.W.
SUITE 1100
WASHINGTON, DC 20006

MAILED
JAN 14 2011
OFFICE OF PETITIONS

In re Application of:	:	
N/A	:	
Application No. 61/290,085	:	DECISION ON PETITION
Filed: December 24, 2009	:	
Attorney Docket No. 16403-00034-USPR	:	

This is a decision on the renewed petition, filed December 23, 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 in a timely manner to the Notice to File Missing Parts of provisional Application mailed January 21, 2010.

Petitioner asserts that the Notice dated January 21, 2010, was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

(1) A statement from 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.

(2) A statement from the practitioner 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.

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).

In view of the statements provided in the renewed petition herein, the above-stated requirements have been satisfied. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Petitioner is reminded that this application will not be regarded as pending under any circumstances after twelve months from its filing date of December 24, 2009. See 35 USC 119(e)(3).

This application is being referred to the Office of Patent Application Processing (OPAP) for further processing on the reply received October 29, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059. Telephone inquiries related to OPAP processing should be directed to their hotline at (271) 272-4000

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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DR. D. GRAESER LTD.
9003 FLORIN WAY
UPPER MARLBORO, MD 20772

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application of Liat Onn, et. al. Application No. 61/290,178 Filed: December 25, 2009 Attorney Docket No. 1594	: : : : :	ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on November 22, 2010, to revive the above-identified application.

The application became abandoned for failure to reply to the Notice to File Missing Parts of Provisional Application mailed January 8, 2010. A Notice of Abandonment was mailed on September 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 $220 for the filing fee and the $50 surcharge; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office also acknowledges receipt of a Terminal Disclaimer and fee of $140 filed on November 22, 2010. 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. Since this application is not a utility or plant application filed before June 8, 1995, a terminal disclaimer is not required. Accordingly, the terminal disclaimer is unnecessary and the fee of $140 will be credited back to petitioner's credit card, in due course.

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 Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

Mr. Erwin Dale Thomas
10320 Pumhouse Road
Banning, California 92220

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application of
Erwin Dale THOMAS
Application No. 61/290,187
Filed: 26 December 2009

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed 12 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed 21 January 2010 ("Notice"), which set a shortened statutory reply period of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 21 March 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 the $25 surcharge and Response to the Notice, (2) a petition fee of $810.00 (small entity), and (3) a Statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

A provisional application may be revived so as to be pending for a period of longer than 12 months from its filing date. This application was hereby deemed revived until December 26, 2010 when it became abandoned as a matter of law.

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 Office of Patent Application Processing for retention purposes.

David Bucci
Petitions Examiner
Office of Petitions

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Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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BAYER CROPSCIENCE LP
Patent Department
2 T .W. ALEXANDER DRIVE
RESEARCH TRIANGLE PARK NC 27709

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NOV 02 2010

OFFICE OF PETITIONS

In re Application of :
SIXL et al. :
Application No. 61/290,389 : DECISION ON PETITION
Filed: December 28, 2009 :
Attorney Docket No. BCS08-1044 :

This is a decision on the Request to Correct Provisional Patent Application, filed October 7, 2010, which has been treated as a petition under 37 CFR 1.59(b) to expunge information from the above identified application. The requisite $200.00 petition fee (Fee Code 1463) has been charged to Deposit Account 50-2510, as authorized in the petition.

The petition is **DISMISSED**.

Petitioner urges that on the application filing date of December 28, 2009 applicants filed two (2) sets of application papers as follows: (1) a first set of sixty-seven (67) total pages out of order, and (2) a second set of fifty-nine (59) total pages in correct order. The second set of application papers was filed as an attempt to correct the out of order condition of the first set of application papers. Applicants subsequently received certified copies of the application that include both sets of application papers as a single application.

The present petition states that:

> "Agent for Applicant requests that the last 59 pages of the certified copy of the Application in its current state be removed as they are duplicative of the first 59 pages of the Specification portion of the Application as a whole."

37 CFR 1.53(c) states, in part, that:

> "The filing date of a provisional application is the date on which a specification...and any drawing required...are filed in the Patent and Trademark Office."

37 CFR 1.59(a)(2) states, in part, that:

> "Information forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment...) will not be expunged from the application file."

Since both sets of application papers were submitted on the December 28, 2009 filing date, both sets of application papers form a part of the original disclosure. "Information forming a part of the original disclosure", as set forth above under 37 CFR 1.59(a)(2), "will not be expunged from the application file." As such, the present petition must be dismissed.

Petitioner may wish to considered the filing of a petition requesting waiver of the requirements of 37 CFR 1.59(a), which is discussed in Section 724.05 (Petition To Expunge Information or Copy of Papers in Application File), subsection IV (INFORMATION FORMING PART OF THE ORIGINAL DISCLOSURE), of the Manual of Patent Examining Procedure.

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

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DEL WOLVERTON
SUITE 3500-C
5070 PARKSIDE AVE
PHILADELPHIA 19131

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
WOLVERTON, et al :
Application No. 61/291,975 :
Filed: January 4, 2010 :
Attorney Docket No. :

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 31, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed January 14, 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 March 15, 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).

With respect to item (1): The petition filed December was not accompanied by a proper reply as indicated by the Notice mailed January 14, 2010. In this regard, the Notice required payment of a $25 surcharge which was not submitted. No consideration on the merits can be given until the required fee is remitted.

With respect to item (3): The petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Derek Bailey) was ever given a power of attorney to act on behalf of inventor Del Wolverton, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

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

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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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DON D. CHA
225 UNION BLVD.
SUITE 150
LAKEWOOD CO 80228

MAILED
FEB 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Chuan-Yuan Li et al	:	
Application No. 61/292,821	:	DECISION ON PETITION
Filed: January 6, 2010	:	
Attorney Docket No. CU-005000PV	:	

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

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the required fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice mailed January 26, 2010, 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 the Office of Patent Application Processing for pre-examination processing.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cc:

DON D. CHA
547 BUENA VISTA RD.
GOLDEN, CO 80401

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Alexandria, VA 22313-1450
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MAILED
MAR 09 2011
OFFICE OF PETITIONS

Mrs. F. Champe Granger
2914 Monument Ave
Richmond VA 23221

In re Application of	:	
Frances Champe Granger et. al.	:	
Application No. 61/292,951	:	DECISION ON PETITION
Filed: January 7, 2010	:	
Attorney Docket No. 6686103	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 15, 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 Notice of File Corrected Application Papers, mailed January 20, 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 March 21, 2010. The Notice of Abandonment was mailed on October 5, 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 lack items (1) and (2).

As to item 1, the reply to the Notice to File Missing Parts, mailed January 20, 2010 was not submitted. Copies supplied with the petition, show that a payment of $110 was paid on application serial number 61/292,955, not 61/292,951. A payment of $135 is due for this application as required by the Notice.

As to item (2) a petition to revive an application requires a fee of $810, this fee was not paid.

It should also be noted that a petition to revive must be signed by all of the inventors.

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

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

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

FEB 23 2011

OFFICE OF PETITIONS

In re Application:	:	
Mills et al.	:	
Application No. 61/294,036	:	ON PETITION
Filed: January 11, 2010	:	
Attorney Docket No. 08056.6175-00	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 14, 2010.

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

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

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

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

This provisional application abandoned March 27, 2010 for failure to respond to the Notice to File Missing Parts of Provisional Application (Notice) mailed January 26, 2010.

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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WEAVER AUSTIN VILLENEUVE & SAMPSON LLP
P.O. BOX 70250
OAKLAND CA 94612-0250

MAILED
JAN 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Michael William MAGES	:	
Application No. 61/294,732	:	DECISION ON PETITION
Filed: January 13, 2010	:	
Attorney Docket No. COCOP001P	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 20, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed January 26, 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 March 27, 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 and the required fee; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and

Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

This application is being referred to the Office of Patent Application Processing for further pre-examination processing.

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

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MAILED

FEB 07 2011

OFFICE OF PETITIONS

ICC SOFTWARE
WILLIE ANTHONY JOHNSON
4837 FROST HOLLOW DR
PLANO, TX 75093

In re Application of	:	
Willie Anthony Johnson	:	
Application No. 61/294,858	:	ON PETITION
Filed: March 30, 2010	:	
Attorney Docket No.	:	

This is in response to the communication, filed December 27, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On April 9, 2010, the Office mailed a Notice to File Missing Parts of Provisional Application (Notice), which set a two month period to reply. The application became abandoned on June 10, 2010, for failure to submit a timely response to the April 9, 2010 Notice. On December 22, 2010, the Office mailed a Notice of Abandonment.

In the present petition, petitioner states "I never received any such notice requesting any additional fees or documentation regarding my patent."

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the April 9, 2010 Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence,

petitioner must explain how he reminds himself of response due dates and show that the due date for the April 9, 2010 Notice, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after April 9, 2010, to demonstrate nonreceipt of the Notice. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to the Notice, and where petitioner would have entered the receipt date of the Notice had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Notice, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the April 9, 2010 Notice was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after April 9, 2010; the period when he would have received the Notice.

In the present petition, petitioner did not submit any statements, documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the April 9, 2010 Notice. Therefore, the petition to withdraw the holding of abandonment is **dismissed**. A copy of the April 9, 2010 Notice accompanies this decision for petitioner's convenience.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application 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.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through

Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, 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) 272-3210.

Irvin Dingle
Petition Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement; and a copy of the Notice to File Missing Parts of Provisional Application dated April 9, 2010.

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ICC SOFTWARE
WILLIE ANTHONY JOHNSON
4837 FROST HOLLOW DR
PLANO, TX 75093

MAILED
MAR 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Willie Anthony Johnson	:	
Application No. 61/294,858	:	ON PETITION
Filed: March 30, 2010	:	
Attorney Docket No.	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 28, 2011, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to the Office of Patent Application Processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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MILLEN WHITE ZELANO & BRANIGAN PC
2200 CLARENDON BLVD
SUITE 1400
ARLINGTON VA 22201

MAILED
JAN 13 2012
OFFICE OF PETITIONS

In re Application of	:	
Chow, et al.	:	
Application No. 61/296,590	:	ON PETITION
Filed: January 20, 2010	:	
Attorney Docket No. ONCOZYME-0002-V02	:	

This is in response to the petition under 37 CFR 1.182 to change the inventor's name, filed December 19, 2011, and supplemented on December 22, 2011.

The petition is **GRANTED**.

Office records have been changed to reflect the change in the inventor's name from Chiaoli Chow to Chiaoli Yew.

Telephone inquiries regarding 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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P.O. Box 1450
Alexandria, VA 22313-1450
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BAKER DONELSON BEARMAN, CALDWELL & BERKOWITZ, PC
920 MASSACHUSETTS AVE., NW
WASHINGTON, DC 20001

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Cedric GASQUERES et al	:	
Application No. 61/296,593	:	RESPONSE TO PETITION
Filed: January 20, 2010	:	
Attorney Docket No. 2901683-039000	:	

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

The petition is **DISMISSED**.

Petitioner request that the English translation of the specification filed January 27, 2010, be expunged from the instant provisional application. Petitioner indicates that the translation was filed in error in this application and was not part of the original application.

A review of the file indicates that the petition does not contain a clear statement that the information requested to be expunged was unintentionally submitted and 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. Furthermore, the petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the period of any patent with regard to which such information is submitted.

Thus, the decision on the petition to expunge must be dismissed at this time.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

USPTO/PCT
Correspondence

OCT 04 2010

Received and Acknowledged

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BAKER DONELSON BEARMAN, CALDWELL & BERKOWITZ, PC
920 MASSACHUSETTS AVE., NW
WASHINGTON, DC 20001

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Cedric GASQUERES et al	:	
Application No. 61/296,593	:	RESPONSE TO PETITION
Filed: January 20, 2010	:	
Attorney Docket No. 2901683-039000	:	

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

The petition is **DISMISSED**.

Petitioner request that the English translation of the specification filed January 27, 2010, be expunged from the instant provisional application. Petitioner indicates that the translation was filed in error in this application and was not part of the original application.

A review of the file indicates that the petition does not contain a clear statement that the information requested to be expunged was unintentionally submitted and 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. Furthermore, the petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the period of any patent with regard to which such information is submitted.

Thus, the decision on the petition to expunge must be dismissed at this time.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

Docketed
Due Date 10-18-2010
Initials KT Date 10-4-10
Date 2CS Dt 10-5-10

Copied from 12706617 on 10/08/2010

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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE, SUITE 100
SAN DIEGO, CA 92130-2040

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of :
Mustapha HADDACH, et *al.* :
Application No. 61/297,669 :
Filed: January 22, 2010 :
Attorney Docket No. **532233005003** :

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 3, 2010.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted forwarding correspondence address information for the application. The request to change the correspondence address of record is not acceptable as the requested address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 CFR 3.71.

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

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

The Office will also no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272- 7253. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED
JAN 07 2011
OFFICE OF PETITIONS

DAMARIS DIXIE-ROSE GORE
10215 OAK POINT DRIVE
HOUSTON TX 77043

In re Application of	:	
Gore, Damaris Dixie-Rose.	:	
Application No. 61/298,541	:	ON PETITION
Filed: January 26, 2010	:	
Title: TEEZEASE/KEEZEASE	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a payment of the $110.00 provisional application filing fee and the $25.00 late surcharge, (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 Patent Application Processing for further processing.

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

MICHAEL BEST & FRIEDRICH LLP
Two Prudential Plaza
180 North Stetson Avenue, Suite 2000
CHICAGO IL 60601

MAILED

DEC 16 2010

OFFICE OF PETITIONS

In re Application of	:	
KIRSCH et al.	:	
Application No. 61/299,832	:	DECISION ON PETITION
Filed: 01/29/2010	:	
Attorney Docket No. 025416-9016-00	:	

This is a decision on the PETITION UNDER 37 C.F.R. § 1.182 TO CORRECT APPLICANT'S NAME, filed April 26, 2010, from "Darek Czokajlo" to – Dariusz Czokajlo --.

The petition is **GRANTED**.

The Office notes that a request to have an inventor's name changed or any other corrections in the name of the inventor will not be entertained unless accompanied by a petition under 37 CFR 1.182 together with an appropriate petition fee set forth in § 1.17(f). MPEP 605.04. Thus, the Office will charge the $400.00 fee to the Deposit Account.

The Office records have been updated to reflect the correction of the inventor's name. A corrected Filing Receipt, which reflects the correction of the inventor's name, was mailed on October 15, 2010.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

MAILED

FEB 24 2011

OFFICE OF PETITIONS

Law Offices of Timothy Brisson
340 Grass Valley Highway
Auburn, California 95603

In re Application of	:	
Michael SALLADIN	:	DECISION GRANTING PETITION
Application No. 61/299,955	:	UNDER 37 CFR 1.137(b)
Filed: 30 January 2010	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 28 December 2010, to revive the above-identified application ("Application").

The petition is **DISMISSED**.

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

The Application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed 18 February 2010 ("Notice"), which set a reply period of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 19 April 2010, with notification mailed 29 October 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 must also be signed.**

The present petition lacks a signature.

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

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

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

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

General inquiries relating to this decision should be directed to Robert DeWitty (571-272-6051).

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAY 20 2011
OFFICE OF PETITIONS

Law Offices of Timothy Brisson
340 Grass Valley Highway
Auburn, California 95603

In re Application of	:	
Michael SALLADIN	:	DECISION GRANTING PETITION
Application No. 61/299,955	:	UNDER 37 CFR 1.137(b)
Filed: 30 January 2010	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed April 25, 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 Provisional Application mailed 18 February 2010 ("Notice"), which set a shortened period of reply of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 19 April 2010. A Notice of Abandonment was mailed October 29, 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of $135 fees as required in the Notice mailed February 18, 2010, (2) a petition fee of $810, and (3) a statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

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 $1175 extension of time fee submitted with the petition filed December 28, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card.

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

The application file will be referred to Office of Patent Application Processing.

for

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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NIXON PEABODY, LLP
300 S. RIVERSIDE PLAZA, 16TH FLOOR
CHICAGO IL 60606-6613

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of	:	
Martin Bondo	:	
Application No. 61/300,289	:	ON PETITION
Filed: February 1, 2010	:	
Attorney Docket No. 247161-000125PL01	:	

This is a decision on the petition under 37 C.F.R. § 1.182, filed October 15, 2010, to change the name of an inventor.

The petition is **GRANTED**.

The name will be changed from "Martin Bondo Jørgensen" to -- Martin Bondo --.

Telephone inquiries regarding this decision should be directed to Joan Olszewski at (571) 272-7751. All other inquiries should be directed to the Technology Center.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/300,289	02/01/2010		220	247161-000125PL01		

CONFIRMATION NO. 2833

CORRECTED FILING RECEIPT

70001
NIXON PEABODY, LLP
300 S. Riverside Plaza, 16th Floor
CHICAGO, IL 60606-6613

OC000000044621558

Date Mailed: 11/22/2010

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Martin Bondo, Vaerlose, DENMARK;

Power of Attorney:
Justin Swindells--48733

If Required, Foreign Filing License Granted: 02/16/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/300,289**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

ASSEMBLY COMPRISING A MALE AND A FEMALE PLUG MEMBER, A MALE PLUG MEMBER AND A FEMALE PLUG MEMBER

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Traskbritt, P.C.
Dow Global Technologies Inc.
P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED
NOV 05 2010
OFFICE OF PETITIONS

In re Application of :
GERDES, et al. :
Application No. 61/301,949 : DECISION ON PETITION
Filed: February 5, 2010 :
Attorney Docket No. 2971-9464US (68214) :

This is a decision on the Petition for Removal of Previously Filed Application and Submission of Replacement Application, filed February 22, 2010, which has been treated as a petition under 37 CFR 1.59(b) to expunge "the application filed February 5, 2010". The requisite $200.00 petition fee (Fee Code 1463) has been charged to Deposit Account 20-1469, as authorized in the petition.

The petition is **DISMISSED**.

Petitioner urges that on the application filing date of February 5, 2010, the "application was inadvertently uploaded and does not pertain to the Provisional Data Sheet filed therewith." A replacement application was submitted with the present petition on February 22, 2010, seventeen (17) days after the original application was filed.

37 CFR 1.59(a)(2) states, in part, that:

> "Information forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment...) will not be expunged from the application file."

Since the application papers submitted on December 5, 2010 form the original disclosure, no portion thereof, as set forth under 37 CFR 1.59(a)(2), will be expunged from the application file. As such, the present petition must be dismissed.

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
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Traskbritt, P.C.
Dow Global Technologies Inc.
P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED
DEC 01 2010
OFFICE OF PETITIONS

In re Application of :
GERDES, et al. :
Application No. 61/301,949 : CORRECTED
Filed: February 5, 2010 : DECISION ON PETITION
Attorney Docket No. 2971-9464US (68214) :

This is a corrected decision on the Petition for Removal of Previously Filed Application and Submission of Replacement Application, filed February 22, 2010, which has been treated as a petition under 37 CFR 1.59(b) to expunge "the application filed February 5, 2010". The requisite $200.00 petition fee (Fee Code 1463) has been charged to Deposit Account 20-1469, as authorized in the petition. The date in the first line of penultimate paragraph has been changed to the correct date of February 5, 2010.

The petition is **DISMISSED**.

Petitioner urges that on the application filing date of February 5, 2010, the "application was inadvertently uploaded and does not pertain to the Provisional Data Sheet filed therewith." A replacement application was submitted with the present petition on February 22, 2010, seventeen (17) days after the original application was filed.

37 CFR 1.59(a)(2) states, in part, that:

> "Information forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment...) will not be expunged from the application file."

Since the application papers submitted on February 5, 2010 form the original disclosure, no portion thereof, as set forth under 37 CFR 1.59(a)(2), will be expunged from the application file. As such, the present petition must be dismissed.

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

DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
WASHINGTON DC 20006-5403

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re application of :
Kyle Anderson et al :
Application No. 61/306,346 : NOTICE
Filed: February 19, 2010 :
Attorney Docket No. A8130.0691/P691 :

This is a notice regarding your communication filed April 26, 2010, which is being treated as a request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The request is **DISMISSED**.

Applicant states that "On February 19, 2010, Applicant paid $220 for the large entity provisional application fee (37 C.F.R. 116(d)), but inadvertently and incorrectly checked the box on the provisional application transmittal sheet claiming status as a "Small Entity", and the USPTO therefore refunded the $110 overpayment to out deposit account."

Applicant now request that the Office charge the balance due ($110.00) for payment as a large entity to applicant's credit card account. However, the Office is not in receipt of a credit card being submitted with the above. Therefore, the request is dismissed at this time.

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

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

By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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MAILED
APR 11 2011
OFFICE OF PETITIONS

BEN SHELEF
709-1 N. SHORELINE BLVD.
MOUNTAIN VIEW CA 94043

In re Application of	:	
Ben Shelef et al	:	
Application No. 61/306,551	:	DECISION ON PETITION
Filed: February 22, 2010	:	
Attorney Docket No. BS-KINEMATIC-001	:	

This is in reply to the communication entitled "Request for withdraw of abandonment – application 61/306,551" filed December 10, 2010 and resubmitted on February 22, 2011.

The request is **DISMISSED**.

The request is dismissed because USPTO regulations require that papers filed in the application be signed by a registered attorney or agent, by the applicants (inventors) or by the assignee of the entire interest who has taken action in the application in accordance with 37 CFR 3.71. The request is not signed. Further, the request should be signed by both inventors. See 37 CFR 1.33(b), which states:

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or

other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Additionally, applicant request that the required $25.00 surcharge fee be waived and the abandonment withdrawn. Applicant further request that if the fee cannot be waived, that he would like to petition to withdraw the abandonment based on non-receipt of the fee notice.

Applicant should note that no evidence was provided to support the above.

Applicant is encouraged to note the below regarding the filing (by pro-se) of a petition under 37 CFR 1.181(no fee) to withdraw holding of abandonment for nonreceipt of an Office action.

As a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his/her correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he/she writes down due dates; how he/she knows replies are due, etc. In essence, petitioner must explain how he/she reminds themselves of response due dates and show that the due date for the Office action was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period to demonstrate nonreceipt of the Office action. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from him/her, or any other person at the address who may have handled the Office action, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the Office action was not found. Lastly, petitioner must state that he/she was, in fact, residing at the correspondence address of record for a reasonable time after the period when he would have received the Office action.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

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

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

By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BEN SHELEF
709-A N SHORELINE BLVD.
MOUNTAIN VIEW CA 94043

MAILED

JUL 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Ben Shelef et al	:	
Application No. 61/306,551	:	DECISION ON PETITION
Filed: February 22, 2010	:	
Attorney Docket No. BS-KINEMATIC-001	:	

This is a decision on the renewed petition, filed June 21, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Notice to File Missing Parts of Provisional Application mailed March 8, 2010, which set a two (2) month period for reply. A Notice of Abandonment was mailed on November 24, 2011.

Petitioner asserts that the Notice mailed March 8, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received.

The showing required to establish nonreceipt of an Office communication must include:

(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).

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.

Further, the surcharge fee paid on February 22, 2011, will not be waived. The surcharge fee was required by the Notice mailed March 8, 2010.

This application is being referred to the Office of Patent Application Processing.

/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

ASAF CIDON
938 LIBERTY COURT
CUPERTINO CA 95014

MAILED

MAR 31 2011

OFFICE OF PETITIONS

In re Application of	:	
Asaf Cidon	:	
Application No. 61/306,578	:	DECISION ON PETITION
Filed: February 22, 2010	:	
Attorney Docket No. 8204-USP	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 21, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed March 5, 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 above-identified application became abandoned on May 6, 2010. A Notice of Abandonment was mailed November 22, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) a Provisional Cover Sheet and $25.00 Surcharge fee, (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. Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. A

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

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Oren Reches
211 North Union Street, Suite 100
Alexandria, Virginia 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

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

IPXLAW GROUP LLP
95 SOUTH MARKET STREET
SUITE 570
SAN JOSE CA 95113

MAILED
DEC 27 2010
OFFICE OF PETITIONS

In re Application of :
Voruganti, Pavan :
Application No. 61/306,925 : ON PETITION
Filed: February 22, 2010 :
Attorney Docket No. VELLO-038001P :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 6, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Provisional Application for Patent Cover Sheet and the $25.00 late surcharge, (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 Patent Application Processing for further processing.

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

SYNECOR LLC
P.O. BOX 5325
LARKSPUR CA 94977

MAILED
JAN 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Salvatore CASTRO	:	
Application No. 61/306,946	:	DECISION ON PETITION
Effective Date: February 22, 2010	:	
Attorney Docket No. TRX-2510	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 03, 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 March 18, 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 May 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 the required fees (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice to File Missing Parts of Nonprovisional Application of March 18, 2010 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 $$865.00 extension of time fee submitted with the petition on December 03, 2010 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

This application is being referred to the Office of Patent Application Processing.

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

CELL PRESERVATION SERVICES, INC (CPSI)
LEGAL IP
2 COURT STREET
OWEGO NY 13827

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of	:	
John M. Baust et al	:	
Application No. 61/307,148	:	DECISION ON PETITION
Filed: February 23, 2010	:	
Attorney Docket No. US700-2010	:	

This is a decision on the request filed March 23, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting refund of the filing fee for the above-identified application.

The petition is **DISMISSED**.

The request filed March 23, 2010, is not signed. Applicant is encouraged to note 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.

Additionally, petitioner asserts that the instant application was an unintended duplicate filing via EFS-Web.

37 CFR 1.26(a) states, in part: "The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee."

However, the Office may find a mistake pursuant to 37 CFR 1.26, waive the presumption in 37 CFR 1.26 that applications are not entitled to filing fee refunds, and refund the filing fees associated with unintended duplicate application filings via EFS-Web when the following conditions have been met:

(1) Applicant must certify that they had filed the duplicate application(s) prior to receiving appropriate confirmation from the Office that the initial application filing via EFS-Web was received by the Office;

(2) the request for a refund must be filed within three months from the filing date of the first application receiving an appropriate acknowledgement;

(3) the request must include a statement which attests on a personal knowledge basis or to the satisfaction of the Director that the duplicate application was intended to be the original application;

(4) the duplicate application must have been filed via EFS-Web on or after March 16, 2006;

(5) the request must list the other application(s) of which the instant application is deemed to be a "duplicate"; and

(6) the request should include a statement of express abandonment of the instant application as it was filed in error.

When the above conditions have been met, the Office will generally accept the statement as an assertion that the duplicate application was filed by mistake without requiring further information.

The instant petition lacks items (5) above.

Accordingly, the petition for refund of a duplicate filing fee under 37 CFR 1.181 cannot be granted at this time.

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CELL PRESERVATION SERVICES, INC (CPSI)
LEGAL IP
2 COURT STREET
OWEGO NY 13827

MAILED
OCT 26 2010
OFFICE OF PETITIONS

In re Application of	:	
John M. Baust et al	:	
Application No. 61/307,148	:	DECISION ON PETITION
Filed: February 23, 2010	:	
Attorney Docket No. US700-2010	:	

This is a decision on the renewed request filed October 18, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting refund of the filing fee for the above-identified application.

The petition is **GRANTED**.

Petitioner asserts that the instant application was an unintended duplicate filing via EFS-Web.

37 CFR 1.26(a) states, in part: "The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee."

However, the Office may find a mistake pursuant to 37 CFR 1.26, waive the presumption in 37 CFR 1.26 that applications are not entitled to filing fee refunds, and refund the filing fees associated with unintended duplicate application filings via EFS-Web.

The Office has accepted petitioner's statement as an assertion that the duplicate application was filed by mistake. Accordingly, the filing fee of 110.00, submitted on February 23, 2010, has been credited to petitioner's credit card account.

As no further action will be taken in this application, this matter is being referred to the Office of Patent Publication for express abandonment of the subject application.

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

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Aug-10

ANTHONY EDW. J CAMPBELL
PO BOX 160370
AUSTIN TX 78716

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Agustin et al.	:	
Application Number: 61/307444	:	ON PETITION
Filed: 02/23/2010	:	
Attorney Docket Number: Gendai-PA01	:	

This is a decision on the petition filed on May 28, 2010, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified provisional application be accorded a filing date of February 23, 2010.

The petition is **GRANTED**.

The application was filed on February 23, 2010, without drawings. Accordingly, on March 29, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application stating that the application has not been accorded a filing date because application had not been accorded a filing date because the application had been deposited without drawings.

On May 28, 2010, the present petition was filed. Petitioner argues that drawings are not necessary for an understanding of the subject matter sought to be patented, and so request that the application be accorded a filing date of February 23, 2010, without drawings.

As stated in MPEP 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure,

directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

As a review of the official file reveals that the application includes three (3) method claims. Therefore, this application contains disclosure relating to a process or method.

In view of the above, the "Notice" mailed March 29, 2010, was mailed in error and is hereby withdrawn.

The application will be processed using the application papers present on filing on February 23, 2010.

The application is accorded a filing date of February 23, 2010, without drawings as a part of the original disclosure. The petition fee paid of $400.00 will be credited to counsel's credit card.

The application is being returned to the Office of Patent Application Processing for further processing with a filing date of February 23, 2010, using only the application papers filed on that date.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ALAN SLISKI
273 CONCORD RD.
LINCOLN MA 01773

MAILED
JAN 21 2011
OFFICE OF PETITIONS

In re Application of :
Jason KOSHNITSKY, et al :
Application No. 61/308,739 : ON PETITION
Filed: February 26, 2010 :
Attorney Docket No. OT6 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 20, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed March 26, 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 May 27, 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).

With respect to item (1): The Application Data Sheet submitted with the petition filed December 20, 2010, is acknowledged, however, does not include the signature of the applicant or representative.

With respect to item (3): The statement of unintentional delay cannot be accepted because the statement is not signed. Accordingly, the petition is considered to not contain a proper statement of unintentional delay as required under the unintentional provisions of 37 CFR 1.137(b). Any renewed petition should include the required signature and must be dated.

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

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ALAN SLISKI
273 CONCORD RD.
LINCOLN MA 01773

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of :
Jason KOSHNITSKY, et al :
Application No. 61/308,739 :
Filed: February 26, 2010 :
Attorney Docket No. OT6 :

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed February 14, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed March 26, 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 May 27, 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) (3).

With respect to item (3): The petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Alan Sliski) was ever given a power of attorney to act on behalf of inventor Jason Koshnitsky, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a

proper statement of unintentional delay. Any future submission of the statement should include the current date of execution.

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
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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

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ALAN SLISKI
273 CONCORD RD.
LINCOLN MA 01773

MAILED
MAY 2 7 2011
OFFICE OF PETITIONS

In re Application of :
Jason KOSHNITSKY, et al :
Application No. 61/308,739 : ON PETITION
Filed: February 26, 2010 :
Attorney Docket No. OT6 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed April 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 Notice to File Missing Parts of Provisional Application (Notice), mailed March 26, 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 May 27, 2010.

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

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

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

All other inquires should be directed to the Office of Data Management at (571) 272-4000.

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

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

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED
MAR 09 2011
OFFICE OF PETITIONS

VISWA NATH SHARMA
217 MILO PLACE
SAN RAMON, CA 94583

In re Application of :
Viswa Nath Sharma :
Application No. 61/308,810 : ON PETITION
Filed: February 26, 2010 :
Attorney Docket No.: VS4-PARAM :

This is a decision in response to the petition filed January 24, 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 **dismissed**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

The application became abandoned for a failure to timely respond to a Notice to File Missing Parts of Provisional Application mailed March 23, 2010, which set a two-month period for response. Accordingly, a reply was due on or before May 23, 2010. A Notice of Abandonment was mailed on December 14, 2010. On January 24, 2011, the present petition was filed.

Petitioner argues that a timely response was filed and request that the abandonment be withdrawn. Petitioner indicates that a provisional application cover sheet, including the requisite surcharge, was filed using a certificate of mailing. In support, petitioner has provided a copy of a Provisional Application Cover Sheet and a communication entitled "Certificate of Mailing".

Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), which states:

> "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."

A review of the copy of the certificate of mailing presented on petition discloses relief under 37 CFR 1.8(b) cannot be granted, since the certificate of mailing is deficient within the meaning of 37 CFR 1.8(a) which states:

:

"Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6 (d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission..."

The certificate of mailing presented does not state it was deposited in first class mail with sufficient postage and there is no way to link the certificate of mailing to the reply since the certificate appears on a separate paper which does not reference the reply being filed. Unfortunately, the certificate of mailing in question does not meet the requirements pursuant to 37 CFR 1.8(a)(1)(i)(A) and 1.8(a)(1)(ii).

In view of the above, the petition cannot be granted.

Petitioner is encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

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

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

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

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

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

By Internet: EFS-Web[1]

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

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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FISH & RICHARDSON PC (BO)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
MAR 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Shelby Clark	:	
Application No. 61/309,320	:	ON PETITION
Filed: March 1, 2010	:	
Attorney Docket No. 29980-0003P02	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed February 22, 2011.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No further fee is required for a renewed petition. This is **not** a final agency decision within the meaning of 5 USC 704.

The above application became abandoned for failure to file a reply to the Notice to File Missing Parts of Provisional Application mailed on March 26, 2010. The Notice set an extendable period for reply of two months for applicant to submit the provisional application cover sheet, and the $25 surcharge for its late filing. No reply having been received, the application became abandoned on May 27, 2010. The Office mailed a Notice of Abandonment on December 13, 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).

The instant petition lacks requirement (1).

Petitioner has not submitted the provisional application cover sheet or the surcharge for its late filing.

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

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED

MAY 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Shelby Clark	:	
Application No. 61/309,320	:	ON PETITION
Filed: March 1, 2010	:	
Attorney Docket No. 29980-0003P02	:	

This is a decision on the renewed petition to revive under 37 CFR 1.137(b), filed April 20, 2011.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above application became abandoned for failure to file a reply to the Notice to File Missing Parts of Provisional Application mailed on March 26, 2010. The Notice set an extendable period for reply of two months for applicant to submit the provisional application cover sheet, and the $25 surcharge for its late filing. No reply having been received, the application became abandoned on May 27, 2010. The Office mailed a Notice of Abandonment on December 13, 2010. Applicant filed a petition to revive under 37 CFR 1.137(b) on February 22, 2011. However, the petition was dismissed in a decision mailed on March 28, 2011. The petition was dismissed because applicant did not submit the provisional application cover sheet and the $25 surcharge.

With the instant renewed petition, petitioner has submitted the provisional application cover sheet and the $25 surcharge. The other requirements for a grantable petition were previously satisfied on February 22, 2011.

The application is being forwarded to the Office of Patent Application Processing for completion of processing.

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK NY 10022

MAILED
NOV 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Bijoy PAUL et al.	:	
Application No. 61/310,686	:	DECISION ON PETITION
Filed: March 04, 2010	:	
Attorney Docket No. 10-2329P	:	

This is a decision on the petition under 37 CFR 1.53(e), filed June 09, 2010, to accord the original filing date.

On April 09, 2010, the Office mailed a Notice of Incomplete Provisional Application, stating that a filing date has not been accorded to the above-identified application, indicating that the application was deposited without drawings application.

Petitioner asserts that drawings were submitted at the time of filing and request that the application be accorded the original filing date of March 04, 2010. A review of the Office records indicates that drawings were in fact filed with the application.

Accordingly, this application is entitled to a filing date of March 04, 2010, and has been so accorded.

In view of the above, the petition is **GRANTED**. The petition fee of $400.00 will be credited to petitioner's deposit account.

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

This application file is being referred to the Office of Patent Application Processing.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle WA 98101

MAILED

JAN 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Andrew Cragg et al.	:	
Application No. 61/311,735	:	DECISION ON PETITION
Filed: March 8, 2010	:	
Attorney Docket No. 37905-13002	:	

This is a decision on the petition under 37 CFR 1.59(b), filed November 9, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that documents identified as Appendix A and Appendix B, filed March 10, 2010 be expunged from the record.

However, 37 CFR 1.59(a)(2) states:

> Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

Accordingly, Appendix A and Appendix B will not be expunged from the record pursuant to 37 CFR 1.59(b) even though they were mistakenly filed. Moreover, petitioner has not established that an extraordinary situation exits in which justice requires the requested expungement pursuant to a waiver of 37 CFR 1.59(a)(2) under 37 CFR 1.183, as discussed in MPEP 724.05 IV.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
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Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle WA 98101

MAILED
MAR 30 2011
OFFICE OF PETITIONS

In re Application of	:	
Anderew Cragg et al.	:	
Application No. 61/311,735	:	DECISION ON PETITION
Filed: March 8, 2010	:	
Attorney Docket No. 37905-13002	:	

This is a decision on the renewed petition under 37 CFR 1.59(b), filed March 9, 2011, to expunge information from the above identified application.

The petition is **granted**.

Petitioner requests that Appendix A and Appendix B, filed March 8, 2010, be expunged from the record. Petitioner states that 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 first petition filed November 9, 2010 was dismissed in a decision mailed January 10, 2011 as the material to be expunged was considered to be part of the original disclosure. In consideration of the instant renewed petition, it has been determined that Appendix A and B are not part of the original disclosure.

Petitioner states that Appendix A and B contain information that is confidential.

In a paper file, the unintentionally submitted exhibits could, but not necessarily would, have been physically removed from the file wrapper and returned to applicant. In the IFW realm the corresponding action(s) is to close the document and also remove such from the listing of "Publicly available Documents." It is agreed that it would be appropriate in this instance to close the information that was filed in the above identified application, and also remove such from the listing of publicly available documents for this Image File Wrapper (IFW).

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

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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LIFE TECHNOLOGIES CORPORATION
C/O INTELLEVATE
P.O. BOX 52050
MINNEAPOLIS MN 55402

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Application of	:	
David C. Neujahr et al.	:	
Application No. 61/312,186	:	DECISION DISMISSING PETITION
Filed: March 9, 2010	:	
Attorney Docket No: LT00174 PRO	:	

This decision is in response to the petition filed June 1, 2010, in response to the Notice of Omitted Items mailed March 29, 2010. The petition is treated under 37 CFR 1.182.

The petition is **DISMISSED**.

The application was filed March 9, 2010, however, on March 29, 2010, the Office of Data Management mailed a "Notice" stating that the application had been accorded a filing date Of March 9, 2010, but that Figure(s) 19d,e,f,g as described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners argue that no Figures were missing on March 9, 2010. Instead, the petition argues that the Figures were mislabeled. Replacement drawings are submitted with the petition to correct the labels and therefore to show that Figure(s) 19d,e,f,g were not omitted.

While the figures were mislabeled and therefore no drawings were actually missing on March 9, 2010, the error occurred as a result of the applicants' filing error. In view thereof, the "Notice" mailed on March 29, 2010 was correct in stating that Figure(s) 19d,e,f,g described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

Petitioner, however, is reminded that no amendment/corrections, other than to make the provisional application comply with the patent statute and all applicable regulations, may be made to a provisional application after the filing date of the provisional application. See 37 CFR 1.53(c); 37 CFR 1.121(j).

As well, the option to take the later filing date, *i.e.*, the date of submission of the omitted page(s) or drawing(s), is not available.[1] As such, if petitioners desire to have the correctly labeled pages entered to reflect Figure(s) 19d,e,f,g, petitioners should simply file a new completed provisional application.

The application will be processed and examined using the application papers filed on March 9, 2010.

The petition fee in the amount of $400 has been charged to the deposit account no 50-3994.

The application is being forwarded to the Office of Patent Application Processing for further processing with a filing date of March 9, 2010, using the application papers filed on that date.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1]MPEP 601.01(d). In view of the relatively low filing fee for provisional applications, and the USPTO's desire to minimize the processing of provisional applications, the USPTO will not grant petitions under 37 CFR 1.182 to accept omitted page(s) or drawing(s) and accord an application filing date as of the date of submission in provisional applications. The applicant should simply file a new completed provisional application. Id.

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5TH FLOOR
BALTIMORE MD 21201

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NOV 08 2010
OFFICE OF PETITIONS

In re Application of	:	
Venu Raman et al.	:	
Application No. 61/313,472	:	DECISION ON PETITION
Filed: March 12, 2010	:	
Attorney Docket No. P11047-01	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 21, 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; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Incomplete Application mailed March 31, 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 Patent Application Processing for pre-examination processing.

/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
DIW Nov-10

JOHNS HOPKINS TECHNOLOGY TRANSFER
100 N. CHARLES ST.
5TH FLOOR
BALTIMORE MD 21201

MAILED
NOV 08 2010
OFFICE OF PETITIONS

In re Application of :
Venu Raman et al. :
Application No. 61/313,472 :
Filed: March 12, 2010 :
Attorney Docket No. P11047-01 :

ON PETITION

This is a decision on the petition filed on July 21, 2010, which is treated as a petition requesting that the above-identified provisional application, without drawings, be accorded a filing date of March 12, 2010.

The petition is **GRANTED**.

The application was filed on March 12, 2010, without drawings. Accordingly, on March 31, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on July 21, 2010, the subject petition was filed. Petitioners assert that that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but

> filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on March 12, 2010, is directed to a process. Accordingly, the application is treated as a provisional application containing at least some disclosure of a process.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on March 31, 2010, was mailed in error and is hereby withdrawn.

Petitioner may request a refund of the petition fee ($400.00) by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

The application is accorded a filing date of March 12, 2010, without drawings as a part of the original disclosure.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to **March 12, 2010**, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 571 272-3208.

/KOC/
Karen Creasy
Petition Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MATTHEW BOGOSIAN
3131 OCEAN TER
MARINA CA 93933

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
MATTHEW BOGOSIAN :
Application No. 61/313,733 : DECISION ON PETITION
Filed: March 13, 2010 :
Attorney Docket No. :

This is a decision on the petition, filed December 27, 2010, and supplemented on March 9, 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 Notice to File Missing Parts of Provisional Application (Notice) mailed March 31, 2010, which set a shortened statutory period for reply of two (2) months. The Notice of Abandonment was mailed on December 15, 2010.

Petitioner asserts that the Notice dated March 31, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

(1) a statement from 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.

This application is being referred to the Office of Patent Application Processing (OPAP) for **re-mailing** the Notice to File Missing Parts of Provisional Application of March 31, 2010. The period for reply will run from the mailing date of the Office action.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MYERS BIGEL SIBLEY & SAJOVEC
P.O. BOX 37428
RALEIGH NC 27627

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Vann **BENNETT** et al	:	
Application No. 61/313,976	:	DECISION ON PETITION
Filed: March 15, 2010	:	
Attorney Docket No. 5405-435PR	:	

This is a decision on the petition under 37 CFR 1.59(b), filed May 14, 2010, to expunge information from the above identified application.

The petition is **DISMISSED**.

Petitioner requests that a document filed May 13, 2010, be expunged from the record.

The petition is deficient because 1) the petition does not clearly identify the information requested to be expunged, 2) the petition does not contain a clear statement that the information requested to be expunged was unintentionally submitted and 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, 3) the petition does not contain a commitment on the part of petitioner to retain the information to be expunged for the period of any patent with regard to which such information is submitted, 4) the petition does not contain a statement that the petition is being submitted by, or on behalf of, the party in interest who originally submitted the information, and 5) no agreement to retrain the information for the life of any patent that may issue from 61/313,976.

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

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

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

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

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Mar-11

ELIAS BORGES
56 ABERFOYLE CRESCENT, SUITE 840
TORONTO ON M8X 2W4
CANADA

MAILED

APR 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Rui Novo	:	LETTER DISMISSING
Application Number: 61/315,675	:	PETITION
Filing Date: 03/19/2010	:	
Attorney Docket Number: 03-1180	:	

This is a communication in response to the paper styled as a petition, filed on February 11, 2011, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is dismissed for the reasons stated below.

This application became abandoned on May 31, 2010, for failure to file a timely reply to the Notice to File Missing Parts of Provisional Application mailed on March 30, 2010, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on December 14, 2010.

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 required additional information where there is a question whether the delay was unintentional; and

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

The petition lacks items (1) and (2).

The petition fee and fee required by the Notice mailed on March 30, 2010 are lacking. In this respect, applicant's credit card payment request was declined on February 16, 2011 for denial or insufficient funds.

In the absence of the petition fee, which is required by law, the USPTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. As petitioner has not asserted any grounds for the withdrawal of the holding of abandonment, the petition must be dismissed.

The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.[1]

Any renewed petition must be accompanied by the petition fee of $810.00, as well as the fees required in the aforementioned Notice.

A reply should be submitted within two (2) months of the mailing date of this decision. **This time period is not extendable.** 37 CFR 1.181(f).

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

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[1] See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

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 should be directed to the undersigned at 571-272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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ELIAS BORGES
56 ABERFOYLE CRESCENT, SUITE 840
TORONTO ON M8X 2W4
CANADA

MAILED

JUL 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Rui Novo	:	
Application No. 61/315,675	:	ON PETITION
Filed: 03/19/2010	:	
Attorney Docket No. 03-1180	:	

This is a decision in response to the renewed petition under 37 CFR 1.137(b) filed on June 1, 2011, to revive the above-identified application.

The petition is **GRANTED**. [1]

This application became abandoned on May 31, 2010, for failure to timely file a reply to the Notice to File Missing Parts of Provisional Application mailed on March 30, 2010, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.137(a) were obtained. Notice of Abandonment was mailed on December 14, 2010. The paper styled as a petition under 37 CFR 1.137(b) filed on February 11, 2011, was dismissed on April 1, 2011.

Receipt of the reply filed on June 1, 2011 is acknowledged.

The application is referred to the Office of Patent Application Processing for further processing.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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[1] Petitioner is reminded that a provisional application will automatically be abandoned 12 months after its filing date and will not be subject to revival to restore it to pending status thereafter. See 35 U.S.C. 111(b)(5).

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JUN 20 2011
OFFICE OF PETITIONS

BASF CORPORATION
CARL-BOSCH-STRASSE 38
LUDWIGSHAFEN D6705-6 DE GERMANY

In re Application of :
Le Vezouet, et al. :
Application No. 61/316,441 : ON PETITION
Filed: March 23, 2010 :
Attorney Docket No. **PF0000070472**

This is a decision on the petition under 37 CFR 1.182 filed February 23, 2011, to change the name of a joint 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 "Ronan Le Vezouet."

A replacement filing receipt is enclosed. It is noted that a corrected filing receipt was mailed on March 1, 2011. The requested change to the inventor's name was made without the benefit of a decision on the petition filed February 23, 2011. Such a change in the inventor's name in Office records is required to be affected by way of petition, however. The instant petition is now granted, accordingly.

Deposit account 23-1925 will be charged $400.00 for the instant petition.

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: Replacement Filing Receipt

cc:
Brinks Hofer Gilson & Lione
PO Box 110285
Research Triangle Park, NC 27709

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
61/316,441	03/23/2010		490	PF0000070472		

CONFIRMATION NO. 7004

REPLACEMENT FILING RECEIPT

29137
BASF CORPORATION
CARL-BOSCH-STRASSE 38
LUDWIGSHAFEN, D67056
GERMANY

OC000000048268251

Date Mailed: 06/17/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Ronan Le Vezouet, Mannheim, GERMANY;
Sebastian Sörgel, Ludwigshafen, GERMANY;
Christian Defieber, Mannheim, GERMANY;
Steffen Groß, Ludwigshafen, GERMANY;
Karsten Körber, Eppelheim, GERMANY;
Douglas D. Anspaugh, Apex, NC;
Deborah L. Culbertson, Fuquay Varina, NC;

Power of Attorney: None

If Required, Foreign Filing License Granted: 04/02/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/316,441**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

Pyridazine Compounds For Controlling Invertebrate Pests

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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Amr Salahieh
18729 Metler CT
Saratoga CA 95070

MAILED
MAY 10 2011
OFFICE OF PETITIONS

In re Application of :
Amr Salahieh et al. :
Application No. 61/317,231 : DECISION ON PETITION
Filed: March 24, 2010 :
Attorney Docket No. 001 001 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 24, 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 April 9, 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 June 10, 2010. A Notice of Abandonment was mailed December 22, 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 provisional application cover sheet and a $25 surcharge fee, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the provisional application cover sheet and fee are accepted as being unintentionally delayed.

Telephone inquiries should be directed to the 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 the Office of Patent Application Processing for appropriate action in the normal course of business on the reply received March 24, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc. James R. Shay
Shay Glenn, LLP
2755 Campus Drive
Suite 210
San Mateo, CA 94403

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OREGON HEALTH & SCIENCE UNIVERSITY
2525 S.W. FIRST AVENUE , SUITE 120
PORTLAND OR 97201

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SEP 0 1 2011

OFFICE OF PETITIONS

In re Application of	:	
Picker et al.	:	
Application No. 61/317,647	:	ON PETITION
Filed: March 25, 2010	:	
Attorney Docket No. 1482	:	

This is in response to the petition, filed July 25, 2011, under 37 CFR 1.183 requesting waiver of the requirements of 37 CFR 1.59. This petition respectively request that the Office expunge portions of the original disclosure in the above-identified application, including that the Office waive the prohibition in 37 CFR 1.59 against expungement of the original disclosure and replace the original disclosure with a redacted version of the disclosure.

The petition under 37 CFR 1.183 requesting waiver of the requirements of 37 CFR 1.59 is **DISMISSED.**

37 CFR 1.59 states:

> (a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.
> (2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
> (b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

However, MPEP 724.05 IV explains that this provision of 37 CFR 1.59(a)(2) may be waived under 37 CFR 1.183 where an extraordinary situation exits in which justice requires the requested waiver of 37 CFR 1.59(a)(2).

37 CFR 1.183 states:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

Petitioner asserts that an extraordinary situation exists here where justice requires the requested waiver since information is presented in the original disclosure that is allegedly irrelevant to the invention and may contain personal and/or confidential information of the applicants, personal and/or confidential information of people who are not applicants, and confidential information of the assignee.

While the presence of information that is trade secret, proprietary, and/or protective order material of the type discussed in MPEP § 724.02 or that contains Personally Identifiable Information (PII)[1] is recognized as an extraordinary situation in which justice requires waiver of 37 CFR 1.59(a)(2), not all of the information that the Office is requested to expunge in this application appears to be trade secret, proprietary, protective order material, and/or PII. In particular, the issue at hand is not the relevance of the information to the application; rather it is whether petitioner has properly followed the statutes and regulations with the exercise of reasonable care and diligence herein. In the instant case, a provisional application was filed under 35 U.S.C. 111(b) with a variety of undesirable information, which filing was avoidable with due care. There is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of 37 CFR 1.59 (a)(2) for all of the information that the Office is requested to expunge in this application. See, Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994)(circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers). Circumstances resulting from petitioner's, or petitioner's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See, In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc. 195 USPQ 586, 588 (Comm'r Pats. 1977).

No adequate basis is given or apparent for expunging all of the information requested by petitioners, and the USPTO sees no reason to exercise its discretion to deviate from, or expand upon, the above long-established reasons for expungement. See, e.g., Saxbe v. Bustos, 419 U.S. 65, 74 (1974) (acknowledging an agency's right to maintain a "longstanding administrative construction").

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[1] The term "personally identifiable information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. See OMB Memorandum regarding the "Safeguarding against and Responding to the Breach of Personally Identifiable Information," issued on May 22, 2007.

Furthermore, the standards for expunging information that is unintentionally submitted in an application, including the standards for establishing that the expungement of the information is appropriate, is discussed in MPEP section 724.05 II. This section states that a petition may be filed under 37 CFR 1.59(b), provided that:

> (A) the Office can effect such return prior to the issuance of any patent on the application in issue;
> (B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
> (C) the information has not otherwise been made public;
> (D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
> (E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
> (F) the petition fee as set forth in 37 CFR 1.17(g) is included.

Petitioner has not satisfied requirements C and D above. Petitioners should provide statements affirming items C and D in a renewed petition. In addition, petitioners should provide another copy of the original disclosure that redacts the trade secret, proprietary, protective order material, and/or PII information by line item rather than by the removal of the entire page. For example, the petition says that page 43 of the original disclosure contains direct cost requests. Such cost information should be redacted as proprietary information while the remainder of the table content is not disturbed.

The $200.00 fee under 37 CFR 1.17(g) for expungement and the $400.00 fee under 37 CFR 1.17(f) for waiver of the requirements of 37 CFR 1.59 have been charged to the deposit account given on the petition, as authorized. Additional fees are not required for the filing of a renewed petition.

Also, 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 regarding this decision should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

cc: Vedder Price P.C.
1633 Broadway, 47th Floor
New York, NY 10019

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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OREGON HEALTH & SCIENCE UNIVERSITY
2525 S.W. FIRST AVENUE , SUITE 120
PORTLAND OR 97201

MAILED

SEP 19 2011

OFFICE OF PETITIONS

In re Application of :
Picker et al. :
Application No. 61/317,647 : ON PETITION
Filed: March 25, 2010 :
Attorney Docket No. 1482 :

This is a response to the renewed petitions under 37 CFR §§ 1.59 and 1.183, filed September 13, 2011, to expunge portions of the original specification from the above identified provisional application.

The petitions are **granted**.

The petitions assert that trade secret, proprietary, protective order material, and/or PII information was inadvertently presented in the specification filed with the above identified provisional application. Applicant requests that this information be expunged and replaced with the redacted version of the original specification presented with the renewed petition.

37 CFR 1.59 states in part:

> (a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.
> (2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
> (b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

The standards for expunging information that is unintentionally submitted in an application, including the standards for establishing that the expungement of the information is appropriate, is discussed in MPEP section 724.05 II. This section states that a petition may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;
(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
(C) the information has not otherwise been made public;
(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
(F) the petition fee as set forth in 37 CFR 1.17(g) is included.

MPEP 724.05 IV explains that the provision of 37 CFR 1.59(a)(2) may be waived under 37 CFR 1.183 where an extraordinary situation exits in which justice requires the requested expungement of information forming part of the original disclosure .

The presence of the trade secret, proprietary, protective order material, and/or PII information in the original specification represents an extraordinary situation in which justice requires the requested expungement, and the further requirements of 37 CFR 1.59 are satisfied.

Therefore, the original specification and the first redacted version of the original specification, filed July 25, 2011, will be expunged in favor of the redacted version of the original specification presented with the renewed petition of September 13, 2011.

The official record for the above identified application is maintained as an electronic Image File Wrapper (IFW) and there is no paper record from which the information can be physically removed. The expunged information will be "closed" in the electronic IFW and removed from the listing of publicly available documents. The redacted version of the original specification will remain on the record as a replacement for the expunged pages of the original specification so that the portions of the original specification that do not present trade secret, proprietary, protective order material, and/or PII information are not removed. Also, this decision will remain on the record to provide clarity as to why information was expunged.

As a condition of this favorable treatment petitioner is required to maintain the material in question during the enforceable life of any patent arising from this application, or any patent claiming benefit of this application.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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Gregory A. Nelson
Novak Druce & Quigg LLP
525 Okeechobee Blvd
Suite 1500
West Palm Beach, FL 33401

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of Pericak-Vance et al. :
Application No. 61/317,900 :
Filing Date: March 26, 2010 :
Attorney Docket No. 7230-135 :

Decision on Petition

This is a decision on the petition requesting that the above-identified provisional application be accorded a filing date of March 26, 2010, and on the petition requesting expedited consideration of the previously identified petition. Both petitions were filed March 17, 2011.

The petition requesting the application be accorded a filing date of March 26, 2010, is **granted**.

The petition seeking expedited consideration of the other filing-date petition is **granted**.

Facts

Application papers were filed March 26, 2010.

The Office mailed a Notice of Incomplete Provisional Application on April 12, 2010. The notice stated the application had not been accorded a filing date because the application was filed without drawings. The notice also stated,

> The filing date will be the date of receipt of the missing items required below, unless otherwise indicated. Any assertions that the items required were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the $400.00 petition fee.

Applicants filed a response to the April 12, 2002 notice on May 10, 2010. The response stated,

> Pages 16, 24 and 31 of the specification as filed refer to Figures 1, 2 and S1. In response to the Notice, filed herewith are Figures 1, 2 and S1. Although the drawings are not necessary under 35 U.S.C. 113, Applicants respectfully request entry of the drawings (Figures 1, 2 and S1) and further request that a filing date of March 26, 2010 be accorded

> to the instant application. As the subject matter of the drawings is disclosed in the specification as filed ..., no new matter has been added.

The Office issued a filing receipt on May 12, 2010. The filing receipt identified the filing date as May 10, 2010.

Applicants filed the instant petitions on March 17, 2011.

Discussion

It is the practice of the PTO to treat a provisional application that contains at least some disclosure directed to a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP 601.01(f) states:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains some disclosure of subject matter for which a drawing is usually not considered essential for a filing date. Pursuant to MPEP 601.01(g), the Office should have mailed a Notice of Omitted Items rather than a Notice of Incomplete Application. The Notice of Omitted Items would have informed petitioner a filing date had been accorded and that the drawing figures referred to in the specification appeared to be missing.

In view of the prior discussion, the application will be accorded a filing date of March 26, 2010.

It should be noted that the claims filed in any subsequent non-provisional application will determine whether or not drawings are necessary for that application since the "subject matter sought to be patented" is determined by the claims in an application. Therefore, the instant decision should not be construed as a determination that drawings will or will not be necessary for a filing date for any future non-provisional applications.

A provisional application cannot be amended. Therefore, the drawings filed May 10, 2010, will not be part of the application.

The Office of Patent Application Processing will be informed of the instant decision and will process the application with a filing date of March 26, 2010, and change Office records to indicate "0" sheets of drawings were present on filing.

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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COMMISSIONER FOR PATENTS
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MARSHALL & MELHORN, LLC
FOUR SEAGATE - EIGHTH FLOOR
TOLEDO OH 43604

MAILED
SEP 08 2010
OFFICE OF PETITIONS

In re Application of	:	
Weidner	:	
Application No. 61/318,036	:	ON PETITION
Received: March 26, 2010	:	
Atty. Dkt. No. 1-20397	:	

This decision is in response to "PETITION UNDER 37 CFR 1.53(e)," filed June 4, 2010 to accord the above-identified application a filing date of March 26, 2010.

The application was received March 26, 2010. The Notice of Incomplete Provisional Application (Notice) mailed April 7, 2010 by the Office of Patent Application Processing (OPAP) indicated that the application had not been accorded a filing date because the application was deposited without drawings. 35 USC 113.

The Notice indicated, *inter alia*, that the filing date of the application would be the date that drawings were submitted and that any assertion that the omitted items were not necessary must be by way of petition.

Petitioner argues that the inadvertently omitted drawings are not necessarily for an understanding of the subject matter sought to be patented. Petitioner directs the Office's attention to MPEP 601.01(f). Petitioner seeks to delete reference to the omitted drawings by way of preliminary amendment and substitute specification.

The arguments submitted by petitioners have been considered, but are not persuasive. While petitioners argue that the drawings are not necessarily for an understanding of the subject matter sought to be patented, the application as deposited failed to meet the requirements for accordance of a filing date because the specification as filed did not include drawings.

35 USC 113 states:

> The applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented. When the nature of such subject matter admits of illustration by a drawing and the applicant has not furnished such a drawing, the Director may require its submission within a time period of not less than two months from the sending of a notice thereof. Drawings submitted after the filing date of the application may not be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.

Thus, the law is clear that the complete application must include a drawing when the nature of the case admits of it. See, In re Application Papers, 152 USPQ 27 (1965).

Accordingly, the application as submitted was not entitled to a filing date as it failed to comply with 35 USC 113.

The Office is not persuaded by applicant's argument that the drawings are not necessary. The specification as filed specifically refers to drawings. Thus, in accordance with MPEP 601.01(f), drawings are deemed necessary.

As the application was admittedly deposited without the drawings required per 35 USC 113, petitioners have failed to establish that the application is entitled to a filing date March 26, 2010.

In view thereof, the petition is hereby DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date set forth above. This period of time is not subject to extension under 37 CFR 1.136. Any request for reconsideration should be titled "Request for Reconsideration under 37 CFR 1.53(e)(2)" Failure to timely reply will result in termination of proceedings.

Petitioner is reminded that 35 USC 111(a)(4) provides, in part:

> The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

Receipt of the required petition fee is hereby acknowledged. The petition fee will not be refunded as the petition was not necessitated due to USPTO error.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

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WWW.USPTO.GOV

Paper No.

MAILED

MAR 28 2011

OFFICE OF PETITIONS

Christopher Hastings
141 Arabian N
Liberty Hill TX 78642

In re Application of	:	
Christopher Hastings	:	
Application No. 61/318,316	:	DECISION ON PETITION
Filed: March 27, 2010	:	PURSUANT TO
Title: METHOD-PROCESS FOR	:	37 C.F.R. § 1.181(A)
ANALYZING COMMERCIAL INDUSTRY	:	
INVOLVEMENT IN ECONOMIC	:	
DEVELOPMENT - MICRO THRU CENSUS	:	
TRACT LEVEL ANALYSIS, INCLUDING	:	
TRADE AREA	:	

This is a decision on the petition filed January 10, 2011, pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

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

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed April 12, 2010, which required the basic filing fee ($100) and the surcharge associated with the late submission of the same ($25). The notice set a shortened statutory period for reply of two 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 June 13, 2010. A notice of abandonment was mailed on December 28, 2010.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

37 C.F.R. § 1.134 sets forth, *in toto*:

> An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

37 C.F.R. § 1.135 sets forth, *in toto*:

> (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
> (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
> (c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

Section 711.03(c)(I)(A) of the MPEP sets forth, *in toto*:

> In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).
>
> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing **required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is** expected that the record would include, but not be limited to, the application number, attorney

> docket number, the mail date of the Office action and the due date for the response.
>
> **Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.**
>
> **A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.** That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. **If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.**
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).
>
> (Emphases added).

ANALYSIS

With this petition, Petitioner has stated that the notice of April 12, 2010 was not received at the correspondence address of record.[1] A courtesy copy of this Office communication has been enclosed with this decision.

Petitioner has explained that he places all "USPTO paperwork…in a special manila file folder that is kept in the top center drawer of (his) office desk."

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1 Petition, page 1.

Petitioner's assertion of non-receipt has not been adequately supported, as will be now pointed out.

First, Petitioner has not provided a statement describing the system used for recording an Office communication received at the correspondence address of record with the USPTO. Moreover, Petitioner has not established that the docketing system is sufficiently reliable.

More specifically, the petition is silent as to how the placement of Office correspondence into a folder serves to ensure that the correspondence recorded therein is responded to in a timely manner. For example, does Petitioner also record due dates on a calendar?

Second, the petition is silent as to any search that might have been performed of the contents of the aforementioned folder, in order to determine if the notice of April 12, 2010 was received.

Third, Petitioner has not provided a copy of the record(s) used by the Applicant where the allegedly non-received notice of April 12, 2010 would have been entered had it been received.

Fourth, Petitioner has not provided a copy of the master docket, or stated that no such master docket exists and submitted other forms of evidence (such as, but not limited to, the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question).

As such, the record does not support a finding that the holding of abandonment should be withdrawn. The petition pursuant to Rule 1.181 is dismissed accordingly.

ALTERNATE VENUE

Due to the fact that Petitioner is a pro se Applicant, it is possible that he might not maintain a docketing system, a file jacket, a master docket, an incoming mail log, a calendar, a reminder system, or an individual docket record for the application in question. It follows that Petitioner might not be in a position to adequately support his assertion of non-receipt.

If such is the case, Petitioner may wish to consider filing a petition pursuant to 37 C.F.R. §§ 1.137(a)[2] and/or (b).[3] Unless Petitioner believes that he can successfully establish that the entire period of delay was unavoidable, he may wish to file pursuant to the unintentional standard. Petitioner may download information about these petitions here: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c

CONCLUSION

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, if reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted.** The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.181(a)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[4] hand-delivery,[5] or facsimile.[6] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[7]

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.[8] All other inquiries

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2 The fee that is associated with the filing of this petition is presently set at $270 for a small entity. Petitioner may download the associated form here: http://www.uspto.gov/web/forms/sb0061.pdf.
3 The fee that is associated with the filing of this petition is presently set at $810 for a small entity. Petitioner may download the associated form here: http://www.uspto.gov/web/forms/sb0064.pdf.
4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
6 (571) 273-8300- please note this is a central facsimile number.
7 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
8 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

concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Encl. Courtesy Copy of the Notice to File Missing Parts of April 12, 2010

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written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any of Petitioner's further action(s).

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Moxon & Associates LLC
Liberty Square Building
110 West Streetsboro Road
Suites L9, L11 & L12
Hudson OH 44236

MAILED
JAN 18 2011
OFFICE OF PETITIONS

In re Application of	:	
Pierre Hirtt	:	
Application No. 61/318,596	:	DECISION ON PETITION
Filed: March 29, 2010	:	
Attorney Docket No. 000209.0002	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 17, 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 Provisional Application (Notice), mailed April 12, 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 The Notice of Abandonment was mailed December 8, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Application Data Sheet and $50 surcharge, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

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

unintentional, petitioner must notify the Office. There is no indication the person signing the petition was ever given a power of attorney to prosecute the application.

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

This application is being referred to the Office of Patent Application Processing for appropriate action on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

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

MAILED
APR 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Jay Dittmer	:	
Application Number: 61/319,751	:	NOTICE
Filing or 371(c) Date: 03/31/2010	:	
Attorney Docket Number: 3156.339US01	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on February 18, 2011.

The Office no longer investigates or rejects original or reissue patents 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 patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

D Wood
Douglas Wood
Attorney
Office of Petitions

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FULBRIGHT & JAWORSKI, LLP
1301 MCKINNEY
SUITE 5100
HOUSTON, TX 77010-3095

MAILED
AUG 20 2010
OFFICE OF PETITIONS

In re Application of	:	
Wei Wang, et al.	:	
Application No. 61/320,129	:	ON PETITION
Filed: April 1, 2010	:	
Attorney Docket No.: HO-P03688US0	:	

This is a decision in response to the petition filed June 21, 2010, which is being treated as a request to withdraw the Notice of Omitted Item(s) in a Provisional Application mailed April 21, 2010.

On April 1, 2010, applicant filed the above-identified application. However, on April 21, 2010, the Office mailed a Notice to File Missing Parts of Provisional Application, stating, *inter alia*, that the application had been accorded a filing date of April 1, 2010, and advising applicant that Figures 4N – 4R described in the specification appeared to have been omitted.

In response, on June 21, 2010, applicant filed the present petition and the petition fee. Applicant asserts that Figures 4N – 4R were not omitted from the application papers as filed on April 1, 2010. Petitioner explains that figures were mislabeled due to a typographical error.

Upon considering applicants' argument, it appears that no drawings were actually missing on April 1, 2010. Rather, the drawings of Figures 4N – 4R were simply mislabeled as a result of applicant's filing error. However, the Notice of Omitted Item(s) in a Provisional Application, mailed April 21, 2010, was correct in stating that Figures 4N – 4R described in the specification appeared to have been omitted. Therefore, the Notice of Omitted Item(s) in a Provisional Application was properly mailed and will not be withdrawn.

Accordingly, the petition is **dismissed**.

The petition fee will not be refunded because the present petition was not necessitated by any error on the part of the USPTO.

The Office reminds applicant that amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the provisional application. MPEP 601.01(b). Likewise, in view of the relatively low filing fee for provisional

applications, and the desire of the USPTO to minimize the processing of provisional applications, the USPTO will not grant petitions under 37 CFR 1.182 to accept omitted page(s) or drawing(s) and accord an application filing date as of the date of such submission in provisional applications. The applicant should simply file a new completed provisional application. MPEP 601.01(d).

This matter is being referred to the Office of Patent Application Processing to process the application with a filing date of April 1, 2010, using the papers filed on that date.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NOV 08 2010

OFFICE OF PETITIONS

MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO CA 94105-2482

In re Application of	:	
George D. GIBSON	:	
Application No. 61/320,677	:	DECISION ON PETITION
Filed: April 02, 2010	:	
Attorney Docket No. 499963001900	:	

This is a decision on the petition under 37 CFR 1.53(e), filed June 11, 2010, to accord a filing date.

Petitioner asserts that no drawings are necessary for the filing of the subject provisional application under 35 USC 113 (first sentence).

A review of the Office records indicates that drawings are in fact **not necessary** for the filing of the subject application and that the requirements under 35 USC 113 (first sentence) pursuant to MPEP 608.2 (III) has been met.

Accordingly, this application is entitled to a filing date of April 02, 2010, and has been so accorded.

In view of the above, the petition is **GRANTED**. The petition fee of $400.00 will be credited to petitioner's deposit account.

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

This application file is being referred to the Office of Patent Application Processing.

Thurman K. Page
Petitions Examiner
Office of Petitions

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KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET
SUITE 1600
PORTLAND OR 97204

MAILED

APR 08 2011

OFFICE OF PETITIONS

In re Application of :
Mark Publicover :
Application No. 61/321,571 : ON PETITION
Filed: April 7, 2010 :
Attorney Docket No. **4859-86540-01** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 31, 2011, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed April 19, 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. The application became abandoned on June 20, 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 provisional cover sheet and surcharge, (2) the petition fee of $810, (3) a proper statement of unintentional delay.

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

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

This application is being referred to the Office of Patent Application Processing.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Mark W. Publicover
18505 Marshall Lane
Saratoga, CA 95070

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

BROUILLETTE & PARTNERS
METCALFE TOWER, 1550 METCALFE STREET
SUITE 800
MONTREAL QC H3A-1X6
CANADA

MAILED
NOV 04 2010
OFFICE OF PETITIONS

In re Application of	:	
Kingsley-Poole et al.	:	DECISION ON PETITION
Application No. 61/321,694	:	PURSUANT TO
Filed: April 7, 2010	:	37 C.F.R. § 1.182
Attorney Docket No. 11714-001	:	
Title: LIGHTWEIGHT SPECIALISED	:	
OVERSHOE SYSTEM	:	

This is a decision on the "PETITION UNDER 37 C.F.R. 1.53(e)," filed May 12, 2010. This submission is being treated as a petition pursuant to 37 C.F.R. § 1.182, requesting that the above-identified application, including Figure 4, be accorded a filing date of April 7, 2010, as part of the original disclosure.

The petition is **DISMISSED**.

Receipt of the $400 petition fee is acknowledged.

The application was deposited on April 7, 2010. However, on April 19, 2010, the Office of Data Management mailed a "Notice of Omitted Item(s) in a Provisional Application - Filing Date Granted," (notice), stating that the application had been accorded a filing date, and advising Applicant that Figure 4 appeared to have been omitted on filing. The notice set a two-month period for reply.

In response, on May 12, 2010, Applicant filed this petition. Petitioner has asserted that Figure 4 was included on initial deposit, and has provided a copy of the Electronic

Acknowledgement Receipt which shows that a file entitled "WikiShoe_Outsole_Details2.pdf," 106,341 bytes in size, was received on April 7, 2010. Applicant has indicated that this file corresponds to Figure 4, and has further included a copy of Figure 4.

The electronic record has been reviewed and Figure 4 has not been located. It is noted that the drawings that were uploaded on filing appear in three distinct batches: the first batch contains Figure 1, the second contains a blank page, and the third contains Figures 2, 3, 5, 6-7, 8, and 9. Therefore, it appears that Applicant attempted to upload Figure 4 on initial deposit, but the file was not properly uploaded. On October 28, 2010, the undersigned contacted the Electronic Business Center, and confirmed that this file was not uploaded in a manner such that the document (which was presumably intended to contain Figure 4) can be viewed. For this reason, the document appears as a blank page in the electronic file.

It follows that Figure 4 was not included on filing.

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing.

Pursuant to this decision, the application will be referred to the Office of Patent Application Processing (OPAP) for:

- processing of the application with a filing date of April 7, 2010, using the original application papers filed on that date, and;

- noting in Office records that Figure 4 was not present on filing.

The general phone number for OPAP is 571-272-4000. Telephone

inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.[1]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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MAR 22 2011
OFFICE OF PETITIONS

Tom Nelson
1011 Pebble Brook Road
Cedar Park TX 78613

In re Application of
Nelson
Application No. 61/322,279
Filed: April 8, 2010
Title: Unknown

: DECISION ON PETITION

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

The petition under 37 CFR 1.137(a) is **DISMISSED.**

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed April 27, 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 June 28, 2010.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item(s) (1) and (3).

Petitioner states that a reply to the Missing Parts was mailed via certified mail on May 25, 2010. Petitioner has provided a copy of a USPS track and confirm mail receipt, which shows that correspondence was received by the USPTO on May 28, 2010. Petitioner contends that the response included a six page response which included small entity status, SB16 Provisional Cover Sheet, copy of specification and check no. 1003 for $135.

APPLICABLE RULES

37 CFR 1.10:

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit

date, provided that:
(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

37 CFR 1.8:

(b) 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 or decided with prejudice, or the prosecution of a reexamination proceeding is terminated pursuant to § 1.550(d) or § 1.957(b) or limited pursuant to § 1.957(c), or a requester paper is refused consideration pursuant to § 1.957(a), 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 that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission. 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. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement

MPEP 503:

The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. 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 the items listed thereon on the date stamped thereon by the USPTO.

OPINION

Petitioner's argument has been considered but it is not persuasive to establish unavoidable delay within the meaning of 37 CFR 1.137(a). A review of the documents shows that petitioner has established that the correspondence was received by the USPTO on May 28, 2010. However, petitioner is unable to establish what the correspondence consisted of as the response did not include a certificate of mailing pursuant to 37 CFR 1.8. While the Office does not require that a certification pursuant to 37 CFR 1.10 and 1.8 be included directly on the check, petitioner must be able to establish that the check was included. This can be accomplished by including a transmittal letter, which includes reference to the check and a statement under 37 CFR 1.8. See MPEP 512.

Further while petitioner states that a check was submitted and cashed, the Office does not have any record of receipt of the check. Thus, the Office is still not in receipt of the $135.00. To the extent petitioner maintains that the check was indeed cashed by the USPTO, additional evidence needs to be provided.

Ultimately provisions under 37 CFR 1.8, 1.10 and the use of a postcard receipt pursuant to MPEP 503 are the only mechanisms within which to establish the timely filing of correspondence in the USPTO. Applicant is unable to provide sufficient evidence to establish to the satisfaction of the Director that a complete timely reply to the Notice to File Missing Parts was provided.

Petitioner's failure to file the reply at issue in compliance with 37 CFR 1.8 or 1.10 precludes a finding that the delay was unavoidable. A "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing. Therefore, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay. *See* Krahn v. Commissioner, 15 USPQ2d 1823, 1825, (E.D. Va 1990); *see also* MPEP 711.03(c)(III)(C)(2).

In sum, petitioner has failed to provide sufficient evidence, to establish a finding of unavoidable delay.

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

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

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

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

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

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

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

Charlema Grant
Petitions Attorney
Office of Petitions

Cc Rick B. Yeager
10805 Mellow Lane
Austin, TX 78759

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SEP 15 2011

OFFICE OF PETITIONS

Tom Nelson
1011 Pebble Brook Road
Cedar Park TX 78613

In re Application of
Nelson
Application No. 61/322,279
Filed: April 8, 2010
Title: **UNKNOWN**

ON PETITION

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

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." 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 Provisional Application (Notice), mailed April 27, 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 June 28, 2010. A petition filed under 37 CFR 1.137(a) was dismissed on March 22, 2011.

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

As to item (1), upon further review of the record it has been determined that the Office is not in receipt of the filing fee, the application data sheet (ADS)/ coversheet and surcharge. Petitioner argued that he submitted the $135 check to cover the small entity filing fee $110.00 and the $25.00 surcharge fee. On petition, petitioner provided a copy of the check. The Office has located the $135.00; however the fees were applied to application no. 61/396,507 which list Tom Nelson as the inventor. Further review of the record shows the documents provided on May 28,

2010 did not include the application number or a copy of the notice to File Missing Parts; as such the papers were properly treated as a new application.

In addition, petitioner is not entitled to a refund of either the $270.00 or the $810.00 petition fees. The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional/unavoidable delay or to accept an unintentionally/unavoidably delayed payment of a fee for issuing a patent.

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

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

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

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

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

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

Charlema Grant
Petitions Attorney
Office of Petitions

Cc: Rick B. Yeager
10805 Mellow Lane
Austin, Texas 78759

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Tom Nelson
1011 Pebble Brook Road
Cedar Park TX 78613

MAILED
JAN 17 2012
OFFICE OF PETITIONS

In re Application of
Nelson
Application No.61/322,279
Filed: April 8, 2010
For: **UNKNOWN**

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 14, 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 Provisional Application (Notice), mailed April 27, 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 June 28, 2010. A petition filed under 37 CFR 1.137(a) was dismissed on March 22, 2011. A petition filed under 37 CFR 1.137(b) was dismissed on September 15, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a provisional cover sheet, $125 filing fee and $25 surcharge, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Petitioner is reminded subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

This application is being referred to the Office of Patent Application Processing for further processing.

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

Charlema Grant
Petitions Attorney
Office of Petitions

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JUBIN DANA
DANA LEGAL SERVICES
325 SHARON PARK DRIVE, SUITE 217
MENLO PARK, CA 94025

MAILED

FEB 10 2011

OFFICE OF PETITIONS

In re Application of:
Timothy ROBERTS et al
Application No. 61/322,893
Filing Date: April 11, 2010
Attorney Docket No. PRTS161PVR (PRO-P180)

DECISION ON PETITION

This is a decision on the petition filed February 3, 2011 under the provisions of 37 CFR 1.182, to expedite the petition filed under 37 CFR 1.137(b), filed February 1, 2011, to revive the above-identified application.

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

The petition filed 37 CFR1.137 (b) is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed May 10, 2010, which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on July 10, 2010. A Notice of Abandonment was mailed July 13, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the required $25.00 fee, (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 571-272-0602.

The application is being referred to the Office of Patent Application Processing for further processing.

Thurman K. Page
Petitions Examiner
Office of Petitions

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MAILED
JAN 27 2011
OFFICE OF PETITIONS

TRANSAXIONS LLC
4302 DENKER DR.
PLEASANTON CA 94588

In re Application of	:	
Nagendra Nagarajayya	:	
Application No. 61/322,899	:	DECISION ON REQUEST FOR REFUND
Filed: April 11, 2010	:	
For: TARGET AREA BASED CONTENT	:	
MONETIZATION	:	

This is a decision on the Request For Refund filed October 20, 2010.

The request is **DISMISSED**.

Applicant request a refund of the filing fee for the above application and states that, "I would like to request the esteemed department to refund the money paid for applications 61/325356 and 61/322899 as I have now been charged twice for the application. I submitted the above two applications over the internet on April 11, and April 18 and also mailed a copy of the submission to your office. ...."

The applicant asserts that two (2) applications were filed by the electronic filing system (EFS), Application No. 61/325,356 on April 18, 2010 and Application No. 61/322,899 on April 11, 2010. The applicant asserts that he mailed a copy of the two applications and that the applications were scanned as new applications bearing Application No. 61/324,961 received April 22, 2010 and Application No. 61/342,386 received April 14, 2010.

Applicant should be aware that the Office had no way of knowing that the applications submitted by mail were copies of the applications submitted by EFS. Therefore, the applications submitted by mail were processed correctly.

Further, applicant states that, "it appears the mailed copies were scanned again and put into the system and the originals filed on April 11, 61/325356 and April 18, 61/322899 discarded." Not so, the applications are pending at this time. Therefore, applicant should let the Office know which two applications he intends to keep.

Applicant is encouraged to note 37 CFR 1.4(c), regarding the filing of separate papers for each distinct subject matter.

Applicant is also encouraged to note **MPEP 607.02** which states:

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).

37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee.

In view of the above, the request for refund is dismissed.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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SUGHRUE MION PLLC
2100 PENNSYLVANIA AVENUE NW
SUITE 800
WASHINGTON DC 20037

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re
Mashima, et al.
Application No. 61/323,338
Filed: April 12, 2010
Attorney Docket No. P118538

DECISION

This is in response to the Notification of Loss of Entitlement to Small Entity Status, filed April 8, 2011.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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WASHINGTON, DC 20037

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In re Application of	:	
Yukihiko Mashima, et al.	:	
Application No. 61/323,342	:	NOTICE
Filed: April 12, 2010	:	
Attorney Docket No.: P118540	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed April 8, 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**.

Status as a small entity has been changed.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

NOVARTIS VACCINES AND DIAGNOSTICS INC.
INTELLECTUAL PROPERTY- X100B
P.O. BOX 8097
Emeryville CA 94662-8097

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Gillis	:	
Application No. 61/323,725	:	DECISION ON PETITION
Filed: April 13, 2010	:	PURSUANT TO
Attorney Docket Number:	:	37 C.F.R. § 1.181(A)
PAT054113-US-PSP	:	
Title: BENZONAPTHYRIDINE	:	
COMPOSITIONS AND USES THEREOF	:	

This is a decision on the petition filed March 23, 2011, pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

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

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 7, 2010, which required either a provisional application cover sheet or an Application Data Sheet (ADS), and the surcharge associated with the late submission of a provisional application cover sheet. The notice set a shortened statutory period for reply of two 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 July 8, 2010. A notice of abandonment was mailed on January 28, 2011.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

37 C.F.R. § 1.134 sets forth, *in toto*:

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

37 C.F.R. § 1.135 sets forth, *in toto*:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
(c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

Section 711.03(c)(I)(A) of the MPEP sets forth, *in toto*:

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

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

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the

> **practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.** A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> **A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.** That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. **If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.**
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).
>
> (Emphases added).

ANALYSIS

With this petition, Petitioner has stated that the notice of May 7, 2010 was not received at the correspondence address of record, [1] and has included a copy of the individual docket record that is associated with this particular application.

Petitioner's assertion of non-receipt has not been adequately supported, as will be now pointed out.

First, Petitioner has not provided a statement describing the system used for recording an Office communication received at the correspondence address of record with the USPTO.

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1 Petition, page 1.

Second, Petitioner has not established that the docketing system is sufficiently reliable.

Third, the petition is silent as to any search that might have been performed of the file jacket (or the equivalent) and the application contents, in order to determine if the notice of May 7, 2010 was received.

Finally, Petitioner has not provided a copy of the master docket, or stated that no such master docket exists and submitted other forms of evidence (such as, but not limited to, the application file jacket; incoming mail log; calendar; reminder system), other than the individual docket record for the application in question. Petitioner has characterized this submission as a "Master Docket System," but it is not a master docket as contemplated by the above-reproduced section of the MPEP. As set forth in the portion of the MPEP that has been reproduced above, a master docket report is a report that shows all replies that the firm has docketed for a particular date in the future (typically the due date of the relevant Office communication, although some firms will docket items for the maximum extendable period for reply), *as opposed to a report that shows the replies that have been docketed for a particular application*.

As such, the record does not support a finding that the holding of abandonment should be withdrawn. The petition pursuant to Rule 1.181 is dismissed accordingly.

CONCLUSION

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, if reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted.** The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.181(a)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[2] hand-delivery,[3] or facsimile.[4]

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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.

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.

It is noted in passing that Petitioner submitted a Supplemental ADS and the required $50 concurrently with this petition. The Supplemental ADS has not been titled as a "Supplemental Application Data Sheet,"[7] and therefore, cannot be entered. On renewed petition, Petitioner may wish to consider submitting a Supplemental ADS that has been executed and contains the proper title.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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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 of Petitioner's further action(s).
7 MPEP § 601.05 indicates that any ADS that is submitted to "correct, modify, or augment the original application data, the ADS, even though it is the first-filed ADS, must be titled "Supplemental Application Data Sheet."

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No.

NOVARTIS VACCINES AND DIAGNOSTICS INC.
INTELLECTUAL PROPERTY- X100B
P.O. BOX 8097
Emeryville CA 94662-8097

MAILED

JUL 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Gillis	:	
Application No. 61/323,725	:	DECISION ON RENEWED PETITION
Filed: April 13, 2010	:	PURSUANT TO
Attorney Docket Number:	:	37 C.F.R. § 1.181(A)
PAT054113-US-PSP	:	
Title: BENZONAPTHYRIDINE	:	
COMPOSITIONS AND USES THEREOF	:	

This is a decision on the renewed petition filed July 11, 2011, pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

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

Receipt of the concurrently submitted Supplemental Application Data Sheet is acknowledged.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 7, 2010, which required either a provisional application cover sheet or an Application Data Sheet (ADS), and the surcharge associated with the late submission of a provisional application cover sheet. The notice set a shortened statutory period for reply of two 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 July 8, 2010. A notice of abandonment was mailed on January 28, 2011.

RELEVANT PORTION OF THE MPEP

Section 711.03(c)(I)(A) of the MPEP sets forth, *in pertinent part*:

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

PROCEDURAL HISTORY AND ANALYSIS

An original petition pursuant to 37 C.F.R. § 1.181(a) was filed on March 23, 2011, where it was indicated that the notice of May 7, 2010 was not received at the correspondence address of record.[1] Petitioner provided a copy of the individual docket record that is associated with this particular application. The original petition pursuant to 37 C.F.R. § 1.181(a) was dismissed via the mailing of a decision on May 9, 2011.

With this renewed petition, Petitioner has included a copy of the master docket for the relevant time period,[2] as well as an assertion that a search of the filewrapper has not resulted in the locating of the notice of May 7, 2010.[3]

Petitioner's assertion of non-receipt has not been adequately supported, as will be now pointed out.

With this renewed petition, Petitioner has further indicated that his law firm utilizes an electronic docketing system entitled "Memotech." The renewed petition is silent as to how this system operates. As such, the statement which Petitioner has included describing the system used for recording an Office action received at the correspondence address of record with the USPTO is insufficient to either describe the docketing system or establish the reliability of the same. More specifically, **the petition is silent as to how information is entered into this**

1 Original petition, page 1.
2 "Copy of US OA Responses (June 1, 2010 - December 31, 2010)," included with renewed petition.
3 Renewed petition, page 1.

docketing system, or how this docketing system serves to ensure that the correspondence recorded therein is responded to in a timely manner. Is all correspondence from the Office entered into this electronic database? Does this computer-based docketing software program generate reports that are distributed to the responsible attorneys? Does it generate periodic reminders prior to the due dates? If so, are these reminders distributed to the responsible attorneys?

It follows that the record does not support a finding that the holding of abandonment should be withdrawn. The renewed petition pursuant to Rule 1.181 is dismissed accordingly.

CONCLUSION

The time period for filing a second renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, if reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted.** The reply should include a cover letter entitled "Second Renewed Petition pursuant to 37 C.F.R. § 1.181(a)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[4] hand-delivery,[5] or facsimile.[6] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[7]

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.[8] All other inquiries

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

concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

reminded that no telephone discussion may be controlling or considered authority for any of Petitioner's further action(s).

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Paper No.

NOVARTIS VACCINES AND DIAGNOSTICS INC.
INTELLECTUAL PROPERTY- X100B
P.O. BOX 8097
Emeryville CA 94662-8097

MAILED

OCT 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Gillis	:	
Application No. 61/323,725	:	DECISION ON SECOND
Filed: April 13, 2010	:	RENEWED PETITION
Attorney Docket Number:	:	PURSUANT TO
PAT054113-US-PSP	:	37 C.F.R. § 1.181(A)
Title: BENZONAPTHYRIDINE	:	
COMPOSITIONS AND USES THEREOF	:	

This is a decision on the second renewed petition filed September 28, 2011, pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

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

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 7, 2010, which required either a provisional application cover sheet or an Application Data Sheet (ADS), and the surcharge associated with the late submission of a provisional application cover sheet. The notice set a shortened statutory period for reply of two 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 July 8, 2010. A notice of abandonment was mailed on January 28, 2011.

An original petition pursuant to 37 C.F.R. § 1.181(a) was filed on March 23, 2011, where it was indicated that the notice of May 7, 2010 was not received at the correspondence address of record. Petitioner provided a copy of the individual docket

record that is associated with this particular application. The original petition pursuant to 37 C.F.R. § 1.181(a) was dismissed via the mailing of a decision on May 9, 2011.

A renewed petition pursuant to 37 C.F.R. § 1.181(a) was filed on July 11, 2011, along with a copy of the master docket for the relevant time period, as well as an assertion that a search of the filewrapper has not resulted in the locating of the notice of May 7, 2010. The renewed petition was dismissed via the mailing of a decision on July 28, 2011.

With this second renewed petition pursuant to 37 C.F.R. § 1.181(a), Petitioner has indicated that members of a "Data Management team" receive correspondence from the Office and enter the relevant information into a computerized docketing system, which generates the due dates for the correspondence. A cover sheet is generated which lists the due dates, and this cover sheet is provided to the attorney and his/her assistant. Moreover, the due dates are listed on a docket report, which is distributed to the attorney and/or his/her assistant on a weekly basis.[1]

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that the notice of May 7, 2010 was not received, pursuant to MPEP § 711.03(c).

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing.

Petitioner will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OPAP.

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 OPAP 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 OPAP where that change of status must be effected - the Office of Petitions cannot effectuate a change of status.

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1 Second renewed petition, pages 2-3.

The general phone number for OPAP is 571-272-4000. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski
Senior 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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LOUIS J. WILLE
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON NJ 08543-4000

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of	:	
Kenneth M. Boy et al.	:	
Application No. 61/324,201	:	DECISION ON PETITION
Filed: April 14, 2010	:	
Attorney Docket No. 11429-US-PSP2	:	

This is a decision on the petition under 37 CFR 1.59(b), filed June 18, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that specific portions of the original specification be expunged from the record.

However, 37 CFR 1.59(a)(2) states:

> Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

Accordingly, portions of the original specification will not be expunged from the record pursuant to 37 CFR 1.59(b) even though it was mistakenly filed. Moreover, petitioner has not established that an extraordinary situation exits in which justice requires the requested expungement pursuant to a waiver of 37 CFR 1.59(a)(2) under 37 CFR 1.183, as discussed in MPEP 724.05 IV.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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ESPINOSA / TRUEBA PL
3001 S. W. 3RD AVENUE
MIAMI FL 33129

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of	:	
Lawrence J. SHAPIRO	:	
Application No. 61/324,607	:	DECISION ON PETITION
Filed: April 15, 2010	:	
Attorney Docket No. Help Hair	:	

This is a decision on the petition under 37 CFR 1.53(e), filed July 06, 2010, to accord a filing date.

Petitioner asserts that no drawings are necessary for the filing of the subject provisional application under 35 USC 113 (first sentence), pursuant to MPEP 608.2 (III). A review of the Office records indicates that drawings are not needed.

A review of the Office records indicates that drawings are in fact **not necessary** for the filing of the subject application and that the requirements under 35 USC 113 (first sentence) pursuant to MPEP 608.2 (III) has been met.

Accordingly, this application is entitled to a filing date of April 15, 2010, and has been so accorded.

In view of the above, the petition is **GRANTED**. The petition fee of $400.00 will be credited to petitioner's deposit account.

This application file is being referred to the Office of Patent Application Processing.

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

/Thurman K. Page/
Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

MAILED

NOV 23 2011

OFFICE OF PETITIONS

In re Application of	:	
Broc William TENHOUTEN et la.	:	
Application No. 61/325,033	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: April 16, 2010	:	
Attorney Docket No. C1316.70001US00	:	

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

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

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

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

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

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MAILED
OCT 11 2011
OFFICE OF PETITIONS

WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re
TenHouten, et al.
Application No. 61/325,063
Filed: April 16, 2010
Attorney Docket No. C1316.70000US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $135, representing $110 for the provisional application filing fee and $25 surcharge, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAR 14 2011

OFFICE OF PETITIONS

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO CA 94111

In re Application of	:	
Nancy J. Sullivan, et al.	:	
Application No. 61/325,166	:	DECISION ON PETITION
Filed: April 16, 2010	:	
Attorney Docket No. 015280-591000US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 2, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed May 6, 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 July 7, 2010. The Notice of Abandonment was mailed January 26, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a provisional application cover sheet and $50 surcharge, (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 the Office of Patent Application Processing for appropriate action on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
JAN 27 2011
OFFICE OF PETITIONS

TRANSAXIONS LLC
4302 DENKER DR.
PLEASANTON CA 94588

In re Application of	:	
Nagendra Nagarajayya	:	
Application No. 61/325,356	:	DECISION ON REQUEST FOR REFUND
Filed: April 18, 2010	:	
For: TARGET AREA BASED STREAM	:	
MONETIZATION USING FEEDBACK	:	

This is a decision on the Request For Refund filed October 20, 2010.

The request is **DISMISSED**.

Applicant request a refund of the filing fee for the above application and states that, "I would like to request the esteemed department to refund the money paid for applications 61/325356 and 61/322899 as I have now been charged twice for the application. I submitted the above two applications over the internet on April 11, and April 18 and also mailed a copy of the submission to your office. ...."

The applicant asserts that two (2) applications were filed by the electronic filing system (EFS), Application No. 61/325,356 on April 18, 2010 and Application No. 61/322,899 on April 11, 2010. The applicant asserts that he mailed a copy of the two applications and that the applications were scanned as new applications bearing Application No. 61/324,961 received April 22, 2010 and Application No. 61/342,386 received April 14, 2010.

Applicant should be aware that the Office had no way of knowing that the applications submitted by mail were copies of the applications submitted by EFS. Therefore, the applications submitted by mail were processed correctly.

Further, applicant states that, "it appears the mailed copies were scanned again and put into the system and the originals filed on April 11, 61/325356 and April 18, 61/322899 discarded." Not so, the applications are pending at this time. Therefore, applicant should let the Office know which two applications he intends to keep.

Applicant is encouraged to note 37 CFR 1.4(c), regarding the filing of separate papers for each distinct subject matter.

Applicant is also encouraged to note **MPEP 607.02** which states:

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).

37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee.

In view of the above, the request for refund is dismissed.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DLA PIPER, LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO, CA 92121-2133

MAILED

JAN 19 2011

OFFICE OF PETITIONS

In re Application of
Nikolay Turovets, et. al.
Application No. 61/326,084
Filed: April 20, 2010
Attorney Docket No. ISCC1220

DECISION GRANTNG PETITION

This is a decision on the petition filed June 28, 2010, requesting that the above-identified application be accorded a filing date of April 20, 2010.

The application was filed on April 20, 2010. However, on May 12, 2010, the Office of Patent Application Processing mailed a Notice of Omitted Item(s) stating that Figures 1A, 1B, 2, 3A-3C and 4A-4H as described in the specification appeared to be missing.

In response, the present petition was filed. Petitioners request that the application be accorded a filing date of April 20, 2010, the date the application was deposited in the U.S. Patent and Trademark Office (USPTO) without drawings labeled 1A, 1B, 2, 3A-3C and 4A-4H. The petition is accompanied by three sheets of replacement drawings containing the figures originally labeled as Figures A-H and A-3 which have been relabeled as Figures 1, 2A-C and 3A-H.

In view of the papers filed on April 20, 2010, it appears that the drawing of Figures 1, 2A-C and 3A-H was present on 1, 2A-C and 3A-H, but mislabeled by applicants. Since it is now clear that these figures were present on April 20, 2010, albeit misnumbered, the application may be accorded that date as the filing date.

The petition is **granted**.

The $400 petition fee will be refunded to petitioner's deposit account.

This application file is being referred to the Office of Patent Application Processing for further **processing with a filing date of April 20, 2010**.

Telephone inquiries concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

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P.O. Box 1450
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Larson & Anderson, LLC
P.O. BOX 4928
DILLON CO 80435

MAILED

JAN 13 2011

OFFICE OF PETITIONS

In re Application of	:	
Yves Larcher et al.	:	
Application No. 61/326,532	:	DECISION ON PETITION
Filed: April 21, 2010	:	
Attorney Docket No. FREI.P-003-PV	:	

This is a decision on the petition for expungement of information, filed November 15, 2010, which is being treated as petitions under 37 CFR 1.182 to invalidate an assignment previously recorded against the above-identified application.

The petition is **dismissed**.

Petitioner indicates an assignment recorded on July 13, 2010 was erroneously filed for the above identified application and requests this assignment record be expunged from the file.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing a petition under 37 CFR 1.182. In this instance, the fee required by law is $400.

The petition in the above identified application was not accompanied by payment of the required fee. No consideration on the merits can be given to the petition until the required fee is received.

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571)272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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Paper No.

MAILED

APR 25 2011

OFFICE OF PETITIONS

LEHR
8922 Ellis Avenue
Los Angeles CA 90034

In re Application of	:	
Mavinahally et al.	:	
Application No. 61/326,662	:	DECISION ON PETITION
Filed: April 22, 2010	:	PURSUANT TO
Attorney Docket No.: LEHR-001	:	37 C.F.R. § 1.28(c)
Title: LUBRICATING SYSTEM FOR A	:	
TWO-STROKE ENGINE	:	

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on March 23, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

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

37 C.F.R. § 1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of

this section.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

Petitioner has not identified when the small entity fee was actually paid.

The requirement that Petitioner must provide the Office with when the small entity fee was actually paid is waived, *sua sponte*.

The deficiency payment in the amount of $110 has been received.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the present application can receive further processing in due course.

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

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.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

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

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MAILED

AUG 17 2010

OFFICE OF PETITIONS

BROWDY AND NEIMARK PLLC
624 NINTH STREET NW
SUITE 300
WASHINGTON DC 20001-5303

In re Application of
Marom, et al.
Application No. 61/326,917
Filed: April 22, 2010
Attorney Docket No. MAROM=8

: DECISION GRANTING PETITION

This is a decision on the petition filed July 12, 2010, which is being treated as a petition under 37 CFR 1.53 to accord the above-identified application a filing date of April 22, 2010.

The petition is **GRANTED**.

The application was deposited on April 22, 2010. However, on May 11, 2010, the Office of Initial Patent Examination mailed a "Notice of Incomplete Provisional Application", stating that the application had not been accorded a filing date because the application was deposited without drawings.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

The instant provisional application contains disclosure for which a drawing is usually not considered essential for a filing date Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g).

In view of the above, the "Notice of Incomplete Provisional Application" mailed May 11, 2010, was mailed in error and is hereby **withdrawn**.

The Office should have instead mailed a Notice of Omitted Items in a Provisional Application.

As the instant petition was due to USPTO error, the $400 petition is being refunded to petitioner.

The application is being forwarded to the Office of Patent Application Processing for further processing as a provisional application with a filing date of April 22, 2010, for indication that "0" sheets of drawings were present on filing.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MARTIN D. MOYNIHAN D/B/A PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

MAILED
JAN 13 2011
OFFICE OF PETITIONS

In re Application:	:	
Emmanuel et al.	:	
Application No. 61/328,692	:	ON PETITION
Filed: April 28, 2010	:	
Attorney Docket No. 48598	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 16, 2010.

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

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

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

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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TRASKBRITT, P.C./BAKER HUGHES, INC.
BAKER HUGHES, INC.
P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Application of :
Daryl L. Pritchard et al :
Application No: 61/329,190 : ON PETITION
Filed: April 29, 2010 :
Attorney Docket No: 9942US :
(ECC4-50454-USP1) :

This is a decision on the petition filed on May 20, 2010, which is treated as a petition requesting that the above-identified provisional application, without drawings, be accorded a filing date of April 29, 2010.

The petition is **GRANTED**.

The application was filed on April 29, 2010, without drawings. Accordingly, on May 13, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on May 20, 2010, the subject petition was filed. Petitioners assert that that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). The same practice has been followed in composition applications.

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure,

directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on April 29, 2010, contain at least one method claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of a process or method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on May 13, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of April 29, 2010, without drawings as a part of the original disclosure. The petition fee will be refunded to counsel's deposit account.

Petitioner may wish to consider filing a preliminary amendment to enter the drawings submitted on May 20, 2010. If a preliminary amendment is filed, it will be reviewed for new matter by the examiner.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to April 29, 2010, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Karen Creasy at 571 272-3208.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Randolph McKinley
2 Davis Drive
Durham, NC 27709

MAILED
APR 26 2011
OFFICE OF PETITIONS

In re Application of McKinley :
Application No. 61/329,200 :
Filing Date: April 29, 2010 :
For: Device for Fast Implementation of :
Contiguous Contoured Motions for :
Imaging :

Decision on Petition

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

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed May 13, 2010. The notice set a period for reply of two (2) months from the mail date of the notice. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on July 14, 2010. A Notice of Abandonment was mailed on February 1, 2011.

The instant petition includes the required statement of unintentional delay, the required petition fee of $810, and a response to the May 13, 2010 notice. Unfortunately, the petition is not signed. As a result, the petition cannot be granted.

If Applicant wishes to revive the application, a request for reconsideration signed by Applicant should be filed. The Office recommends the request also include a signed copy of the letter filed February 24, 2011, with the instant's application's cover letter.

A grantable petition under 37 CFR 1.137(b) must be accompanied by 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. Although the instant petition includes

such a statement, the statement should also appear in any request for reconsideration. In other words, any request for reconsideration should include the following statement, or a similar statement: "The entire delay in filing the required reply from the due date for the reply until the filing the instant petition pursuant to 37 CFR 1.137(b) was unintentional."

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

MAILED
MAY 16 2011
OFFICE OF PETITIONS

Cislo & Thomas LLP
1333 2nd Street
Suite #500
Santa Monica CA 90401-4110

In re Application of	:	
Michael Archer	:	DECISION ON PETITION
Application No. 61/329,383	:	
Filed: April 29, 2010	:	
Atty Docket No. 11-24712	:	

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.37(b)" filed April 7, 2011. This petition is decided in light of the supplement to petition, the provisional cover sheet and payment of late surcharge filed May 6, 2011.

The petition is **GRANTED**.

The above-identified provisional application became abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application mailed May 24, 2010. The Notice set a two-month period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply received and no extension of time obtained, the application became abandoned effective July 25, 2010. A courtesy Notice of Abandonment was mailed on February 11, 2011.

In response, applicant filed the instant petition, requesting revival based on unintentional delay. The petition included the required reply in the form of a provisional cover sheet which identified the city and state of the inventor and payment of the late surcharge; the required statement of unintentional delay; and the petition fee for revival pursuant to 37 CFR 1.137(b).

This petition is granted to this provisional application for the 12-month period following the filing of the provisional application. This provisional application is not considered pending after 12 months from its filing date.

The application is being returned to the Office of Patent Application Processing for processing of the response to the Notice to File Missing Parts, a provisional cover sheet, filed May 6, 2011.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE TN 37203

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of :
Chapuis :
Application No. 61/329,889 : ON PETITION
Application Received: April 30, 2010 :
Attorney Docket No. 002175 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 14, 2011, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned July 22, 2010 for failure to timely submit a proper reply to the Notice of File Missing Parts (Notice) mailed May 21, 2010. The Notice set a two month shortened statutory period of time for reply. Notice of Abandonment was mailed February 10, 2011.

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

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being directed to the Office of Patent Application Processing for further processing.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

MAILED

OCT 04 2010

OFFICE OF PETITIONS

In re Application of :
Ming-Che LI et al. :
Application No. 61/330,406 :
Filed: May 03, 2010 :
Attorney Docket No. **ISCP0006USA** :

NOTICE

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

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

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

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

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

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **KLEIN, O'NEILL & SINGH, LLP**
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
OCT 03 2011
OFFICE OF PETITIONS

ADELI & TOLLEN, LLP
11940 SAN VICENTE BLVD
SUITE 100
LOS ANGELES, CA 90049

In re Application of	:	
Ashutosh Joshi, et al.	:	
Application No. 61/330,875	:	NOTICE
Filed: May 3, 2010	:	
Attorney Docket No. FRST.P0002P	:	

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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MAILED
OCT 14 2011
OFFICE OF PETITIONS

ADELI & TOLLEN, LLP
11940 SAN VICENTE BLVD., SUITE 100
LOS ANGELES, CA 90049

In re Application of Ashutosh Joshi, et al. Application No. 61/330,875 Filed: May 3, 2010 Attorney Docket No.: FRST.P0002P	: : : : :	CORRECTED NOTICE

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

The Notice mailed October 3, 2011 is hereby **vacated**.

Counsel explains that fees were inadvertently paid at the small entity rate. Accordingly, the present request under 37 CFR 1.28 was filed, including authorization to charge the fee deficiency of $135 to counsel's deposit account. However, since counsel was not an authorized user of the deposit account, the requisite fees could not be charged to the deposit account.

As a fee deficiency has not been paid, **a fee deficiency cannot be accepted at this time**. This communication is being treated under 1.27(g)(3) as a notification of a loss of entitlement to small entity status.

Applicant is given **ONE MONTH** to submit a complete listing of all the fees erroneously paid as a small entity and the balance of the fee deficiency to avoid the return of the present fee deficiency paper. This time period is not extendable under 37 CFR 1.136(a).

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

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

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

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

By Internet: EFS-Web[1]

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-1642.

April M. Wise
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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ADEL & TOLEN, LLP
11940 SAN VICENTE BLVD
SUITE 100
LOS ANGELES, CA 90049

MAILED
NOV 18 2011
OFFICE OF PETITIONS

In re Application of :
Ashutosh Joshi, et al. :
Application No. 61/330,875 : NOTICE
Filed: May 3, 2010 :
Attorney Docket No. FRST.P0002P :

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

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

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

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

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

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

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POTOMAC PATENT GROUP PLLC
P. O. BOX 270
FREDERICKSBURG VA 22404

MAILED
AUG 04 2010
OFFICE OF PETITIONS

In re Application of	:	
Baldemair, et al.	:	
Application No. 61/331,164	:	DECISION
Filed/Deposited: 4 May, 2010	:	
Attorney Docket No. P31953US1/0110-533	:	

This is a decision on the petition filed on 14 June, 2010, supplemented on 26 July, 2010, and properly considered under 37 C.F.R. §1.53, to obtain a filing date for the instant application.

The petition under 37 C.F.R. §1.53 is **GRANTED in part** and **DISMISSED in part**.

BACKGROUND

The record reflects as follows:

The instant application was deposited on 4 May, 2010.

On 25 May, 2010, the Office of Patent Application Processing (OPAP) mailed a Notice of Incomplete Application (the Notice) and indicated therein that the application had not been accorded a filing date because it had been deposited without drawings as required under 35 U.S.C. §113 (first sentence).

OPAP indicated that Petitioner might:

- contend via petition that the drawings were submitted (and evidence same with a copy of a date-stamped receipt card (see: MPEP §503)), or that drawings were not necessary for a filing date; or

- submit the drawings (with a new application) and accept the later date of submission as the filing date.

OIPE set a two- (2-) month period for reply.

On 14 June, 2010, Petitioner filed, *inter alia*, filed a petition seeking a filing date of 4 May, 2010, for the instant application, and averred therein, *inter alia*, an itemized listing of transactions/events Petitioner contended occurred—including the stated deposit of drawings—and further submitted in support a statement by Andrea W. Terry (Ms. Terry), averred to be his legal assistant, and a copy of the Electronic Acknowledgement Receipt generated by the Office in response to Petitioner's electronic deposit of papers on 4 May, 2010.

(What was evident from the Electronic Acknowledgement Receipt is that the drawings were not received by the Office on deposit of the application on 4 May, 2010.)

On 26 July, 2010, Petitioner supplemented his petition and this time expressly stated (at page 8, paragraph 38 of the 26 July, 2010, supplement) that "none of the nine drawing figures [on six sheets of drawings] were necessary for the understanding of the subject matter sought to be patented ..." (*See* also: 26 July, 2010, supplement at page 7, paragraph 29.)

Petitioner stated that drawings were not necessary for the understanding of the subject matter sought to be patented as to the instant application—by way of a suggestion that the application contains one or more method(s)/process claims.

As discussed below, the presence of one or more method/process claims is controlling.

ANALYSIS

A search of the official file reveals that:

- the instant application was deposited on 4 May, 2010, without drawings, and the Office transmitted to Petitioner on 25 May, 2010, a Notice of Incomplete Application;

- Petitioner contends that he and his assistant attempted to submit drawings with the application, however, the Electronic Acknowledgement Receipt does not evidence that the Office received those drawings on deposit of the application papers

It is the practice of the Office to treat an application that contains at least one method/process/composition claim as an application for which a drawing is not necessary for the understanding of the invention under 35 U.S.C. §113 (first sentence) (see : MPEP §601.01, and specifically MPEP §601.01(f)(A)).

A review of the application as deposited by Petitioner and of Petitioner's petition papers and submitted on 14 June, 2010, and 26 July, 2010, respectively reveals that Petitioner avers that the application does not require drawings for an understanding of the subject matter sought to be patented.

Thus, the argument of the petition-with-supplement is construed for the purposes of this decision to mean that drawings are not necessary for understanding of the subject matter sought to be patented, and thus for a filing date in this application.

In the absence of entry by the Examiner of an amendment, drawing(s) will not be further considered as a part of this application.

In view of the foregoing, the Notice mailed on 25 May, 2010, hereby is withdrawn to the extent that it indicates no filing date will be granted.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

The petition under 37 C.F.R. §1.53 is **granted in part** to the extent that the application will be accorded the filing date of 4 May, 2010, without the drawings as part of the original disclosure of the application; in all other respects the petition **is dismissed**. The petition fee is waived and refunded via credit card—should Petitioner later find that the petition fee was not refunded, Petitioner should request a refund from the Office of Finance and enclose therewith a copy of this decision.

This application is released to the Office of Patent Application Processing (OPAP) (formerly the Office of Initial Patent Examination (OIPE)) to be processed for correction of the filing date to 4 May, 2010, with the 22 pages of specification (description and abstract), deposited on 4 May, 2010, and **no** drawings as the original disclosure.

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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

'1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

MAILED

MAR 28 2011

OFFICE OF PETITIONS

BAHRET & ASSOCIATES
320 NORTH MERIDIAN STREET
SUITE 510
INDIANAPOLIS IN 46204

In re Application of	:	
Podell	:	
Application No. 61/331,373	:	DECISION ON PETITION
Filed: May 4, 2010	:	PURSUANT TO
Attorney Docket No.: 19225-2	:	37 C.F.R. § 1.28(c)
Title: APPARATUS AND METHOD FOR	:	
MANAGING VEHICLE BODY	:	
PERFORMANCE	:	

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on December 27, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

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

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

The deficiency payment of $110 is acknowledged.

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

The Technology Center will be notified of this decision.

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

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JAMES W. PRAVEL
PRAVEL INTELLECTUAL PROPERTY LAW, PC
1800 DIAGONAL ROAD
SUITE 600
ALEXANDRIA, VA 22314

MAILED
APR 13 2011
OFFICE OF PETITIONS

In re Application of	:	
Richard T. Ross, et al.	:	
Application No. 61/331,675	:	DECISION ON PETITION
Filed: May 5, 2010	:	
Attorney Docket No.: 7195.1	:	

This is a decision in response to the petition, filed February 16, 2011 and supplement of March 10, 2011, requesting withdrawal of the holding of abandonment in the above-identified application under the provisions of 37 CFR 1.181 (no fee). It is noted that petitioner has paid a $270 petition fee and, alternatively, requests consideration under the provisions of 37 CFR 1.137(a).

The petition under 37 CFR 1.18 is **GRANTED**.

This application was held abandoned for failure to timely reply to a Notice to File Missing Parts of Provisional Application (Notice) mailed May 26, 2010, which set a two-month period for reply. A Notice of Abandonment was mailed on February 11, 2011.

Petitioner asserts that the Notice of May 26, 2010 was not received.

A review of the application file reveals no irregularities in the mailing of the Notice of May 26, 2010. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

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

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

Petitioner has adequately supported his claim of non-receipt with such evidence.

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

In view of this decision, no consideration on the merits of the petition under 37 CFR 1.137(a) is necessary. The $270 fee submitted is being credited to counsel's credit card.

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

The application is being referred to the Office of Patent Application Processing (OPAP) for consideration of the response filed February 16, 2011.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at OPAP should be directed to their hotline at (571) 272-4000.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

MAILED
NOV 12 2010
OFFICE OF PETITIONS

In re Application of	:	
Darren PETRUCCI et al.	:	
Application No. 61/332,679	:	DECISION ON PETITION
Filed: May 07, 2010	:	
Attorney Docket No. 02960-22755US01	:	

This is a decision on the petition filed June 09, 2010 in response to the Notice of Omitted Items mailed May 27, 2010.

On May 27, 2010, the Office mailed a Notice of Omitted items indicating that a filing date has been accorded however, figure 6D4 was omitted from the application.

Petitioner asserts that figure 6D4 was submitted when the application was filed May 07, 2010, but was not labeled. Petitioner has submitted a replacement sheet correcting the error.

In view of the above, the petition is GRANTED. The petition fee of $400.00 will be credited to petitioner's deposit account.

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

This application file is being referred to the Office of Patent Application Processing.

Thurman K. Page
Petitions Examiner
Office of Petitions

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

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OCT 04 2010

OFFICE OF PETITIONS

In re Application of :
Richard Lee-Chee KUO :
Application No. 61/332,815 :
Filed: May 10, 2010 :
Attorney Docket No. **ISCP0004USA** :

NOTICE

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

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

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

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

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

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **KLEIN, O'NEILL & SINGH, LLP**
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

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MERRIFIELD VA 22116

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OCT 04 2010

OFFICE OF PETITIONS

NOTICE

In re Application of
Ming-Che LI et al.
Application No. 61/332,825
Filed: May 10, 2010
Attorney Docket No. **ISCP0005USA**

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

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

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

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

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

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **KLEIN, O'NEILL & SINGH, LLP**
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

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SENNIGER POWERS LLP
100 NORTH BROADWAY
17TH FLOOR
ST LOUIS MO 63101

MAILED
OCT 22 2010
OFFICE OF PETITIONS

In re Application of :
Richard D. Bucholz :
Application No: 61/333,042 :
Filed: May 10, 2010 :
Attorney Docket No:SLU 4561 :

ON PETITION

This is a decision on the petition filed on July 28, 2010, which is treated as a petition requesting that the above-identified provisional application, without drawings, be accorded a filing date of May 10, 2010.

The petition is **GRANTED**.

The application was filed on May 10, 2010, without drawings. Accordingly, on May 28, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on July 28, 2010, the subject petition was filed. Petitioners assert that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but

filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on May 10, 2010, contain at least one method claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of or method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on May 28, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of May 10, 2010, without drawings as a part of the original disclosure. No petition fee is due.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to May 10, 2010, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Karen Creasy at 571 272-3208.

Anthony Knight
Director
Office of Petitions

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Paper No.

Michael Henderson
11795 SW Ebberts Court
Beaverton OR 97008

MAILED

MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
Michael Henderson	:	ON PETITION
Application No. 61/333,068	:	
Filed: May 10, 2010	:	
Title: POTTYSHOT, PEASHOT	:	

This is in response to applicant's Petition to withdraw the holding of abandonment filed April 7, 2011.

The petition is **DISMISSED**.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f). Extensions of time under §1.136(a) are not permitted.

The above-identified application became abandoned for failure to file a response to the NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION mailed May 27, 2010. The Notice required applicants to provide the provisional application cover sheet, including city and state, or city and foreign country, of the residence of each inventor; and a $25 late surcharge. This Notice set a two-month period for applicant to submit the cover sheet and pay the late surcharge. No response was received. The application became abandoned effective July 28, 2010. A courtesy Notice of Abandonment was mailed on February 15, 2011.

Applicant responds with a letter requesting withdrawal of the holding of abandonment on the basis of nonreceipt of the Notice. It is noted that applicant states that the family moved to Oregon in July 2010. This would have been able two months after the mailing of the correspondence to the correspondence address of record in Bellevue Washington. There is no showing of the

filing of a change of address in this application. The filing of this petition appears to be the first notification to the Office that the applicant's address was no longer the one in Bellevue Washington.

The correspondence was mailed to the correspondence address of record as of May 27, 2010. A review of the image file wrapper for this application reveals no irregularities in the mailing of the Notice. Thus, there is a strong presumption that the correspondence was properly mailed to applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner (or pro se applicant) describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner (or pro se applicant) must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) (or pro se applicant'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.

Applicant has submitted no such evidence. Applicant is reminded that all such evidence must establish that the correspondence was not received at the correspondence address of record as opposed to the correspondence not being received because applicant moved from the correspondence address and failed to timely notify the Office of his new address. It is noted that a change of correspondence address was filed on May 13, 2010; however, it set the address as that associated with customer No. 96584. That customer number is associated with the Bellevue WA address to which the correspondence was mailed.

Under these circumstances, it is concluded that the required showing of non-receipt has not been met. Withdrawal of the holding of abandonment on petition under 37 CFR 1.181 is not warranted.

If applicant cannot provide persuasive evidence of non-receipt of the Notice to File Missing Parts of Application mailed May 27, 2010, applicant may submit a petition to revive pursuant to § 1.137. The small entity petition fee for consideration under 37 CFR 1.137 is $810.

Applicant is reminded however that a provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to 37 CFR 1.137. Nonetheless, subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances. This means that applicant may petition to have an abandoned provisional application revived as a pending provisional application for a period of no longer than 12 months from the filing date of the provisional application where the delay was unavoidable or unintentional. It would be permissible to file a petition for revival later than 12 months from the filing date of the provisional application but only to revive the application for the 12-month period following the filing of the provisional application. Thus, even if the petition were granted to establish the pendency up to the end of the 12-month period, the provisional application would not be considered pending after 12 months from its filing date.

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MAILED
MAY 27 2011
OFFICE OF PETITIONS

Michael Gregory Perez
1340 Lenape Dr.
Miami Springs, FL 33166

In re Application of Perez :
Application No. 61/333,316 : Decision on Petition
Filing Date: May 11, 2010 :
For: Fix Folding Knife Locking :
Dead Bolt/Pivot Release Block :

This is a decision on the petition filed March 2, 2011 under 37 CFR 1.137(b), which requests revival of the instant 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 Provisional Application mailed June 1, 2010. The notice set a period for reply of two (2) months from the mail date of the notice. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the application became abandoned on Tuesday, August 2, 2010. A Notice of Abandonment was mailed on February 22, 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 a $25 surcharge, the required petition fee of $810, and the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

A provisional application may be revived so as to be pending for a period no longer than 12 months from its filing date. Therefore, this application is hereby deemed revived until midnight on May 11, 2011, when it went abandoned as a matter of law.

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
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Alexandria, VA 22313-1450
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Paper No.

LAW OFFICE OF DUANE S. KOBAYASHI
P.O. Box 4160
Leesburg VA 20177

MAILED
SEP 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Dennis Williams	:	DECISION ON PETITION
Application No. 61/333,557	:	
Filed: May 11, 2010	:	
Atty Docket No. APS.0010000	:	

This is in response to the "PETITION TO REVIVE UNDER 37 C.F.R. §1.137(b)" filed April 21, 2011.

The petition is **GRANTED**.

The above-identified provisional application became abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application mailed June 1, 2010. The Notice set a two-month period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply received and no extension of time obtained, the application became abandoned effective August 2, 2010. A courtesy Notice of Abandonment was mailed on February 22, 2011.

In response, applicant filed the instant petition, requesting revival based on unintentional delay. The petition included the required reply in the form of payment of the additional fees; the required statement of unintentional delay; and the petition fee for revival pursuant to 37 CFR 1.137(b).

This petition is granted to revive this provisional application for the 12-month period following the filing of the provisional application. This provisional application is not considered pending after 12 months from its filing date.

The application is being returned to the Office of Patent Application Processing for processing of the response to the Notice to File Missing Parts, payment of the required fees, filed April 21, 2011.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SOFER & HAROUN LLP
317 MADISON AVENUE, SUITE 910
NEW YORK, NY 10017

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Application of :
Paul Kroushl et al :
Application No. 61/334,033 : DECISION ON PETITION
Filed: May 12, 2010 :
Attorney Docket No. 979-494BTK :

This is a decision on the petition, filed April 21, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The above-identified application became abandoned for failure to reply in a timely manner to the Notice To File Missing Parts of Nonprovisional Application (Notice) mailed June 1, 2010. The Notice set a period for reply of two (2) months from the mail date of the Notice. Four month (4) extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on December 2, 2010.

The petitioner states "A reply was submitted on January 3rd 2011 (January 1st and 2nd were Saturday and Sunday respectively). The deposit account of 19-2825 order number 979-494btk was charged $2000 on that date for the filing fee, surcharge and extension fees."

Office record show $2000 was received on January 3, 2011. Since there was no authorization to charge the fifth (5) month extension of time under the provisions of 37 CFR 1.136(a), this application became abandoned after the fourth (4) month, which was December 2, 2010.

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

revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $1620 petition fee.

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

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

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

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

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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HONEYWELL/HUSCH
PATENT SERVICES
101 COLUMBIA ROAD
P.O.BOX 2245
MORRLSTOWN NJ 07962

MAILED
AUG 1 0 2011
OFFICE OF PETITIONS

In re Application of :
Tink, et al. :
Application No. 61/334,199 : DECISION ON PETITION
Filed: 13 May, 2010 :
Attorney Docket No. H0027337/4874/112307 :

This is a decision on the petition filed on 13 July, 2011, supplemented on 3 August, 2011, requesting correction of the name of the inventor/applicant, and considered for relief pursuant to 37 C.F.R §1.182.

NOTE:

Petitioner's Applicant has not stated that the error as to his name occurred without deceptive intent.

Nonetheless, the Office is construing the statement of Petitioner's Applicant to state that the error as to his name occurred without deceptive intent.

Petitioner is cautioned that—if she has not already done so—she **must** now make inquiry (consistent with her duties of candor, disclosure and diligence) to ensure that facts support the construal set forth above.

Should Petitioner's inquiry reveal that the facts do not so support the construal set forth above, Petitioner **must** immediately so Notice the Office.

The petition under 37 C.F.R §1.182 is **GRANTED**.

The guidance in the Commentary set forth at MPEP§605.04(c) suggests to Petitioner the proper procedure herein:

605.04(c)Inventor Changes Name [R-5]

In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and **>a statement< signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a * copy of the court order.

Since amendments are not permitted after the payment of the issue fee (37 CFR 1.312), a petition under 37 CFR 1.182 to change the name of the inventor cannot be granted if filed after the payment of the issue fee.

If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor's name.

If the petition is granted, if the application is maintained in paper with a file jacket label (i.e., the application is an 08/ or earlier series application), the original declaration must be marked in red ink, in the left margin "See paper No. _ for correction of inventor name" and the application should be sent to the Office of Initial Patent Examination (OIPE) for change of name on the file wrapper and in the PALM database. If the petition is granted in an Image File Wrapper (IFW) application or if the application is an 09/ or later series application, the spelling of the inventor's name should be changed in the Office computer records and a new PALM bib-data sheet should be printed. If the application is assigned, applicant should submit a corrected assignment document along with a cover sheet and the recording fee as set forth in 37 CFR 1.21(h) to the Assignment Division for a change in the assignment record. (Emphasis supplied)

BACKGROUND

A search of the file indicates that:

The instant application was filed, Petitioner indicates, with an incorrect form as to an inventor's name—the name having been typed and signed in that form. (Petitioner states that it is correctly "Edsel James Tink," however the original filing information reflects the name was set forth, incorrectly, as "Ed Tink."

On 13 July, 2011—supplemented on 3 August, 2011, Petitioner indicated to the Office that the name of inventor/applicant should be corrected to overcome the incorrect form of the name of one of the inventors. At that time Petitioner submitted a petition and fee, a statement by the inventor signed in both forms of the name—incorrect ("Ed Tink") and correct ("Edsel James Tink")—and an updated application data sheet (ADS). Thus, Petitioner complied with Office requirements.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.182 is **granted**.

The application is released to the Office of Patent Application Processing (OPAP) for processing as necessary to update Office records and mail a corrected filing receipt before being returned to the Technology Center for further processing in due course.

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office). See specifically, the regulations at 37 C.F.R. §10.18.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[2] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of Petitioners or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

MAILED
OCT 11 2011
OFFICE OF PETITIONS

In re
Gow, et al.
Application No. 61/334,337
Filed: May 13, 2010
Attorney Docket No. C1316.70004US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $135, representing $110 for the provisional application filing fee and $25 surcharge, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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OCT 11 2011
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WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re
Hamade, et al.
Application No. 61/334,369
Filed: May 13, 2010
Attorney Docket No. C1316.70009US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $135, representing $110 for the provisional application filing fee and $25 surcharge, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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OCT 11 2011
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WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re
Tenhouten, et al.
Application No. 61/334,406
Filed: May 15, 2010
Attorney Docket No. C1316.70003US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $135, representing $110 for the provisional application filing fee and $25 surcharge, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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BOSTON MA 02210-2206

MAILED
OCT 11 2011
OFFICE OF PETITIONS

In re
Gow, et al.
Application No. 61/334,441
Filed: May 13, 2010
Attorney Docket No. C1316.70008US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $135, representing $110 for the provisional application filing fee and $25 surcharge, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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EDWARDS ANGELL
PALMER & DODGE LLP
P.O. BOX 55874
BOSTON MA 02205

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of	:	
Bradner, et al.	:	
Application No. 61/334,991	:	DECISION
Filed/Deposited: 14 May, 2010	:	
Attorney Docket No. 86363P(70157)	:	

This is a decision on the petition filed on 4 August, 2010, and properly considered under 37 C.F.R. §1.53, to obtain a filing date for the instant application.

The petition under 37 C.F.R. §1.53 is **GRANTED in part** and **DISMISSED in part**.

BACKGROUND

The record reflects as follows:

The instant application was deposited on 14 May, 2010.

On 4 June, 2010, the Office of Patent Application Processing (OPAP) mailed a Notice of Incomplete Application (the Notice) and indicated therein that the application had not been accorded a filing date because it had been deposited without drawings as required under 35 U.S.C. §113 (first sentence).

OPAP indicated that Petitioner might:

- contend via petition that the drawings were submitted (and evidence same with a copy of a date-stamped receipt card (see: MPEP §503)), or that drawings were not necessary for a filing date; or

- submit the drawings and accept the later date of submission as the filing date.

OIPE set a two- (2-) month period for reply.

On 4 August, 2010, Petitioner filed, *inter alia*, filed a petition seeking a filing date of 14 May, 2010, for the instant application, and averred therein, *inter alia*, that drawings were not necessary for the understanding of the subject matter sought to be patented. Petitioner stated that drawings were not necessary for the understanding of the subject matter sought to be patented as to the instant application (in that it contains one or more method(s) claims), and that information is evident upon review of the file.

As discussed below, the presence of one or more method claims is controlling.

ANALYSIS

A search of the official file reveals that:

- the instant application was deposited on 14 May, 2010, without drawings, and the Office transmitted to Petitioner on 4 June, 2010, a Notice of Incomplete Application;

- Petitioner does not contest that drawings were not deposited with the instant application, and does not provide any other evidence of receipt of such drawings by the Office

It is the practice of the Office to treat an application that contains at least one process or method or composition claim as an application for which a drawing is not necessary for the understanding of the invention under 35 U.S.C. §113 (first sentence) (see : MPEP §601.01, and specifically MPEP §601.01(f)(A)).

A review of the application as deposited by Petitioner reveals that the application contains at least one method/process/composition claim (e.g., Claim 1).

Thus, the argument of the petition is construed for the purposes of this decision to mean that drawings are not necessary for understanding of the subject matter sought to be patented, and thus for a filing date in this application.

In the absence of entry by the Examiner of an amendment, drawing(s) will not be further considered as a part of this application.

In view of the foregoing, the Notice mailed on 4 June, 2010, hereby is withdrawn <u>to the extent that it indicates no filing date will be granted</u>.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

The petition under 37 C.F.R. §1.53 is **granted in part** to the extent that the application will be accorded the filing date of 14 May, 2010, without the drawings as part of the original disclosure of the application; in all other respects the petition **is dismissed**. The petition fee is waived and refunded *via* Deposit Account 04-1105—should Petitioner later find that the petition fee was not refunded, Petitioner should request a refund from the Office of Finance and enclose therewith a copy of this decision.

This application is released to the Office of Patent Application Processing (OPAP) (formerly the Office of Initial Patent Examination (OIPE)) to be processed for correction of the filing date to 14 May, 2010, with the 120 pages of specification (description, claims, and abstract), deposited on 14 May, 2010, and **no** drawings as the original disclosure.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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

'1.2 Business to be transacted in writing.

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

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KEN CARNEY
45244 QUAIL HOILOW CT.
AMHERST, OH 44001-2563

MAILED

JAN 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Ken Carney	:	
Application No. 61/335,430	:	ON PETITION
Filed: January 4, 2010	:	
Title: SAFETY STAR WORKSHOP	:	

This is a decision in response to the communication filed November 22, 2010, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 (no fee) in the above-identified application.

The petition under 1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On January 25, 2010, the Office mailed a Notice to File Missing Parts of Provisional Application (Notice), which set a two month shortened statutory period to reply. The application became abandoned on March 26, 2010, for failure to submit a timely reply to the Notice. On October 15, 2010, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to nonreceipt of the Notice to File Missing Parts of Provisional Application. Specifically, petitioner states that the Notice dated January 25, 2010 was not received because the Office mailed the communication to wrong correspondence address. Additionally, petitioner asserts that all appropriate fees were submitted.

Petitioner's attention is directed to 37 CFR 1.33(a) which provides that the application must specify a correspondence address to which the Office will send notice, letters, and other communications relating to an application in a clearly identifiable manner. Since the handwritten correspondence address provided on The Provisional Application for Patent Cover Sheet was not clearly written or typed the address was recorded as 95244 Quail Hoilow Ct., Amherst OH 44001 instead of 45244 Quail Hoilow Ct., Amherst OH 44001 as indicated in the petition submitted November 22, 2010. Office records have been updated to properly reflect the correct correspondence address.

A review of the file record indicates that the copy of the cancelled check in the amount of $110, submitted with the petition indicates that it is intended for Application No. 61/281,650. Further, the cancelled check dated November 18, 2009, was endorsed by the USPTO on November 24, 2009, which is before the filing date of the above identified application. Therefore, the statutory basic filing fee for the above mentioned application (61/335,430) was never received by the Office.

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

Petitioner should note that a provisional application for patent (provisional application) has a pendency lasting 12 months from the date the provisional application is filed. Therefore, this application will not be regarded as pending under any circumstances after twelve months from its filing date of January 4, 2010. An applicant who files a provisional application must file a corresponding non-provisional application for patent (non-provisional application) during the 12-month pendency period of the provisional application in order to benefit from the earlier filing of the provisional application. See 35 U.S.C. § 119(e). If petitioner wishes to seek an alternative venue, a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application would be more appropriate.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application 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.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

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

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

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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COREY N. SAVAGE
C/O MERCURY SPEED UNLIMITED
611 TALMADGE CT.
LEESBURG VA 20175

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of :
Corey Nicholas Savage :
Application No. 61/337,069 :
Filed: January 30, 2010 :
Title of Invention: **"SAVAGE HILL" IS A MULTI-PURPOSE SPORTS & LEISURE TRAINING DEVICE. THE DEVICE CONSIST OF POSSIBLY THREE COMPONENTS MODIFIED FROM THE INFLATABLE INDUSTRY: 1) ONE DEVICE IS USED FOR RESISTANT RUNNING & OTHER STEEP HILL BASED ACTIVITIES 2) 2ND DEVICE FOR DOWNHILL TRAINING** :

ON PETITION

This is a decision on the petition filed January 26, 2011 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned on May 13, 2010, for failure to timely reply to the Notice to File Missing Parts, mailed March 12, 2010, which set a two (2) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed November 29, 2010.

The filing of the response to the Notice to File Missing Parts mailed January 26, 2011 is acknowledged.

Petitioner is advised however, that the 12 month period for filing a non-provisional that claims priority to this provisional passed on January 30, 2011. Although the granting of the instant petition revives the provisional application for the period up to January 30, 2011, the provisional application is now expired as a matter of law and cannot be further revived.

All other requirements having been met, this matter is being referred to the Office of Patent Application Processing.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Michael R. Hudson
5424 Sunol Bl. #10
Pleasanton CA 94566

MAILED
SEP 03 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael R. Hudson	:	
Application No. 61/337,107	:	ON PETITION
Filed: February 1, 2010	:	
Attorney Docket No.	:	

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

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

A review of the record shows that a Notice to File Missing Parts was mailed on February 22, 2010. A response can be still be filed timely, along with a petition for extension of time. A petition for a five month extension of time is $1,175 (which is now due) along with the response to the Notice to File Missing. The reply must be received no later than September 22, 2010.

If a response is not received by this date, the case will become abandoned. Petitioner should then consider resubmitting a petition under 37 CFR 1.137(a) (with the required fee of $270). Form Nos. PTO/SB/22 (Petition for Extension of time) and PTO/SB/65 (Petition for Revival of an Applicant Abandoned Unavoidably) are attached to this decision.

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

Carl Friedman
Petitions Examiner
Office of Petitions

Attachments: PTO Forms

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARK S. NOWOTARSKI
30 GLEN TERRACE
STAMFORD, CT 06906

MAILED
AUG 31 2011
OFFICE OF PETITIONS

In re Application of	:	
MARC MICHAEL GROZ	:	
Application No. 61/337,175	:	DECISION ON PETITION
Filed: January 31, 2010	:	
Attorney Docket No. MIG100201US	:	

This is a decision on the petition, filed March 10, 2011, to expunge information from an application and to correct the file contents above identified application. The petition will be considered under 37 CFR 1.59(b).

The petition is **DISMISSED**.

Petitioner, in substance, requests that the instant application contents be corrected to show that the communication to the Office January 31, 2010, which contained drawings, was not designated to be scanned into this provisional application. Petitioner indicates that the application transmittal form makes no reference to drawings and furthermore the specification of five pages does not mention drawings. Petitioner indicates that the drawings submitted are unrelated to the subject matter of the provisional application.

A review of the file indicates that the drawings were submitted with the transmittal form on January 31, 2010, and are originally filed. A petition under 37 CFR 1.59(b) to expunge information, cannot be used to expunge originally filed documents. Originally filed documents form part of the original disclosure. Hence the petition cannot be granted.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

John A. Mundt
P.O. Box 221
Prescott WI 54021

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Application of
Mundt, et al.
Application No. 61/337,252
Filed: February 2, 2010
For: GRANDPAS HIDEY HOLE

: DECISION ON PETITION

The above-identified application has been directed to the Office of Petitions for consideration of the petition to withdraw the holding of abandonment filed November 16, 2010. This matter is being properly treated pursuant to 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

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 1.181." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

In accordance with 37 CFR 1.33(b), "[a]mendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by: (1) A patent practitioner of record appointed in compliance with § 1.32(b); (2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34; (3) An assignee as provided for under § 3.71(b) of this chapter; or (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter."

The instant petition has not been executed in accordance with 37 CFR 1.33(b)(4). Accordingly, treatment on the merits of the petition under 37 CFR 1.137(b) is not forthcoming.

Any request for reconsideration must be accompanied by a petition properly executed in accordance with 37 CFR 1.33(b).

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

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

By facsimile: (571) 273-8300

By hand delivery:

U.S. Patent and Trademark Office
Customer Window, **Mail Stop Petition**
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

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

John A. Mundt
P.O. Box 221
Prescott WI 54021

MAILED
MAR 08 2011
OFFICE OF PETITIONS

In re Application of
Mundt, et al.
Application No. 61/337,252
Filed: February 2, 2010
For: GRANDPAS HIDEY HOLE

: DECISION ON PETITION
:
:
:

The above-identified application has been directed to the Office of Petitions for consideration of the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed December 27, 2010.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

As previously advised, in accordance with 37 CFR 1.33(b), "[a]mendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by: (1) A patent practitioner of record appointed in compliance with § 1.32(b); (2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34; (3) An assignee as provided for under § 3.71(b) of this chapter; or (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter."

The instant application names two inventors. The instant petition (and prior petition) is signed by just one of the two joint inventors.

Accordingly, the petition has not been properly executed in accordance with 37 CFR 1.33(b)(4). Therefore, treatment on the merits of the petition under 37 CFR 1.181 is not forthcoming.

Any request for reconsideration must be accompanied by a petition properly executed by each inventor named in the application in accordance with 37 CFR 1.33(b).

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

By mail:

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

By facsimile: (571) 273-8300

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KEVIN M. WHITE
7406 TOUR DR
EASTON MD 21601

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
WHITE :
Application No. 61/337,899 : ON PETITION
Filed: February 12,2010 :
Attorney Docket No. :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 7, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed March 22, 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 March 23, 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) (2).

With respect to item (2): A review of the Office record shows that a fee of $100 accompanied the petition filed January 7, 2011, the current petition fee for a small entity is $810. An additional fee of $710 is required under the provisions of 37 CFR 1.137(b). In this regard, the petition filed January 7, 2011, cannot be accepted. No consideration on the merits can be given until the required fee is remitted.

Further, the document containing the grounds for unintentional delay should be signed.

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
AUG 03 2011
OFFICE OF PETITIONS

GENE C. BENCKINI
612 LOCUST ST.
COOPERSBURG PA 18036

In re Application of	:	
BENCKINI, Gene C.	:	
Application No. 61/338,666	:	DECISION ON PETITION
Filed: February 22, 2010	:	TO MAKE SPECIAL UNDER
Attorney Docket No.	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed March 09, 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 Gene Benckini, attesting to his age. Accordingly, the above-identified application has been accorded "special" status.

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

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

The application is being forwarded to the Technology Center for action on the merits commensurate with this decision.

/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

PHILIP H. BURRUS, IV
460 GRANT STREET
ATLANTA GA 30312

MAILED
DEC 23 2010
OFFICE OF PETITIONS

In re Application of	:	
Kumar, Kshitj	:	
Application No. 61/339,045	:	ON PETITION
Filed: February 26, 2010	:	
Attorney Docket No. BPCUR0019KK	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 3, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the basic filing fee and the late surcharge, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

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

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

This matter is being referred to the Office of Patent Application Processing for further processing.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: KIRK L. SOMERS, EXECUTIVE VICE PRESIDENT
CONCURRENT COMPUTER
4375 RIVER GREEN PARKWAY
DULUTH, GA 30006

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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www.uspto.gov

JOSEPH M. AMBROSIO
52 ROUNDABOUT ROAD
SMITHTOWN NY 11787

MAILED
FEB 08 2011
OFFICE OF PETITIONS

In re Application of :
Ambrosio, et al. :
Application No. 61/339,442 : DECISION
Filed/Deposited: 4 March, 2010 :
Attorney Docket No. (None) :

This is a decision on the petition filed on 23 December, 2010, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTE:

There appear to be multiple inventors comprising the inventive entity in this matter.

In the absence of submissions by a registered practitioner authorized by all members of the inventive entity, all papers submitted **must** be signed by all members of the inventive entity/applicants. (*See*: the guidance in the Commentary at MPEP §605.04(a).)

Moreover, Petitioner appears to have ignored the guidance in 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 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).

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 Notice to File Missing Parts (coversheet and surcharge) mailed 1 April, 2010, with reply due absent extension of time on or before 1 June, 2010.

The application went abandoned by operation of law after midnight 1 June, 2010.

The Office mailed the Notice of Abandonment on 16 December, 2010.

On 23 December, 2010, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.181 and averred, *inter alia*, non-receipt of the Office action but failed to follow and satisfy the guidance in the Commentary at MPEP §711.03(c)(I).

Thus, Petitioner has not completed the showing as discussed below in the citation from the Manual of Patent Examining Procedure (MPEP).

Petitioner is directed to the appropriate guidance (MPEP §711.03(c)(I)), and requested to comply with it.

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 non-receipt:

***.

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[1]

***

If Petitioner is unable to comply with and/or otherwise satisfy these requirements, Petitioner may wish to revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

Out of an abundance of caution, Petitioners always are reminded that:

- the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)); and

- those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support

[1] *See*: MPEP §711.03(c) (I)(A).

averments with the appropriate documentation–since all owe to the Office the continuing duty to inquire and 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).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

---

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Application No. 61/339,442

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[3]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SHAWN HAND
125 SOUTHFORK DR.
SUN VALLEY NV 89433

MAILED

JUN 16 2011

OFFICE OF PETITIONS

In re Application of
Shawn Eric Hand Sr. :
Application No. 61/339,661 : ON PETITION
Filed: March 8, 2010 :
Title of Invention: **FLAVOR FILTERS** :

This is a decision on the petition under 37 CFR 1.137(b)[1], filed May 27, 2011, to revive the above identified application.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

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

This application became abandoned August 17, 2010 for failure to timely respond to the Notice to File Missing Parts mailed June 15, 2010. Accordingly, a Notice of Abandonment was mailed February 25, 2011.

Pursuant to 37 CFR 1.137(b) however, the instant petition lacks items (1) and (2) of the regulation. Neither the required response, filing fees and late surcharge, nor the petition fee has been filed, and since no authorizations for debiting a deposit account for any

---

[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)).

deficiencies have been granted, the petition fee and the complete response has not been filed. The fees due are the fees set at the time the application file is revived.

In view thereof, a petition fee and complete response is due before a petition on the merits can be addressed and granted. The application will therefore remain in an abandoned status until such time as the petition fee and complete response have been filed.

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SEP 22 2010

OFFICE OF PETITIONS

AYUB KHAN
SUITE 109
1765 SCOTT BLVD.
SANTA CLARA, CA 95050

In re Application of Mohammad Ayub Khan, et al. Application No. 61/340,801 Deposited: March 22,2010 Attorney Docket No. None	: : : : :	ON PETITION

This is a decision in response to the renewed petition filed July 20, 2010. The petition is properly being treated as a petition requesting that the above-identified application be accorded a filing date.

The petition is **DISMISSED**.

A review of the record shows that the application was deposited on March 22, 2010. However, on May 13, 2010, a Notice of Incomplete Provisional Application was mailed, stating that the application was filed without drawings. On April 19, 2010, a petition was filed requesting, in effect, that the application be accorded a filing date. It is noted that the petition was erroneously considered as a petition under the provisions of 37 CFR 1.137(b). The petition was subsequently dismissed in a decision mailed June 9, 2010, because the petition was not signed in accordance with 37 CFR 1.33(b). In response, on July 20, 2010, the present petition was filed, accompanied by an executed declaration.

Petitioner should note that the present petition is not acceptable as it is not signed in accordance with 37 CFR 1.33(b). Again, the petition is signed by one of the six joint inventors. **The petition must be signed by all of the applicants to be effective**. Consequently, no consideration on the merits can be given to the petition until a properly signed petition is filed.

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

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

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

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

By internet: EFS-Web[1]

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Jan-11

AYUB KHAN
SUITE 109
1765 SCOTT BLVD.
SANTA CLARA, CA 95050

MAILED
JAN 20 2011
OFFICE OF PETITIONS

In re Application of :
Mohammad Ayub Khan, et al. :
Application No.: 61/340,801 : ON PETITION
Filed: March 22, 2010 :
For: DECENTRAKUZED SYMMETRIC :
NETWORK OF AUTONOMOUS DIGITAL :
VIDEO RECORDERS AND ITS METHOD :
OF USE :

This is a decision on the renewed petition filed November 12, 2010, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application, including 7 sheets of drawing, be accorded a filing date of March 22, 2010.

The petition is **GRANTED**.

The application was filed on March 22, 2010. On April 13, 2010, the Office of Data Management, Application Assistance Unit mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings. On April 19, 2010 and July 20, 2010, applicants submitted an unsigned petition for filing date. Accordingly, each petition was dismissed in a decision mailed June 9, 2010 and September 22, 2010, respectively. On November 12, 2010, the present petition was filed, along with a $400 petition fee.

Petitioner argues that drawings were included with the application papers deposited on March 22, 2010. As evidence thereof, petitioner submitted a copy of his postcard receipt. Petitioner requests that the application, including the drawings, be accorded a filing date of March 22, 2010. A copy of the seven sheets of drawing was also submitted.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the U. S. Patent and Trademark Office (USPTO) of all items listed thereon on the date stamped thereon by the USPTO. See MPEP 503. A

review of the postcard receipt reveals that: (1) it was date stamped as received in the USPTO on March 22, 2010; (2) it specifically identifies the items being filed, including *inter alia* "Drawings 7 pages"; and (3) it lacks any annotation of non-receipt of any item denoted on the postcard.

A review of the application failed to uncover seven pages of drawings on March 22, 2010. However, the evidence is convincing that the application papers deposited on March 22, 2010 contained seven (7) pages of drawing, which were subsequently misplaced in the USPTO. Accordingly, petitioner has shown that drawings were among the items present in the application on the date of deposit and should be included in the original disclosure.

The Notice mailed April 13, 2010, was sent in error and is hereby vacated. Since the petition was a result of USPTO error, the $400 petition fee is subject to refund.

Any request for refund of the fees noted above must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

The application is being referred to the Office of Patent Application Processing (OPAP) for further processing with a filing date of March 22, 2010, using the application papers filed March 22, 2010 and the seven (7) sheets of drawing filed November 12, 2010 and an indication on the Bibliographic Data Sheet that seven (7) sheets of drawing were included on filing.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at OPAP should be directed to their hotline at (571) 272-4000.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARK E. MESKU
SPACE #4
9289 SKYWAY
PARADISE CA 95969

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
MESKU, et al	:	
Application No. 61/340,839	:	ON PETITION
Filed: March 22, 2010	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 3, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed April 12, 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 June 13, 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) (2) and (3).

With respect to item (2): Petitioner submitted a fee of $25 with the petition filed January 3, 2011. The current petition fee under the provisions of 37 CFR 1.137(b) for a small entity is $810, an additional fee of $785 is due. Petitioner should submit a total of $785 with any renewed petition. No consideration on the merits can be given until the required fee deficiency is remitted.

With respect to item (3): The petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Mark Emerson Mesku) was ever given a power of attorney to act on behalf of inventor Louise Mesku, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay. In this regard, the statement of unintentional delay is considered to not be in compliance with 37 CFR 1.137(b) and cannot be accepted.

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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
61/341,059	03/18/2010	Vern Maurice Craney	1-1-63972590

CONFIRMATION NO. 3269

VERN M. CRANEY
POST OFFICE BOX 1197
LINCOLN CITY, OR 97367

CONVERSION REQUEST

OC000000045249985

Date Mailed: 01/03/2011

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **09/03/2010,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the fee required by 37 CFR 1.17(i).

It is not accompanied by the amendment including at least one claim in compliance with 35 U.S.C. 112, second paragraph, as required by 37 CFR 1.53(c)(3).

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/341,059	03/18/2010	Vern Maurice Craney	1-1-63972590

CONFIRMATION NO. 3269

VERN M. CRANEY
POST OFFICE BOX 1197
LINCOLN CITY, OR 97367

CONVERSION REQUEST

OC000000045657012

Date Mailed: 01/25/2011

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **01/10/2011,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the amendment including at least one claim in compliance with 35 U.S.C. 112, second paragraph, as required by 37 CFR 1.53(c)(3).

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/341,059	03/18/2010	Vern Maurice Craney	1-1-63972590

CONFIRMATION NO. 3269

VERN M. CRANEY
POST OFFICE BOX 1197
LINCOLN CITY, OR 97367

CONVERSION REQUEST

OC000000051578388

Date Mailed: 12/20/2011

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **04/04/2011,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It was received after the expiration of twelve months after the filing date of the provisional application.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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

Chris Irby-Kendall
1767 Quinnipizc Ave
New Haven CT 06513

MAILED

MAR 23 2011

OFFICE OF PETITIONS

In re Application of
Chris Irby-Kendall
Application No. 61/341,190
Filed: March 29, 2010
Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition filed January 31, 2011, in the above-identified application.

The petition is **DISMISSED**.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is $810.

The petition in the above-identified application was not accompanied by payment of the required fee. No consideration on the merits can be given to the petition until the required fee is received.

For petitioner's convenience enclosed with this decision is blank copy of the petition for revival of an application for patent abandoned unintentionally (PTO/SB/64). Petitioner is encouraged to use these forms.

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) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BELASCO, JACOBS & TOWNSLEY LLP
HOWARD HUGHES CENTER
6701 CENTER DRIVE WEST
14TH FLOOR
LOS ANGELES CA 90045

MAILED

JAN 26 2011

OFFICE OF PETITIONS

In re Application of	:	
Brent Michael Phillips	:	
Application No. 61/341,618	:	DECISION ON PETITION
Filed: April 2, 2010	:	
Attorney Docket No. 10-151-T	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a proper and timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed May 6, 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 above-identified application became abandoned on July 7, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) a substitute Specification, (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 application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on 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
www.uspto.gov

LUMEN PATENT FIRM
350 CAMBRIDGE AVENUE
SUITE 100
PALO ALTO CA 94306

MAILED
APR 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Joachim Sachs et al.	:	
Application No. 61/341,952	:	NOTICE
Filed: April 06, 2010	:	
Attorney Docket No. **S09-327/PROV**	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 March 08, 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) 272-2783.

/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

Jacob Alan Bender
1426 S Galena Rd
Galena OH 43021

In re Application of	:	
Bender	:	
Application No. 61/342,096	:	DECISION ON PETITION
Filed: April 9, 2010	:	
Title: Unknown	:	
	:	

This is a decision on the petition, filed January 28, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The petition has **not** been reviewed on the merits because the petition has not been properly signed.

In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. In this instance the petition filed on January 28, 2011 has not been properly 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 hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

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

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Jacob Alan Bender
1426 S Galena Rd
Galena OH 43021

MAILED
MAR 08 2011
OFFICE OF PETITIONS

In re Application of
Bender
Application No. 61/342,096
Filed: April 9, 2010
Title: Unknown

DECISION ON PETITION

This is a decision on the petition, filed January 28, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

The petition has **not** been reviewed on the merits because the petition has not been properly signed.

In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. In this instance the petition filed on January 28, 2011 has not been properly 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 hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

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

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Jacob Alan Bender
1426 S Galena Rd
Galena OH 43021

MAILED

JUN 14 2011

OFFICE OF PETITIONS

In re Application of
Bender
Application No. 61/342,096
Filed: April 9 2010
For: Foot Binding Device

ON PETITION

This is in response to the renewed petition, filed May 23, 2011 to withdraw the holding of abandonment.

The petition is **GRANTED**.

On April 27, 2010, the Office mailed a Notice to File Missing Parts of A Provisional Application ("Notice"), which set a two month shortened statutory period to reply. The application became abandoned on June 28, 2010, for failure to submit a timely response to the Notice. On January 13, 2011, the Office mailed a Notice of Abandonment.

All of the requirements have been met.

The Office is in receipt of the provisional cover sheet and the $25.00 surcharge.

Petitioner is reminded subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances. As such, the instant provisional application expired on April 10, 2011.

This application is being referred to the Office of Patent Application Processing for appropriate action in the normal course of business.

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

Charlema Grant
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Reginald K. Taylor
University of South Alabama
Office of Technology Transfer
307 University Blvd., N., AD-200
Mobile AL 36688-0002

MAILED
MAR 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Reed et al.	:	
Application No. 61/342,520	:	DECISION ON PETITION
Filed: April 15, 2010	:	
Attorney Docket No. 2010-001-MCI	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 25, 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 Provisional Application (Notice), mailed May 18, 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 July 19, 2010. A Notice of Abandonment was mailed on February 11, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an ADS and $25 surcharge, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Petitioner is reminded subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

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

This application is being referred to the Office of Patent Application Processing for further processing.

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

MICHAEL L. WACH
4425 MARINERS RIDGE
ALPHARETTA GA 30005

MAILED
SEP 13 2010
OFFICE OF PETITIONS

In re Application of	:	
Wach	:	
Application No. 61/343,352	:	DECISION
Filed/Deposited: 27 April, 2010	:	
Attorney Docket No. 501.1015.P	:	

This is a decision on the petition filed on 17 August, 2010, pursuant to 37 C.F.R. §1.53.

NOTE:

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 submitted.

A courtesy copy of this decision will be mailed to Petitioner.

However, all future correspondence will be directed to the address of record until such time as appropriate instructions (*e.g.*, revocation/power of attorney) are received to the contrary.

For the reasons set forth below, the petition pursuant to 37 C.F.R. §1.53 is **DISMISSED**.

BACKGROUND

The instant application was deposited on 27 April, 2010.

On 17 June, 2010, the Office mailed a Notice of Omitted Items, indicating therein that the application had been accorded a filing date but without drawing FIGS. 1 - 5 described in the specification.

Thus, the application was accorded a filing date but without drawing FIGS. 1 - 5 described in the specification.

OPAP indicated that Petitioner might: contend via petition (with support, *inter alia*, of e.g., a date-stamped receipt card (*see*: MPEP §503)) that the drawing FIG. 10 was present on deposit, and provide a copy of the drawing figures; submit the drawings and accept the date of submission as the filing date; or accept the application as deposited.

OPAP set a two- (2-) month period for reply.

On 26 July, 2010, Petitioner submitted a petition, unsigned—it is noted that while Petitioner submitted a separate paper with an averment as to the true nature of copies provided, the petition itself was unsigned—with fee and an averment, *inter alia*, that the drawing FIGS. 1 – 5 were present, and other efforts toward a showing, however, the petition was unsigned.

CONCLUSION

The petition is **dismissed**; Petitioner is given one (1) month, not less than 30 days to correct the deficiency described above.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

CC:
BOURGEOIS,JASON
10025 Hyde Place
River Ridge, LA 70123

[1] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
www.uspto.gov

MICHAEL L. WACH
4425 MARINERS RIDGE
ALPHARETTA GA 30005

MAILED

JAN 18 2011

OFFICE OF PETITIONS

In re Application of :
Wach :
Application No. 61/343,352 : DECISION
Filed/Deposited: 27 April, 2010 :
Attorney Docket No. 501.1015.P :

This is a decision on the petition filed on 13 October, 2010, pursuant to 37 C.F.R. §1.53.

For the reasons set forth below, the petition pursuant to 37 C.F.R. §1.53 is **DISMISSED**.

BACKGROUND

The instant application was deposited on 27 April, 2010.

On 17 June, 2010, the Office mailed a Notice of Omitted Items, indicating therein that the application had been accorded a filing date but without drawing FIGS. 1 - 5 described in the specification.

Thus, the application was accorded a filing date but without drawing FIGS. 1 - 5 described in the specification.

OPAP indicated that Petitioner might: contend via petition (with support, *inter alia*, of e.g., a date-stamped receipt card (*see*: MPEP §503)) that the drawing FIGS. 1 – 5 were present on deposit, and provide a copy of the drawing figures; submit the drawings and accept the date of submission as the filing date; or accept the application as deposited.

OPAP set a two- (2-) month period for reply.

On 26 July, 2010, Petitioner submitted a petition, unsigned—it is noted that while Petitioner submitted a separate paper with an averment as to the true nature of copies provided, the petition itself was unsigned—with fee and an averment, *inter alia*, that the drawing FIGS. 1 – 5 were

present, and other efforts toward a showing, however, the petition was unsigned. The petition was dismissed on 13 September, 2010.

On 13 October, 2010, Petitioner re-advanced his petition and averred inclusion of, *inter alia*, a date-stamped receipt card.

A review of the papers submitted on 13 October, 2010, and available in the record indicates that the papers include a four- (4-) page petition, a one- (1-) page request for reconsideration and a one- (1-) page power of attorney. It does not appear that a date-stamped receipt card is present in the materials submitted by Petitioner on that date.

CONCLUSION

The petition is **dismissed**; Petitioner is given one (1) month, not less than 30 days to correct the deficiencies in his petition, including that described above.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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MICHAEL L. WACH
4425 MARINERS RIDGE
ALPHARETTA GA 30005

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Wach	:	
Application No. 61/343,352	:	DECISION
Filed/Deposited: 27 April, 2010	:	
Attorney Docket No. 501.1015.P	:	

This is a decision on the petition filed on 18 March, 2011, pursuant to the regulations at 37 C.F.R. §1.53.

For the reasons set forth below, the petition pursuant to 37 C.F.R. §1.53 is **DISMISSED**.

BACKGROUND

A review of the record reflects that:

- The instant application was deposited on 27 April, 2010.
- On 17 June, 2010, the Office mailed a Notice of Omitted Items, indicating therein that the application had been accorded a filing date but without drawing FIGS. 1 - 5 described in the specification.
- The application was accorded a filing date but without drawing FIGS. 1 - 5 described in the specification.
- OPAP indicated that Petitioner might: contend via petition (with support, *inter alia*, of e.g., a date-stamped receipt card (*see*: MPEP §503)) that the drawing FIGS. 1 – 5 were present on deposit, and provide a copy of the drawing figures; submit the drawings and accept the date of submission as the filing date; or accept the application as deposited.
- OPAP set a two- (2-) month period for reply.
- On 26 July, 2010, Petitioner submitted a petition, unsigned—it is noted that while Petitioner submitted a separate paper with an averment as to the true nature of copies provided, the petition itself was unsigned—with fee and an averment, *inter alia*, that the

drawing FIGS. 1 – 5 were present, and other efforts toward a showing, however, the petition was unsigned. The petition was dismissed on 13 September, 2010.

- On 13 October, 2010, Petitioner re-advanced his petition and averred inclusion of, *inter alia*, a date-stamped receipt card.

  A review of the papers submitted on 13 October, 2010, and available in the record indicated that the papers include a four- (4-) page petition, a one- (1-) page request for reconsideration and a one- (1-) page power of attorney.

  It did not appear that a date-stamped receipt card was present in the materials submitted by Petitioner on that date. The petition was dismissed on 18 January, 2011.

- On 18 March, 2011, Petitioner again re-advanced his petition and averred inclusion of, *inter alia*, a date-stamped receipt card. A review of the receipt card evidences:

  > A bar-coded stamp bearing the date notation: "042710" and the following detail, in pertinent part:
  >
  > > Papers Submitted:
  > >
  > > Provisional Patent Application Transmittal (1 page); Provisional Patent Application (35 Specification Pages and 28 Drawing Pages); Fee Transmittal; Check for $110.00; and Return Postcard

From this information it is not possible to discern what if any part the five (5) sheets of drawings—which Petitioner now submits with his petition—were of the original 27 April, 2010, deposit.

It appears that Petitioner's original deposit was something of a 58-page composite of several papers, including an issued patent.

The pages of the issued patent pages contain several sheets of drawings, including five (5) sheets identified as FIGS. 1-5.

The five (5) sheets of drawing figures submitted by Petitioner on petition also are identified as FIGS. 1-5.

At best the showing of record is that Petitioner insufficiently identified and insufficiently itemized materials he averred that he included on deposit of the instant application.

CONCLUSION

The petition is **dismissed**.

Any request for reconsideration must be submitted within one (1) month, not less than 30 days. No extension of time will be available.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[1] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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BUTZEL LONG
2190 COMMONS PARKWAY
OKEMOS MI 48864

MAILED

MAR 03 2011

OFFICE OF PETITIONS

In re Application:	:	
Sarver et al.	:	
Application No. 61/343,892	:	ON PETITION
Filed: May 5, 2010	:	
Attorney Docket No. Neogen 4.1-68(141404-651)	:	

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

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

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

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

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

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Steven M. Parks
Butzel Long
110 W. Michigan Avenue, Suite 1100
Lansing, MI 48933

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

MAILED

FEB 02 2011

OFFICE OF PETITIONS

In re Application:	:	
Christiansson et al.	:	
Application No. 61/344,337	:	ON PETITION
Filed: July 1, 2010	:	
Attorney Docket No. 12090-000059/US//PS1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 17, 2010.

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

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

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

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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Timothy Reago
1913 Sword Lane
Alexandria, VA 22308

(For Applicant)

MAILED

JUL 01 2011

OFFICE OF PETITIONS

In re Application of:
Timothy Reago
Application No.: 61/344,384
Filing Date: July 12, 2010

: **DECISION**
: **DISMISSING**
: **PETITION**

This is a decision on applicant's August 13, 2010 paper requesting waiver of the application size fee, which is being treated as a petition under 37 CFR 1.183 to waive the application size fee requirement as set forth in 37 CFR 1.16(s).

The present petition is before the Office of Patent Legal Administration for consideration.

The present petition is **dismissed** for the reasons set forth below.

DECISION

I. Relevant Authority

35 U.S.C. § 41(a)(1)(G) provides:

In addition, excluding any sequence listing or computer program listing filed in electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), $250 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

35 U.S.C. § 41(f) provides:

The fees established in subsections (a) and (b) of this section may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

37 CFR 1.16(s) provides:[1]

Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a)). . . $135.00
By other than a small entity. . . . $270.00

37 CFR 1.183 provides:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part **which is not a requirement of the statutes** may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f). (Emphasis added).

II. Dismissal of Petition

In response to the Office's August 4, 2010 Notice to File Missing Parts of Provisional Application, applicant's August 13, 2010 petition requests a waiver of the application size fee of $3240 for 1174 pages in excess of 100 pages. The regulation (rule) for the application size fee is 37 CFR 1.16(s), which follows 35 U.S.C. § 41(a)(1)(G). As set forth in 37 CFR 1.16(s), the application size fee is reduced by 50% for a small entity in compliance with 37 CFR 1.27(a).

Applicant's request of waiver of the application size fee is constrained to be interpreted as waiver of the requirement of 37 CFR 1.16(s) and the corresponding statute, 35 U.S.C. § 41(a)(1)(G).

However, the application size fee cannot be waived because it is a statutory requirement. See 35 U.S.C. § 41(a)(1)(G), reproduced above. The Office does not have the authority to waive a statutory requirement. Therefore, the application size fee must be paid.

For this reason, applicant's petition under 37 CFR 1.183 requesting waiver of the application size fee is not granted.

III. Additional Discussion

Applicant's August 13, 2010 paper has been interpreted as a petition under 37 CFR 1.183 requesting a waiver of the application size fee of $3240 for the 1,174 pages in excess of 100 pages for a small entity in compliance with 37 CFR 1.27. Applicant explains in the petition that he has a limited income due to disability and that the requested application size fee represents 40% of applicant's annual income.

[1] The difference between the application size fee as set forth in 37 CFR 1.16(s) and in 35 U.S.C. § 41(a)(1)(G) is due to the Consumer Price Index (CPI) adjustment as provided by 35 U.S.C. § 41(f).

However, the petition fee of $400 pursuant to 37 CFR 1.17(f) for the August 13, 2010 petition under 37 CFR 1.183 has not been paid. Accordingly, the present petition is also dismissed for failure to pay the petition fee.

CONCLUSION

The August 13, 2010 petition under 37 CFR 1.183 requesting waiver of the application size fee is dismissed because the application size fee under 37 CFR 1.16(s) is a statutory requirement that, as discussed above, the Office does not have the authority to waive. Furthermore, the August 13, 2010 petition under 37 CFR 1.183 is also dismissed for failure to pay the petition fee of $400 pursuant to 37 CFR 1.17(f).

Any inquiry concerning this decision should be directed to the undersigned below at (571) 272-5047.

Brian E. Hanlon

Brian E. Hanlon
Director
Office of Patent Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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John P. Moulton
Ste 103
3509 Shannon Park Dr.
Fredericksburg, VA 22408

MAILED

JUL 05 2011

OFFICE OF PETITIONS

In re Application of
John Patrick Moulton
Application No. 61/344,496
Filed: August 6, 2010
Attorney Docket No. N/A

ON PETITION

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

The present petition is **dismissed**.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner 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). The instant petition lacks item (2) above.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unavoidable delay or to accept an unavoidably delayed payment of a fee for issuing a patent. In this instance, the fee required by law is $270. If this application is no longer entitled to small entity status, the petition fee required by law is $540.

Since the present petition was not accompanied by the required $270 petition fee, no consideration on the merits can be given to the present petition until the required fee is received[1].

[1] Petitioner's credit card request submitted on May 23, 2011, was declined.

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
40I Dulany Street
Alexandria, VA 22314

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

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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www.uspto.gov

John P. Moulton
Ste 103
3509 Shannon Park Dr.
Fredericksburg, VA 22408

MAILED

SEP 19 2011

OFFICE OF PETITIONS

In re Application of
John Patrick Moulton
Application No. 61/344,496
Filed: August 6, 2010
Attorney Docket No. N/A

ON PETITION

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

The petition is again **dismissed**.

A Notice to File Missing Parts of Provisional Application (Notice) was mailed on August 26, 2010, setting a two-month period within which to submit a reply. Since no extensions of time under the provisions of 37 CFR 1.136 were obtained, the application became abandoned on October 27, 2010. A Notice of Abandonment was mailed May 5, 2011.

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 Commissioner 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). The instant petition lacks item (3).

With regard to item (3) above, the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 35 U.S.C. § 151 and 37 CFR 1.137(a). See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

In the original petition filed May 23, 2011, petitioner asserts that he searched his records and never located the Notice mailed August 26, 2010. Petitioner further asserts "I received this notice on 05/19/2011 and for the first time identified that the missing part of the original 08/06/2010 Provision Patent Application was "the statutory basic filing fee of $110.00. However, I do not understand this as my original application included a Credit Card Payment Form, PTO-2038, Authorizing the amount of $110.00 to be charged to my credit card."

A review of the record discloses that petitioner submitted a credit card payment of $110 on August 6, 2010. However, the credit card form was declined for missing the handwritten or s-signature of the authorized user. Since the signature was missing, the Office did not have appropriate authorization to charge the $110 filing fee and $25 surcharge. Petitioner is required to show failure to properly sign the credit card authorization form was unavoidable.

Additionally, it is noted that the record indicates no irregularity in the mailing of Notice of August 26, 2010, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice of August 26, 2010, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after August 26, 2010, to demonstrate nonreceipt of the Notice. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to correspondence from the Office, and where petitioner would have entered the receipt date of the Notice had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Notice, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the Notice was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after August 26, 2010; the period when he would have received the Notice.

Here, petitioner did not submit any documentary evidence or an explanation of any method for tracking due dates for filing responses to communications from the USPTO, to show that the Notice mailed August 26, 201 was never received. Therefore, the petition cannot be granted at this time.

ALTERNATIVE VENUE

Petitioner may wish to file a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

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 petition fee. A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience.

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

Any request for reconsideration of this decision should be submitted within **TWO (2) MONTHS** from the mail date of this decision and be entitled "Renewed Petition under 37 CFR 1.137." *See* 37 CFR 1.181(f).

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) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

Enclosures: Privacy Act Statement
Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) - Form No. PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

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MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON, VA 22215

MAILED

FEB 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Vinocur et al.	:	
Application No. 61/345205	:	
Filing or 371(c) Date: 05/17/2010	:	LETTER
Attorney Docket Number: 48918	:	

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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470 TOTTEN POND ROAD
WALTHAM MA 02451-1914

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Application of :
William E. Baird et al :
Application No: 61/345,917 :
Filed: May 18,2010 :
Attorney Docket No: BAIRD-1 :
PROV :

ON PETITION

This is a decision on the petition filed on July 13, 2010, which is treated as a petition requesting that the above-identified provisional application, without drawings, be accorded a filing date of May 18, 2010.

The petition is **GRANTED**.

The application was filed on May 18, 2010, without drawings. Accordingly, on May 27, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on July 13, 2010, the subject petition was filed. Petitioners assert that that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). The same practice has been followed in method applications.

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but

> filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on May 18, 2010, contain at least one method claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of a method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on May 27, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of May 18, 2010, without drawings as a part of the original disclosure. The petition fee will be refunded to counsel's deposit account.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to May 18, 2010, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 571 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NIXON PEABODY, LLP
300 S. Riverside Plaza, 16th Floor
CHICAGO IL 60606-6613

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application of :
Anders Leonhard Jensen et al. :
Application No. 61/346,201 : NOTICE
Filed: May 19, 2010 :
Attorney Docket No. 052447-000009PL01 :

This is in response to the paper filed July 14, 2010, under 37 CFR 1.27(c) seeking status as a small entity.

The statement claiming small entity status of July 14, 2010, has been made of record and small entity status has been accorded. Therefore, the request for refund has been accepted and the overpayment of $110 for the provisional filing fee is being refunded to petitioner's deposit account as authorized.

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
www.uspto.gov

Douglas Taylor Hamer
3 Crabapple Ct
Greenville SC 29605

MAILED
MAR 25 2011
OFFICE OF PETITIONS

In re Application of
Hamer
Application No. 61/346,758
Filed: May 20, 2010
For: Mirror-Shave

ON PETITION

This is in response to the petition, filed February 25, 2011, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

On June 1, 2010, the Office mailed a Notice to File Missing Parts of Provisional Application, which set a two month shortened statutory period to reply. The application became abandoned on August 2, 2010, for failure to submit a timely response to the June 1, 2010 Notice. On February 17, 2011, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to nonreceipt of the June 1, 2011 Notice. Specifically, petitioner states that the June 1, 2010 Notice was not received.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the June 1, 2010 Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record.

As petitioner is pro-se, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where he writes down due dates; how he knows replies are due, etc. In essence, petitioners must explain how he reminds himself of

response due dates and show that the due date for the June 1, 2010 Notice was not entered into that system. Petitioners should include any available documentary evidence of the mail received, covering a reasonable period after June 1, 2010, to demonstrate nonreceipt of the Notice. Petitioners should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action or Notice, and where petitioners would have entered the receipt date of the Notice had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioners must include a statement from any other person at the address who may have handled the Office action. Lastly, petitioners must state that he was, in fact, residing at the correspondence address of record for a reasonable time after June 1, 2010; the period when he would have received the Notice. It is noted the address provided on the petition differs from the correspondence address of record. Thus, if petitioner did not continue to reside/receive mail at the correspondence address of record and failed to timely inform the Office of the change in address, petitioner will be unable to establish the abandonment should be withdrawn.

In the present petition, petitioner did not submit any documentary evidence, or an explanation of the method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the June 1, 2010 Notice. Therefore, the petition to withdraw the holding of abandonment is **dismissed**. A copy of the June 1, 2010 Notice accompanies this decision for petitioner's convenience.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

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), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application 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.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

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

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

By 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

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement; and a copy of the Notice dated June 1, 2010.

Cc: Doug Hamer
Takes 2 To Do
20 Grand Avenue, Suite E
Greenville, SC 29607

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
61/346,758	05/20/2010	Douglas Taylor Hamer	

CONFIRMATION NO. 8368

FORMALITIES LETTER

Douglas Taylor Hamer
3 Crabapple Ct
Greenville, SC 29605

OC000000041846226

Date Mailed: 06/01/2010

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
  *Applicant must submit $**110** to complete the basic filing fee for a small entity.*

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- To avoid abandonment, a surcharge (for late submission of filing fee or cover sheet) as set forth in 37 CFR 1.16(g) of $**25** for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this notice.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is $**135** for a small entity
- $**110** Statutory basic filing fee.
- $**25** Surcharge.

Replies should be mailed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.
https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at http://www.uspto.gov/ebc.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

/thailc/

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

PAUL D. YASGER
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK, IL 60064-6008

MAILED
SEP 23 2010
OFFICE OF PETITIONS

In re Application of :
Lorenzo Benatuil, et al. :
Application No. 61/346,789 : ON PETITION
Filed: May 20, 2010 :
Attorney Docket No.: 10497USL1 :

This is a decision on the petition, filed August 10, 2010, which is being treated as a request to withdraw that the Notice of Omitted Item(s) in a Provisional Application mailed June 11, 2010.

The petition is **DISMISSED**.

On May 20, 2010, applicant filed the above-identified application. However, on June 11, 2010, the Office mailed a Notice of Omitted Item(s) in a Provisional Application, stating that the application had been accorded a filing date of May 20, 2010, and advising applicant that Figure 25 described in the specification appeared to have been omitted.

In response, on August 10, 2010, applicant filed the present petition and the petition fee. Applicant asserts that Figure 25 was not omitted from the application papers as filed on May 20, 2010. Petitioner explains that Figure 25 was inaccurately referenced in the specification and request that the specification be amended to remove the reference to Figure 25 as noted in the accompanying amendment. Petitioner states that no new matter is presented, but rather, "[a]pplicant is simply correcting a typographical error."

Upon considering applicants' assertion, it appears that a drawing of Figure 25 was not actually missing on May 20, 2010. Rather, drawing Figure 25 was inadvertently referenced in the specification as a result of applicant's filing error. Since the Notice of Omitted Item(s) in a Provisional Application, mailed June 11, 2010, was correct in stating that Figure 25 described in the specification appeared to have been omitted, the Notice was properly mailed and will not be withdrawn.

Further, the Office reminds applicant that amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the

provisional application. MPEP 601.01(b). Since the amendment presented on petition is not required to comply with any applicable regulations, the amendment will not be entered.

This application is being returned to the Office of Patent Application Processing for further processing with a filing date of May 20, 2010, using the papers filed on that date.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Aug-10

MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

MAILED
AUG 19 2010
OFFICE OF PETITIONS

In re Application of :
Thomas J. Pinnavaia, et al. :
Application No.: 61/347,142 : ON PETITION
Filed: May 21, 2010 :
Atty Docket No.: 027951-9003-US00 :

This is a decision on the petition filed June 18, 2010, requesting that the above-identified provisional application, without drawings, be accorded a filing date of May 21, 2010.

The petition is **GRANTED**.

The application was filed on May 21, 2010, without drawings. Accordingly, on June 10, 2010, the Office of Data Management, Application Assistance Unit mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

On June 18, 2010, the present petition was filed. Petitioner concedes that the application was filed without drawings, but states that drawings are not necessary for an understanding of the subject matter sought to be patented.

MPEP § 601.01(f) states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but

> filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

The statement by petitioner in the petition is accepted that drawings are not necessary for a filing date in this application. Drawings will not be further considered as a part of this case.

In view of the above, the "Notice" mailed June 10, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of May 21, 2010, without drawings as a part of the original disclosure.

Since the petition was necessitated by an error on the part of the USPTO, no petition fee is necessary. The $400 petition fee is being refunded to counsel's credit card.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to May 21, 2010.

Telephone inquiries specific to this matter should be directed to the undersigned at 571 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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EDWARD K. WELCH, II
IP&L Solution
4558 Ashton Court
Naples, FL 34112

MAILED

AUG 10 2010

OFFICE OF PETITIONS

In re Application of
John P. Gagnon
Application No. 61/347,545
Filed: May 24, 2010
Attorney Docket No. WEB-001 PRO

DECISION GRANTNG PETITION

This is a decision on the petition filed June 19, 2010 requesting that the above-identified provisional application be accorded a filing date of May 24, 2010.

The application was deposited on May 24, 2010. However, on June 14, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (Notice) requiring drawings and stating that the filing date of the application would be the date of receipt of the omitted drawings.

In response, the present petition was filed along with the omitted drawing on June 19, 2010.

It is noted that while petitioner submitted the omitted drawing, the present petition contains a statement from the attorney of record that the drawings are not necessary for an understanding of the claimed subject matter. Therefore, the petition is **granted**.

In view of this decision, the $400 petition fee submitted on June 19, 2010 is unnecessary and petitioner may request that this fee be credited back to the credit card, on file, by writing the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

This application file is being referred to the Office of Patent Application Processing for further **processing with a filing date of May 24, 2010**.

Telephone inquiries concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SOROKER-AGMON ADVOCATE AND PATENT ATTORNEYS
NOLTON HOUSE, 14 SHENKAR STREET
HERZELIYA PITUACH 46725 IL ISRAEL

MAILED

AUG 31 2011

OFFICE OF PETITIONS

In re Application of :
MOSHE DGANI et al :
Application No. 61/347,826 :
Filed: May 25, 2010 :
Attorney Docket No. 5307/13.1 :

ON PETITION

This is a decision on the petition, filed on February 2, 2011, under 37 CFR 1.183 for suspension of the rules.

The petition is **DISMISSED**.

Petitioner submits a request for recordation of the filing date of the above provisional application to be May 26, 2010, based on a complete filing of the application. Alternatively, petitioner request acceptance of the surcharge fee and waiver of any extension of time fees and the consequences requiring the abandonment of the application.

37 CFR § 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations which is not a requirement of the statutes may be suspended or waived by the Commissioner. In order for grant of a petition under 37 CFR § 1.183, petitioners must show (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255,256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case.

Circumstances are not extraordinary, and do not require waiver of the rules when a party makes an avoidable mistake in filing or not filing papers. Circumstances resulting from petitioner's failure to exercise due care, or lack of knowledge of , or failure to properly apply, the patent statutes or rules are not, in any event, extraordinary circumstances where the interest of justice require the granting of relief.. See In re Tetrafluor Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990).

But in any event, the USPTO will not normally consider an extraordinary remedy, when the patent statutes and rules of practice already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664(Comm'r Pat. 1982). Here 37 CRF 1.137(b) provides for the revival of an abandoned application for purposes of establishing continuity, with

the current fee being $1620. No extension of time fees would be due; however petitioner must submit the surcharge as the proper reply to the Notice of Incomplete Parts.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Oct-10

AVERY DENNISON CORPORATION
AMANDA WITTINE
8080 NORTON PARKWAY
22-D
MENTOR OH 44060

MAILED
OCT 25 2010
OFFICE OF PETITIONS

In re Application of	:	
Bassam Hallak	:	
Application No: 61/347,971	:	ON PETITION
Filed: May 25, 2010	:	
Attorney Docket No: 4996-US-P1	:	

This is a decision on the petition filed July 14, 2010, which is treated as a petition requesting that the above-identified provisional application, without drawings, be accorded a filing date of May 25, 2010.

The petition is **GRANTED**.

The application was filed on May 25, 2010, without drawings. Accordingly, on June 14, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on July 14, 2010, the subject petition was filed. Petitioners assert that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but

filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on May 25, 2010, contain at least one method claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of a process or method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on June 14, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of May 25, 2010, without drawings as a part of the original disclosure.

Given the basis for granting this petition, the petition fee is not necessary. Petitioner may request a refund of the petition fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to May 25, 2010, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Karen Creasy at 571 272-3208.

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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CALIFORNIA INSTITUTE
OF TECHNOLOGY
1200 E.CALIFORNIA BLVD.
M/C 201-85
PASADENA CA 91125

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of :
Han, et al. :
Application No. 61/348,194 : DECISION
Filed/Deposited: 25 May, 2010 :
Attorney Docket No. CIT-5604-P :

This is a decision on the petition filed on 13 August, 2010, and properly considered pursuant to 37 C.F.R. §1.53, to obtain a filing date for the instant application.

The petition pursuant to 37 C.F.R. §1.53 is **GRANTED in part and DISMISSED in part**.

BACKGROUND

On 25 May, 2010, applicants deposited the instant application.

On 14 June, 2010, the Office of Patent Application Processing (OPAP) mailed a Notice of Incomplete Provisional Application, stating that the application had not been accorded a filing date as it was filed without drawings as required under 35 U.S.C. §113 (first sentence). OPAP indicated that Petitioner might:

- contend via petition that the drawings were submitted (and evidence same with a copy of a date-stamped receipt card (see: MPEP §503)), or that drawings were not necessary for a filing date; or

- submit the drawings (with a new application) and accept the later date of submission as the filing date.

OPAP set a two- (2-) month period for reply.

On 13 August, 2010, Petitioner filed the instant petition and averred therein that drawings were not necessary for an understanding of the subject matter sought to be patented.

Because this is a provisional application, for which no claims are required, a review of the papers on record as of deposit would not have revealed that conclusion upon deposit.

Thus, the original determination by OPAP was not erroneous.

Nonetheless, Petitioner, as one registered to practice before the Office has made the assertion and for the purposes of this petition that assertion will be accepted, and a final determination as to the matter will be left to the province of the Examiner at such time as a non-provisional application is filed and a claim of priority made.

Thus, the application may be accorded a filing date of 25 May, 2010.

It is noted, however, that while Petitioner makes the assertion that drawings are not necessary for an understanding of the subject matter sought to be patented, the absence of drawings without such an assertion on deposit necessitated special processing; the fee will not be waived.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

The petition pursuant to 37 C.F.R. §1.53 is **granted in part** to the extent that the application will be accorded the filing date of 25 May, 2010, without drawings as deposited on that date as part of the original disclosure of the application; in all other respects, including as to waiver of the petition fee, the petition **is dismissed**.

This application is released to the Office of Patent Application Processing (OPAP) to be processed for correction of the filing date to the Office of Patent Application Processing to accord the application a filing date of 25 May, 2010, without drawings, as deposited on that date, as part of the original disclosure.

[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).

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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

'1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

MAILED

OCT 04 2010

OFFICE OF PETITIONS

NOTICE

In re Application of :
Yu-Hsuan Guo :
Application No. 61/348,247 :
Filed: May 26, 2010 :
Attorney Docket No. **ISCP0008USA** :

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

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

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

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

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

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **KLEIN, O'NEILL & SINGH, LLP**
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Sep-10

MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581336
MINNEAPOLIS MN 55458-1336

MAILED
SEP 30 2010
OFFICE OF PETITIONS

In re Application of :
John Ohlfest et al :
Application No: 61/348,348 :
Filed: May 26, 2010 :
Attorney Docket Number: :
110.03290160 :

ON PETITION

This is a decision on the petition filed on July 1, 2010, entitled "PETITION TO ACCORD FILING PURSUANT TO37 C.F.R. § 153(e)(2)," requesting that the above-identified provisional application, without drawings, be accorded a filing date of May 26, 2010.

The petition is **GRANTED**.

The application was filed on May 26, 2010, without drawings. Accordingly, on June 17, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on July 1, 2010, the subject petition was filed. Petitioners assert that that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). The same practice has been followed in composition applications.

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but

> filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on May 26, 2010, contain at least one composition claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of a composition.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on June 17, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of May 26, 2010, without drawings as a part of the original disclosure. The petition fee will be refunded to counsel's deposit account.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to May 26, 2010, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Karen Creasy at 571 272-3208.

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

KEELY SCHNEITER
PRESTON FRISCHKNECHT
399 NORTH MAIN
SUITE 300
LOGAN UT 84321

MAILED

JUN 08 2011

OFFICE OF PETITIONS

In re Application of	:	
THORNLEY, et al	:	
Application No. 61/348,556	:	DECISION ON PETITION
Filed: January 13, 2010	:	
Attorney Docket No. 1058.P01	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 22, 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 Provisional Application (Notice), mailed June 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 August 8, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form a Provisional Application Cover Sheet and the required fee; (2) the petition fee of $810; and (3) a statement of unintentional delay.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/348,841	05/27/2010	Hiok Nam TAY	P021YZ

CONFIRMATION NO. 6853

CONVERSION REQUEST

OC000000050442487

AIR MAIL
83109
Hiok Nam Tay
Blk 409 Woodlands Street 41#13-109
Singapore, 730409
SINGAPORE

Date Mailed: 10/19/2011

DECISION DISMISSING REQUEST UNDER 37 CFR 1.53(c)(3) TO CONVERT TO NON-PROVISIONAL

This is a decision on the request under 37 CFR 1.53(c)(3) received in the U.S. Patent and Trademark Office on **07/05/2011,** to convert the above-identified application to a non-provisional application under 35 U.S.C. 111(a) and 37 CFR 1.53(b).

The request is dismissed because it does not comply with all the requirements of 37 CFR 1.53(c)(3).

A grantable request under 37 CFR 1.53(c)(3) to convert a provisional application to a non-provisional application must be accompanied by the fee set forth in 37 CFR 1.17(i) and an amendment including at least one claim if no claim is present in the provisional application and be filed prior to the earliest of: abandonment of the provisional application filed under 37 CFR 1.53(c) or expiration of twelve months after the filing date of the provisional application filed under 37 CFR 1.53(c). The present request is not grantable because:

It is not accompanied by the fee required by 37 CFR 1.17(i).

It was received after the expiration of twelve months after the filing date of the provisional application.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the date of this decision. This time limit may NOT be extended pursuant to 37 CFR 1.136. The request must be accompanied by the items noted above.

Any inquiries related to this decision should be directed to Application Assistance Unit at (571) 272-4000, or (571) 272-4200, or 1-888-786-0101.

A copy of this notice MUST be returned with the reply.

JANICE L TIPPETT
Office of Patent Application Processing (OPAP)
(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
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DIW May-11

BRIDGET OSETINSKY
1324 LOCUST APT. 1131
PHILADELPHIA PA 19107

MAILED
MAY 27 2011
OFFICE OF PETITIONS

In re Application of :
Osetinsky Kelly Bridget :
Application No: 61/350,089 : ON PETITION
Filed: June 1,2010 :
For: CROSS SEARCH ENGINE :

This is a decision on the petition filed on April 13, 2011 and supplemented on May 26, 2011, which is treated as a petition (37 CFR 1.53) requesting that the above-identified provisional application, without drawings, be accorded a filing date of June 1, 2010. This is also a decision on the petition filed April 13, 2011 and supplemented on May 26, 2011, under the provisions of 37 CFR 1.137(b) to revive the above identified application. Lastly, this is a decision on the petition (37 CFR 1.182) to expedite filed May 20, 2011 and supplemented on May 26, 2011.

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

The petition under 37 CFR 1.53 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED** as Moot.

The application was filed on June 1, 2010, without drawings. Accordingly, on June 10, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on April 13, 2010, and supplemented on May 26, 2011, the subject petition was filed. Petitioners assert that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a

drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on June 1, 2011, contain at least some disclosure of a method and process in paragraphs, 0012-0014 and on 0024-0030. Accordingly, the application is treated as a provisional application containing at least some disclosure of a process or method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on June 10, 2010, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of June 1, 2010, without drawings as a part of the original disclosure. No petition fee is due. A request for refund of the petition fee was submitted on April 13, 2011 and supplemented on May 26, 2011. Accordingly, the petition fee ($400.00) is being credited to petitioner's credit card account as it is the method in which the fee was paid.

As to the Petition under 37 CFR 1.137(b):

A review of the record, as noted above, reveals that the application has not been accorded a filing date. Since no filing date was accorded, the application did not become abandoned. As such, the petition under 37 CFR 1.137(b) is **dismissed** as moot. The petition fee of $810.00 is being credited to petitioner's credit card account.

No matter under 37 CFR 1.181 has been considered as none exist.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to **June 1, 2010**, restoring the application to a pending status, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Karen Creasy at 571 272-3208.

/Ramesh Krishnamurthy/
For Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WINSTEAD PC
P.O. BOX 50784
DALLAS TX 75201

MAILED
JUN 28 2011
OFFICE OF PETITIONS

In re application of :
David Keith Potter, et al :
Application No. 61/350,828 :
Filed: June 2, 2010 :
Attorney Docket No. 11321/P206V1 :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 on March 14, 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 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) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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WINSTEAD PC
P.O. BOX 50784
DALLAS TX 75201

MAILED
APR 28 2011
OFFICE OF PETITIONS

In re Application:	:	
Barron et al.	:	
Application No. 61/350,836	:	ON PETITION
Filed: June 2, 2010	:	
Attorney Docket No. 11321/P207V1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 14, 2011.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Robert Pozner
1 Landover Ct.
Durham NC 27713

MAILED
MAY 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Francesco Venneri	:	
Application No. 61/351,016	:	DECISION ON PETITION
Filed: June 3, 2010	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 1, 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 a provisional application cover sheet and a $25 surcharge fee and $110 filing fee, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the provisional application cover sheet and fees are accepted as being unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,175 extension of time fee submitted with the petition on March 1, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card.

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 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 March 1, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Kevin Mun
1919 Gallows Road, Ste. 330
Vienna, VA 22182

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
APR 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Russell et al.	:	
Application Number: 61/351,585	:	NOTICE
Filing or 371(c) Date: 06/04/2010	:	
Attorney Docket Number: 3156.346US01	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on February 18, 2011.

The Office no longer investigates or rejects original or reissue patents 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 patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

D Wood
Douglas Wood
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

MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
Alexey Pikin	:	
Application No. 61/351,711	:	DECISION ON PETITION
Filed: June 4, 2010	:	
Attorney Docket No. **25295-16924**	:	

This is a decision on the petition under 37 CFR 1.182, filed, January 31, 2011, to change the name of inventor "Leonid Vovk" to –Leanid Vouk --.

The petition is **GRANTED**.

Office records have been updated to reflect the inventor's change of name. A corrected Filing Receipt was mailed on February 4, 2011, which reflects the inventor's change of name, accompanies this decision on petition.

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

Any questions concerning this matter may be directed to JoAnne Burke at (571) 272-4584. Any questions concerning the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to the Office of Patent Application Processing (OPAP) of Data Management for the normal course of business.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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

HANCOCK HUGHEY LLP
P.O. BOX 6553
PORTLAND OR 97228

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of
Hayhurst
Application No. 61/352,314
Filed/Deposited: 7 June, 2010
Attorney Docket No. 1078-008-PWH

DECISION

This is a decision on the petition filed on 12 August, 2010, and properly considered pursuant to 37 C.F.R. §1.53, to obtain a filing date for the instant application.

The petition pursuant to 37 C.F.R. §1.53 is **GRANTED in part and DISMISSED in part**.

BACKGROUND

On 7 June, 2010, Applicant(s) deposited the instant application.

On 16 June, 2010, the Office of Patent Application Processing (OPAP) mailed a Notice of Incomplete Provisional Application, stating that the application had not been accorded a filing date as it was filed without drawings as required under 35 U.S.C. §113 (first sentence). OPAP indicated that Petitioner might:

- contend via petition that the drawings were submitted (and evidence same with a copy of a date-stamped receipt card (see: MPEP §503)), or that drawings were not necessary for a filing date; or

- submit the drawings (with a new application) and accept the later date of submission as the filing date.

OPAP set a two- (2-) month period for reply.

On 12 August, 2010, Petitioner filed the instant petition and averred, *inter alia*, that drawings were not necessary for the understanding of the subject matter sought to be patented. Petitioner stated that drawings were not necessary for the understanding of the subject matter sought to be

patented as to the instant application (in that it contains one or more method(s) claims), and that information is evident upon review of the file.

As discussed below, the presence of one or more method claims is controlling.

ANALYSIS

A search of the official file reveals that:

- the instant application was deposited on 7 June, 2010, without drawings, and the Office transmitted to Petitioner on 4 June, 2010, a Notice of Incomplete Application;
- Petitioner does not contest that drawings were not deposited with the instant application, and does not provide any other evidence of receipt of such drawings by the Office—rather, Petitioner avers that drawings are not necessary for the understanding of the matter sought to be patented.

It is the practice of the Office to treat an application that contains at least one process or method or composition claim as an application for which a drawing is not necessary for the understanding of the invention under 35 U.S.C. §113 (first sentence) (see : MPEP §601.01, and specifically MPEP §601.01(f)(A)).

A review of the application as deposited by Petitioner reveals that the application contains at least one method/process/composition claim (e.g., Claim 1).

Thus, the argument of the petition is construed for the purposes of this decision to mean that drawings are not necessary for understanding of the subject matter sought to be patented, and thus for a filing date in this application.

In the absence of entry by the Examiner of an amendment, drawing(s) will not be further considered as a part of this application.

In view of the foregoing, the Notice mailed on 7 June, 2010, hereby is withdrawn <u>to the extent that it indicates no filing date will be granted</u>.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice <u>and</u> all others who make representations before the Office must inquire into the underlying facts

of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

The petition under 37 C.F.R. §1.53 is **granted in part** to the extent that the application will be accorded the filing date of 7 June, 2010, without the drawings as part of the original disclosure of the application; in all other respects the petition **is dismissed**. The petition fee is waived and refunded *via* credit card—should Petitioner later find that the petition fee was not refunded, Petitioner should request a refund from the Office of Finance and enclose therewith a copy of this decision.

This application is released to the Office of Patent Application Processing (OPAP) (formerly the Office of Initial Patent Examination (OIPE)) to be processed for correction of the filing date to 7 June, 2010, with the 7 pages of specification (description, claims, and abstract), deposited on 7 June, 2010, and **no** drawings as the original disclosure.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/Caller's action(s).

/ John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

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

'1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

MAILED

OCT 04 2010

OFFICE OF PETITIONS

In re Application of :
Richard Lee-Chee KUO :
Application No. 61/352,399 :
Filed: June 08, 2010 :
Attorney Docket No. **ISCP0012USA** :

NOTICE

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

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

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **KLEIN, O'NEILL & SINGH, LLP**
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

UNITED STATES PATENT AND TRADEMARK OFFICE

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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

MAILED
OCT 18 2011
OFFICE OF PETITIONS

In re Application of :
Sargent :
Application No.61/352,410 : DECISION ON PETITION
Filed: June 8, 2010 :
Attorney Docket No. 3154.026PRV :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a response to the Notice to File Missing Parts mailed June 28, 2010. This Office action set a two-month shortened statutory period for reply, with extensions of time obtainable under §1.136(a). No reply having been received, the above-identified application became abandoned on August 29, 2010. A courtesy Notice of Abandonment was mailed on March 10, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $125 provisional filing fee and the $25 surcharge fee, (2) the petition fee of $930, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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 $1,345 extension of time fee submitted with the petition on October 6, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited.

Petitioner is reminded subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

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

Charlema Grant
Attorney Advisor
Office of Petitions

Cc: Daniel Stewart Lang
2700 Las Vegas Blvd. South, Suite 3703
Las Vegas, NV 89109

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND, WA 98052

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application of
Mark Schwesinger et. al.
Application No. 61/353,626
Filed: 00/00/0000
Attorney Docket No. 329968.01

DECISION ON PETITION

This is a decision on the petition filed July 28, 2010, requesting that the above-identified application be accepted to include all the Figures of the original disclosure as deposited in the USPTO.

The application was filed on June 10, 2010. However, on June 23, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" notifying applicant that a filing date has not been accorded in the above application and the that the fling date will be date of receipt of the required drawings.

In reply, petitioner filed the instant petition along with $400 for the petition fee. Petitioner asserts that the application as deposited with the USPTO was complete with a 32 page specification that included drawings on pages 4-9, 11, 13 and 16. In support, petitioner states "a copy of the application as filed having the drawings in a separate section is attached hereto as Appendix B. Thus, in the alternative if the Office deems that a separate section for the drawings is required, this copy complies and thus should also be accorded a filing date of June 10, 2010 because this is the same material as filed, but rearranged as requested by the Office during the telephone conversation." It is further noted that petitioner states, in the alternative, that drawings are not necessary for an understanding of the invention.

A review of the record discloses that drawings was included as part of the specification as filed on July 28, 2010. MPEP 608.01 VI states in part "Graphical illustrations, diagrammatic views, flowcharts, and diagrams in the descriptive portion of the specification do not come within the purview of 37 CFR 1.58(a), which permits tables, chemical and mathematical formulas in the specification in lieu of formal drawings. The examiner should object to such descriptive illustrations in the specification and request drawings in accordance with 37 CFR 1.81 when an application contains graphs, drawings, or flow charts in the specification. The specification, including any claims, may contain chemical formulas and mathematical equations, but >the written description portion of the specification< must not contain drawings or flow diagrams".

37 CFR 1.81(c) states "Whenever the nature of the subject matter sought to be patented admits of illustration by a drawing without its being necessary for the understanding of the subject matter and the applicant has not furnished such a drawing, the examiner will require its submission within a time period of not less than two months from the date of the sending of a notice thereof." However, since the filing date of a provisional application shall be the date on which the specification and **any** required drawing are received in the Patent and Trademark Office and comparison of the specification, as filed on June 10, 2010, with the drawings supplied July 28, 2010, appears to be the same, the present petition is **granted**.

This application is being referred to the Office of Patent Application processing for further processing with a filing date of June 10, 2010, using the drawings supplied on July 28, 2010.

Telephone inquiries concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

MAILED

OCT 04 2010

OFFICE OF PETITIONS

In re Application of :
Li-Chih TSENG :
Application No. 61/353,660 :
Filed: June 11, 2010 :
Attorney Docket No. **ISCP0013USA** :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **KLEIN, O'NEILL & SINGH, LLP**
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

Docket No.: FDEHN41.001PRF **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Cynthia Chang, et al.
Appl. No.	:	61/354,625
Filed	:	June 14, 2010
For	:	IN VITRO BONE MODEL AND DISTRACTION DEVICE
Conf. No.	:	1969

NOTIFICATION OF LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

AND

SUBMISSION OF DEFICIENCY PAYMENT UNDER 37 C.F.R. § 1.28(c)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants hereby notify the Patent and Trademark Office that it is no longer entitled to status as a small entity and that any previous assertion is hereby withdrawn.

This is also a submission of deficiency payment in accordance with 37 C.F.R. § 1.28(c). The deficiency owed, resulting from the previous payment of small entity fees, is being paid.

The calculation of the deficiency owed has been made in accordance with 37 C.F.R. § 1.28(c)(2)(i). The itemization of the deficiency payment is shown below as required by 37 C.F.R. § 1.28(c)(2)(ii).

The small entity status was established in good faith in the present application at the time of filing. Thus, the small entity provisional application fee was paid as a small entity in good faith. However, it has been determined that such status was established in error and Applicants respectfully wish the change of the entity status by submission of this paper and the deficiency payment.

02/15/2011 CKHLOK 00000020 111410 61354625
01 FC:1461 135.00 DA

Calculation of the deficiency owed is as follows.

Type of fee	Current fee amount for a non-small entity	FEE CODE	Small entity fee actually paid and date	**Deficiency owed amount**
Provisional Application Filing Fee	$220	2005	$110 (June 14, 2010)	**$110**
Late Provisional Filing Fee/Cover Sheet	$50	2052	$25 (November 8, 2010)	**$25**

(X) Please charge the deficiency amount of $135 to Deposit Account No. 11-1410.

(X) Please charge any other required fees, or credit overpayment, to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 8, 2010

By: /daniel altman/

Daniel E. Altman
Registration No. 34,115
Attorney of Record
Customer No. 20995
(949) 760-0404

10124205
120710

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

MAILED

NOV 17 2010

OFFICE OF PETITIONS

In re Application:	:	
Ming-Che Li	:	
Application No. 61/354,712	:	ON PETITION
Filed: June 15, 2010	:	
Attorney Docket No. ISCP0014USA	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 8, 2010.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Further, the address given on the petition differs from the new address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Sang N. Dang
Klein, O'Neill & Singh, LLP
18200 Von Karman Avenue, Suite 725
Irvine, California 92612

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET, SUITE 1800
SAN ANTONIO TX 78205-1521

MAILED

OCT 24 2011

OFFICE OF PETITIONS

In re Application of	:	
Mark Kevin Hennig	:	
Application No. 61/356,947	:	NOTICE
Filed: June 21, 2010	:	
Attorney Docket No. 30610.90	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THE BROAD INSTITUTE, INC
ATTN: BUSINESS DEVELOPMENT
7 CAMBRIDGE CENTER
CAMBRIDGE MA 02142

MAILED

JUN 08 2011

OFFICE OF PETITIONS

In re Application of	:	
Damian W. Young	:	
Application No. 61/357,281	:	DECISION ON PETITION
Filed: June 22, 2010	:	
Attorney Docket No. BI-2010-022	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed July 1, 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 above-identified application became abandoned on September 2, 2010. A Notice of Abandonment was mailed March 10, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) a Provisional Cover Sheet and $25.00 Surcharge fee, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on 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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BUTZEL LONG
IP DOCKETING DEPT
350 SOUTH MAIN STREET
SUITE 300
ANN ARBOR MI 48104

MAILED
AUG 30 2011
OFFICE OF PETITIONS

In re Application:	:	
Rob Bingle	:	
Application No. 61/357,316	:	ON PETITION
Filed: June 22, 2010	:	
Attorney Docket No. 139630-11	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed July 25, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

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.

Petitioner has been charged $130.00 towards the required $110.00 deficiency fee payment, thus creating a $20.00 overage. This overage will be refunded to petitioner's credit card in due course.

Further, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Christopher A. Mitchell
Dickinson Wright
301 E. Liberty, Ste. 500
Ann Arbor, MI 48104

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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STRASBURGER & PRICE, LLP
901 MAIN STREET
SUITE 4400
DALLAS TX 75202

MAILED
DEC 20 2010
OFFICE OF PETITIONS

In re Application of	:	
David YORK	:	
Application No. 61/357,359	:	DECISION ON PETITION
Filed: June 22, 2010	:	
Attorney Docket No. York-3001	:	

This is a decision on the petition under 37 CFR 1.53(c) filed July 12, 2010, in response to the Office action mailed June 30, 2010.

The petition is **GRANTED**.

On June 30, 2010, the Office mailed a Notice of Omitted Item (s), indicating that figures 4, 5, and 6 were omitted from application.

A further review of the application papers indicates that the omitted items listed on the Office action mailed June 30, 2010 were in fact received by the Office.

This application is being referred to the Office of Patent Application Processing.

Telephone inquiries regarding this decision should be directed to the Michelle R. Eason at (571) 272- 4231.

/Thurman Page/
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

APR 08 2011

OFFICE OF PETITIONS

Thomas Charles Strizki
18630 County Road 1
Berthoud, CO 80513

In re Application of Thomas C. Strizki	:	
Application No. 61/357,736	:	Letter
Filing Date: June 23, 2010	:	
Attorney Docket No. 82514 CCD	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed February 17, 2011.

The deficiency payment of $110 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED

JUN 10 2011

OFFICE OF PETITIONS

Li Xu
19199 De Havilland Drive
Saratoga CA 95070

In re Application of	:	
Bo PI et al.	:	DECISION DISMISSING PETITION
Application No. 61/358,844	:	UNDER 37 CFR 1.137(b)
Filed: June 25, 2010	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 5, 2011, to revive the above-identified application.

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application went abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts mailed July 21, 2010 (Notice), which set a shortened period of reply of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application became abandoned on September 22, 2010. A Notice of Abandonment was mailed March 24, 2011.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (3).

Regarding item (3), the instant petition lacks the signature of inventor Bo Pi. In addition, there is no indication that the person signing the instant petition, Li Xu, was given power of attorney or authorization of agent from all inventors to prosecute the present application.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30AM to 5:30PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experience Primary Examiners who answer general questions concerning patent examining policy and procedure.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571-273-8300).**

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

for

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED
AUG 04 2011
OFFICE OF PETITIONS

Li Xu
19199 De Havilland Drive
Saratoga CA 95070

In re Application of	:	
Bo PI et al.	:	DECISION GRANTING PETITION
Application No. 61/358,844	:	UNDER 37 CFR 1.137(b)
Filed: June 25, 2010	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed June 22, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application went abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts mailed July 21, 2010 (Notice), which set a shortened period of reply of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application became abandoned on September 22, 2010. A Notice of Abandonment was mailed March 24, 2011.

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 Notice mailed July 21, 2010, (2) a petition fee of $810 (small entity), and (3) a statement of unintentional delay. the reply to the Notice is accepted as having been unintentionally delayed.

A provisional application may not be revived so as to be pending for a period of longer than 12 months from its filing date. As 12 months from the filing date of the above-identified application has passed, the application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application remains abandoned in favor of international application PCT/US11/42065.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

for Rajesh Krishnamurthy

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
61/359,092	06/28/2010	ANDREW SIMON BELL	PC71664	1407

7590 01/24/2011

PFIZER INC.
PATENT DEPARTMENT
Bld 114 M/S 9114
EASTERN POINT ROAD
GROTON, CT 06340

EXAMINER

ART UNIT	PAPER NUMBER

NOTIFICATION DATE	DELIVERY MODE
01/24/2011	ELECTRONIC

Decision Granting Petition under 37 CFR 1.138(c)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(c), for express abandonment to avoid publication of the above-identified application.

The petition is granted.

The express abandonment is recognized and the application has been withdrawn from publication.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Kaletus Buchana

Patent Publication Branch
Office of Data Management

FORM PET650G (Rev. 08/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

PEPPER HAMILTON LLP
ONE MELLON CENTER, 50TH FLOOR
500 GRANT STREET
PITTSBURGH PA 15219

MAILED

NOV 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Raymond Miller	:	
Application No. 61/359,129	:	DECISION
Filed: June 28, 2010	:	ON PETITION
Atty Docket No. 134357.00300	:	

This is in response to the "PETITION AND RESPONSE TO NOTICE OF INCOMPLETE PROVISIONAL APPLICATION," filed September 20, 2010, requesting that the above-identified application be accorded a filing date of June 28, 2010.

The petition is **GRANTED**.

Application papers in the above-identified application were deposited on June 28, 2010. However, on July 20, 2010, the Office mailed a "Notice of Incomplete Provisional Application," stating that the application had not been accorded a filing date because the application was deposited without drawings.

In response, applicant timely filed the instant petition. Applicant point out, inter alia, they did not intend to file drawings with this provisional application, and no drawings are referred to in the specification. Applicant states that no drawings are necessary to gain an understanding of the claimed pharmaceutical compositions and methods of their use.

35 U.S.C. 111(b)(4) provides that:

> The filing date of a provisional application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

However, it is the practice of the Office to treat an application that contains at least one process or method or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). MPEP § 601.01(f).

A review of the original application papers filed June 28, 2010, reveals that they contained at least one method claim and at least one composition claim. Thus, the application, containing a specification and at least one claim was complete within the meaning of 37 CFR §1.53(b), and entitled to a filing date of June 28, 2010.

Accordingly, the petition is granted. The provisional application will be accorded the June 28, 2010 filing date with no drawings as a part of the original disclosure of the application.

Given the basis for granting the petition, the petition fee is being refunded.

This application is being forwarded to the Office of Patent Application Processing for:

- **Correction of the filing date to June 28, 2010**; and
- indication in Office records, as appropriate, that "0" sheets of drawings were present on filing.

Applicant will receive appropriate notifications regarding any missing items or fees owed, and other information in due course from the Office of Patent Application Processing.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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CHALKER FLORES, LLP
2711 LBJ FRWY
SUITE 1036
DALLAS TX 75234

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of	:	
Sherry et al	:	
Application No. 61/359,325	:	DECISION ON PETITION
Filed: June 28, 2010	:	
Attorney Docket No. UTDA:115ab	:	

This is a decision on the request filed August 16, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting refund of the filing fee for the above-identified application.

The petition is **GRANTED**.

Petitioner asserts that the instant application was an unintended duplicate filing via EFS-Web.

37 CFR 1.26(a) states, in part: "The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee."

However, the Office may find a mistake pursuant to 37 CFR 1.26, waive the presumption in 37 CFR 1.26 that applications are not entitled to filing fee refunds, and refund the filing fees associated with unintended duplicate application filings via EFS-Web.

The Office has accepted petitioner's statement as an assertion that the duplicate application was filed by mistake. Accordingly, the filing fee of $110.00, submitted on June 28, 2010, has been credited to petitioner's deposit account no. 50-4863 as authorized.

As no further action will be taken in this application, this matter is being referred to the Office of Patent Publication for express abandonment of the subject application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Myrexis, Inc.
c/o CPA Global
P.O. Box 52050
Minneapolis, MN 55402

MAILED

OCT 05 2010

OFFICE OF PETITIONS

In re Application of
J. Adam Willardsen, et. al.
Application No. 61/360,364
Filed: June 30, 2010
Attorney Docket No. 5300-01-2P

DECISION GRANTNG PETITION

This is a decision on the petition filed July 28, 2010 requesting that the above-identified provisional application be accorded a filing date of June 30, 2010.

The application was deposited on June 30, 2010. However, on July 26, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (Notice) requiring drawings and stating that the filing date of the application would be the date of receipt of the omitted drawings.

In response, on July 28, 2010, the present petition was filed, in which the attorney of record states that drawings are not necessary for an understanding of the subject matter sought to be patented and the application should be accorded the June 30, 2010 filing date.

Since it is noted that drawings are not necessary for an understanding of the subject matter sought to be patented, the petition is **granted**.

In view of the above, the petition fee of $400 has been credited to petitioner's deposit account.

It is further noted that the correspondence address given in the present petition differs from the correspondence address of record. A courtesy copy of this decision is being mailed to petitioner at the address given in the petition; thereafter, all future communications from the Office will be mailed solely to the address of record unless otherwise instructed.

This application file is being referred to the Office of Patent Application Processing for further **processing with a filing date of June 30, 2010**.

Telephone inquiries concerning this matter may be directed to Andrea Smith at (571) 272-3226.

/Andrea Smith/
Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

cc: Kelly A. Echols
Intellectual Property Group
Myrexis, Inc.
305 Chipeta Way
Salt Lake City, UT 84108

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TOWNSEND AND TOWNSEND AND CREW LLP / PULMONX 017534
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Surag Mantri	:	
Application No. 61/360,816	:	DECISION ON PETITION
Filed: July 1, 2010	:	TO WITHDRAW
Attorney Docket No.: 017534-008100US	:	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 18, 2011.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request is filed by Brad J. Loos on behalf of the attorneys/agents associated with Customer Number 96352.

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 (20995) 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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14910 AIRLINE ROAD
Bldg. 14
ROSHARON TX 77583

MAILED
APR 05 2011
OFFICE OF PETITIONS

In re Application of	:	
Rajesh A. Chanpura et al.	:	
Application No. 61/360,820	:	DECISION ON PETITION
Filed: July 1, 2010	:	
Attorney Docket No. 68.1054	:	

This is a decision on the petition under 37 CFR 1.59(b), filed January 3, 2011, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the drawings filed on July 1, 2010 be expunged from the record.

However, 37 CFR 1.59(a)(2) states:

> Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

Accordingly, the drawings will not be expunged from the record pursuant to 37 CFR 1.59(b) even though it was mistakenly filed. Moreover, petitioner has not established that an extraordinary situation exits in which justice requires the requested expungement pursuant to a waiver of 37 CFR 1.59(a)(2) under 37 CFR 1.183, as discussed in MPEP 724.05 IV.

The petition was filed with a petition fee of $130. Petitions filed under 37 CFR 1.59(b) require a fee set forth under 37 CFR 1.17(g) which is currently $200. The balance of $70 has been charged to petitioner's deposit account as authorized.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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SHERR & VAUGHN, PLLC
620 HERNDON PARKWAY
SUITE 320
HERNDON VA 20170

MAILED
JUN 06 2011
OFFICE OF PETITIONS

In re Application of :
David Sherrer :
Application No. 61/361,132 : ON PETITION
Filed: July 2, 2010 :
Attorney Docket No. 440-0429 :

This is in response to the petitions, filed February 25, 2011, under 37 CFR 1.59 and, alternatively, under 37 CFR 1.183 requesting waiver of the requirements of 37 CFR 1.59. These petitions respectively request expungement of the original specification in the above-identified application or, alternatively, to waive the prohibition in 37 CFR 1.59 against expungement of the original disclosure and replace the original specification with another version of the specification. This is also a decision on the petition under 37 CFR 1.182, filed June 1, 2011, to expedite consideration of the petition to waive the requirements of 37 CFR 1.59.

The petition under 37 CFR 1.182 is **GRANTED**.

The requirements of 37 CFR 1.182 to expedite the petition to expunge have been satisfied. Accordingly, the request to expunge information will be processed promptly.

The petitions under 37 CFR 1.59 and 37 CFR 1.183 requesting waiver of the requirements of 37 CFR 1.59 are **DISMISSED.**

In regard to the petition under 37 CFR 1.59, 37 CFR 1.59 states:

> (a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.
> (2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
> (b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the

> information is appropriate in which case a notice granting the petition for expungement will be provided.

Contrary to petitioner's understanding, the original specification of a provisional application does form part of the original disclosure even if it contains some non-essential information. The prohibition in 37 CFR 1.59(a)(2) against expungement of the original disclosure does apply to provisional applications even though a provisional application does not require the filing of an oath or declaration under §§ 1.63 and 1.175. The specification of the provisional application will likely serve as the basis of the disclosure in a non-provisional application that claims the benefit of the provisional under 35 USC 119(e), and a non-provisional application does require the filing of an oath or declaration under §§ 1.63 and 1.175. Accordingly, the petition to expunge the original specification of the above-identified provisional application must be dismissed.

In regard to the requested waiver, 37 CFR 1.183 states:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

Petitioner asserts that an extraordinary situation exists here where justice requires the requested waiver since: 1) the Office may disagree with Petitioner's understanding of 37 CFR 1.59 and conclude that information in the specification of the above-identified provisional application forms part of the original disclosure and 2) non-essential, vendor related information is unnecessary to comply with the written description, enablement, and/or best mode requirements of 35 USC 112, first paragraph. However, neither of these circumstances amount to an extraordinary situation where justice requires the requested waiver.

Although the Office does disagree with Petitioner, a mere difference of opinion does not justify the requested revision or expungement of the communication in whole or in part.[1] Moreover, a mere difference of opinion is not extraordinary.

Furthermore, the issue at hand is not the non-essential nature of the information; rather it is whether petitioner has properly followed the statutes and regulations with the exercise of reasonable care and diligence herein. In the instant case, petitioner filed a provisional application under 35 U.S.C. 111(b) with vendor related information, which filing was avoidable with due care. There is no adequate showing of "an extraordinary situation" in which "justice requires"

---

[1] In Lear, Inc. v. Adkins, 395 U.S. 653, 670, 162 USPQ 1, 8 (1969), Justice Harlan, writing for the Court, observed:

> A patent, in the last analysis, simply represents a legal conclusion reached by the Patent Office. Moreover, the legal conclusion is predicated on factors as to which reasonable men can differ widely.

suspension of 37 CFR 1.59 (a)(2). See, Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994)(circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers). Circumstances resulting from petitioner's, or petitioner's counsel's, failure to exercise due care, or lack of knowledge of, or failure to properly apply, the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See, In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc. 195 USPQ 586, 588 (Comm'r Pats. 1977).

No adequate basis is given or apparent for expunging the original specification, and the USPTO sees no reason to exercise its discretion to deviate from, or expand upon, the above long-established reasons for expungement. See, e.g., Saxbe v. Bustos, 419 U.S. 65, 74 (1974) (acknowledging an agency's right to maintain a "longstanding administrative construction").

In the event that the vendor information includes trade secret, proprietary, and/or protective order material of the type discussed in MPEP § 724.02 or contains Personally Identifiable Information (PII), the original specification may be replaced with a version of the original specification that redacts the sensitive information without disturbing the remainder of the specification content. Petitioner should clearly state on the record that the redacted information is either trade secret, proprietary, protective order material, or PII if this is true.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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620 HERNDON PARKWAY
SUITE 320
HERNDON VA 20170

MAILED

JUN 27 2011

OFFICE OF PETITIONS

In re Application of	:	
David Sherrer	:	
Application No. 61/361,132	:	ON PETITION
Filed: July 2, 2010	:	
Attorney Docket No. 440-0429	:	

This is a response to the renewed petitions under 37 CFR §§ 1.59 and 1.183, filed June 8, 2011 and supplemented on June 20, 2011 and June 22, 2011, to expunge portions of the original specification from the above identified provisional application.

The petitions are **granted**.

The petitions assert that proprietary information was inadvertently presented in the specification filed with the above identified provisional application. Applicant requests that this information be expunged and replaced with the version of the original specification presented with the supplemental petition of June 20, 2011 as modified by the version presented with the supplemental petition of June 22, 2011, which replacement specification redacts the proprietary information without disturbing the remainder of the original specification content.

37 CFR 1.59 states in part:

> (a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.
> (2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
> (b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

The standards for expunging information that is unintentionally submitted in an application, including the standards for establishing that the expungement of the information is appropriate, is

discussed in MPEP section 724.05 II. This section states that a petition may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;
(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
(C) the information has not otherwise been made public;
(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
(F) the petition fee as set forth in 37 CFR 1.17(g) is included.

MPEP 724.05 IV explains that the provision of 37 CFR 1.59(a)(2) may be waived under 37 CFR 1.183 where an extraordinary situation exits in which justice requires the requested expungement of information forming part of the original disclosure .

The presence of the proprietary information in the original specification, as discussed by Applicant, represents an extraordinary situation in which justice requires the requested expungement, and the further requirements of 37 CFR 1.59 are satisfied.

Therefore, the original specification and the first redacted version of the original specification, filed February 25, 2011, will be expunged in favor of the redacted version of the original specification presented with the supplemental petition of June 20, 2011. Also, the redacted version of the original specification presented with the supplemental petition of June 20, 2011 will be modified by closing a 16 page portion of this redacted version and replacing it with the similar 16 page portion presented with the supplemental petition of June 22, 2011 that further redacts proprietary information without disturbing the remainder of the content.

The official record for the above identified application is maintained as an electronic Image File Wrapper (IFW) and there is no paper record from which the information can be physically removed. The expunged information will be "closed" in the electronic IFW and removed from the listing of publicly available documents. The redacted version of the original specification will remain on the record as a replacement for the expunged pages of the original specification so that the portions of the original specification that do not present confidential, proprietary, and trade secret information are not removed. Also, this decision will remain on the record to provide clarity as to why information was expunged.

As a condition of this favorable treatment petitioner is required to maintain the material in question during the enforceable life of any patent arising from this application, or any patent claiming benefit of this application.

Telephone inquiries concerning this communication should be directed to Christopher Bottorff at (571) 272-6692.

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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THE PROCTER & GAMBLE COMPANY
GLOBAL LEGAL DEPARTMENT - IP
SYCAMORE BUILDING – 4TH FLOOR
299 EAST SIXTH STREET
CINCINNATI, OH 45202

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Mark Robert SIVIK ET AL	:	
Application No. 61/361,154	:	DECISION ON PETITION
Filed: September 18, 2006	:	
Attorney Docket No. 10591-54824	:	

This is a decision on the petition under 37 CFR 1.59(b), filed July 8, 2010, to expunge information from the above identified application.

The petition is **DISMISSED**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

Petitioner requests that a provisional transmittal sheet, specification, claims abstract, and drawings, filed July 2, 2010, be expunged from the record and the filing date be retained based on the filing of new documents on July 8, 2010. The petition fee required under 37 CFR 1.17(g) has been received.

Petitions to grant filing dates based on subsequently filed papers are proper for a petition under 37 CFR 1.53. Since no petition under 37 CFR 1.53 has been submitted with the 37 CFR 1.59(b) petition to expunge, the petition is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

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CINCINNATI, OH 45202

MAILED

AUG 31 2011

OFFICE OF PETITIONS

In re Application of	:	
Mark Robert SIVIK ET AL	:	
Application No. 61/361,154	:	DECISION ON PETITION
Filed: July 2, 2010	:	
Attorney Docket No. 11792P	:	

This is a decision on the renewed petition under 37 CFR 1.59(b), filed May 16, 2011, to expunge information from the above identified application filed July 2, 2010. This is also a decision on the petition under 37 CFR 1.53 to accord the papers filed July 8, 2010, a filing date of July 2, 2010.

The petition under 37 CFR 1.59(b) and 37 CFR 1.53 are **DISMISSED**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Petitioner requests that a provisional transmittal sheet, specification, claims abstract, and drawings, filed July 2, 2010, be expunged from the record and the filing date be retained based on the filing of new documents on July 8, 2010. The petition fee required under 37 CFR 1.17(g) has been received.

Original filed application papers filed and on which a filing date has been based cannot be expunged. Hence the application papers filed July 2, 2010 are necessary for the filing date and cannot be expunged.

Petitions to grant filing dates based on subsequently filed papers are proper for a petition under 37 CFR 1.53. A review of the file indicates that the provisional application, as filed, on July 2, 2010 was complete and met the filing requirements of 37 CFR 1.53(c). The file does not indicate that on the same day, corrected papers were filed to replace the papers originally filed July 2,

2010. In the absence of a same day correction of an error no substitution may be other than to comply with the patent statute and all applicable regulations, after filing date.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

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ADELI & TOLLEN, LLP
11940 San Vicente Blvd., Suite 100
LOS ANGELES, CA 90049

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Amit Gupta, et. al.	:	
Application No. 61/361,510	:	NOTICE
Filed: July 5, 2010	:	
Attorney Docket No. FRST.P0016P	:	

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on September 23, 2011.

Counsel explains that fees were inadvertently paid at the small entity rate. Accordingly, the present request under 37 CFR 1.28 was filed, including authorization to charge the fee deficiency of $380 to counsel's deposit account. However, since counsel was not an authorized user of the deposit account, the requisite fees could not be charged.

As a fee deficiency has not been paid, **a fee deficiency cannot be accepted at this time**. This communication is being treated under 1.27(g)(3) as a notification of a loss of entitlement to small entity status.

Applicant is given **ONE MONTH** to submit a complete listing of all the fees erroneously paid as a small entity and the balance of the fee deficiency to avoid the return of the present fee deficiency paper. This time period is not extendable under 37 CFR 1.136(a).

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
40I 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) 272-3226.

Andrea Smith
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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ADELI & TOLLEN, LLP
11940 San Vicente Blvd., Suite 100
LOS ANGELES, CA 90049

MAILED
NOV 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Amit Gupta, et. al.	:	
Application No. 61/361,510	:	NOTICE
Filed: July 5, 2010	:	
Attorney Docket No. FRST.P0016P	:	

This is a Notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on October 18, 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**. Therefore, status as a small entity has been removed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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ROGER P. VANDERLINDEN
1100 BURLOAK DRIVE
SUITE 300
BURLINGTON, ONTARIO L7L 6B2
CANADA

MAILED
JUN 14 2011
OFFICE OF PETITIONS

In re Application of :
Vanderlinden :
Application No. 61/361,588 : ON PETITION
Filed: July 6, 2010 :
Attorney Docket No. 005 RV-143-US :
For: AIR-FLOW CONTROLLING PICK-UP HEAD APPARATUS

This is a decision on the petition under 37 CFR 1.137(b), filed May 13, 2011, to revive the above-identified application.

This application became abandoned for failure to timely reply to the Notice to File Missing Parts of Provisional Application, mailed July 15, 2010, which set a two month shortened statutory period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a) and no reply being received in the Office, this application became abandoned on September 16, 2010. A Notice of Abandonment was mailed on April 5, 2011.

Applicant has submitted a proper reply to the July 15, 2010 Notice in the form of the basic filing fee, a provisional application cover sheet, and the $25.00 surcharge, an acceptable statement of the unintentional nature of the delay in responding to the July 15, 2010 Notice, and the $810.00 petition fee.

All of the requirements under 37 CFR 1.137(b) being met, the petition is **granted**.

After the mailing of this decision, the file will be referred to the Office of Patent Application Processing for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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1100 BURLOAK DRIVE
SUITE 300
BURLINGTON, ONTARIO L7L 6B2
CANADA

MAILED
JUN 14 2011
OFFICE OF PETITIONS

In re Application of :
Vanderlinden :
Application No. 61/361,764 : ON PETITION
Filed: July 6, 2010 :
Attorney Docket No. 005 RV-144-US :
For: DUST SUCTIONING PICK-UP HEAD APPARATUS FOR USE WITH A SWEEPING VEHICLE

This is a decision on the petition under 37 CFR 1.137(b), filed May 13, 2011, to revive the above-identified application.

This application became abandoned for failure to timely reply to the Notice to File Missing Parts of Provisional Application, mailed July 14, 2010, which set a two month shortened statutory period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a) and no reply being received in the Office, this application became abandoned on September 15, 2010. A Notice of Abandonment was mailed on March 21, 2011.

Applicant has submitted a proper reply to the July 14, 2010 Notice in the form of the basic filing fee, a provisional application cover sheet, and the $25.00 surcharge, an acceptable statement of the unintentional nature of the delay in responding to the July 14, 2010 Notice, and the $810.00 petition fee.

All of the requirements under 37 CFR 1.137(b) being met, the petition is **granted**.

After the mailing of this decision, the file will be referred to the Office of Patent Application Processing for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Application:	:	
Collings et al.	:	
Application No. 61/362,257	:	ON PETITION
Filed: July 7, 2010	:	
Attorney Docket No. 083900-005400US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEHR
8922 ELLIS AVENUE
LOS ANGELES CA 90034

MAILED

MAY 16 2011

OFFICE OF PETITIONS

In re Application:	:	
Mavinahally et al.	:	
Application No. 61/362,294	:	NOTICE
Filed: July 7, 2010	:	
Attorney Docket No. LEHR-005	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 21, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **DISMISSED**.

The request under 37 CFR 1.28 cannot be accepted at this time since it appears that the petition is not signed by a person having authority to act in the above-identified patent.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
(3) An assignee as provided for under §3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The instant petition was signed by only one of the three listed inventors. Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney or agent registered to practice before the U.S. Patent and Trademark Office or the assignee of the entire interest under 37 CFR 3.73(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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LEHR
8922 ELLIS AVENUE
LOS ANGELES CA 90034

MAILED
JUN 28 2011
OFFICE OF PETITIONS

In re Application:	:	
Mavinahally et al.	:	
Application No. 61/362,294	:	ON PETITION
Filed: July 7, 2010	:	
Attorney Docket No. LEHR-005	:	

This is a notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 10, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Douglas R. Hansen
353 Lake Wylie Rd.
Belmont, NC 28012

MAILED
JUN 30 2011
OFFICE OF PETITIONS

In re Application of :
Hansen :
Application No.: 61/362,931 : ON PETITION
Filed: July 9, 2010 :
Attorney Docket No. :

This is in response to the petition under 37 CFR 1.137(b) filed May 27, 2011.

The petition under 37 CFR 1.137(b) is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

A "Notice to File Missing Parts of Provisional Application" (the "Notice") was mailed by the Office on July 20, 2010, allowing a shortened period of reply of two-months from its mailing date. Extensions of time set for reply were available pursuant to 37 CFR 1.136(a). No response was received within allowed period, and the application became abandoned on September 21, 2010. A Notice of Abandonment was mailed on April 4, 2011.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (1) above.

In re Application No. 61/362,931

As to item (1), the Notice of July 30, 2010, required payment of a $25.00 surcharge. The surcharge did not accompany the petition, nor was an authorization to charge a deposit account for the same on file. The renewed petition must be accompanied by the $25.00 surcharge.

No petition fee is due with the renewed petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

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

Cc:
Jeffrey Watson
Hammer & Associates, PC
3125 Springbank Lane
Suite G
Charlotte, NC 28226

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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MAILED
JUL 25 2011
OFFICE OF PETITIONS

HAMMER & ASSOCIATES, P.C.
3125 SPRINGBANK LANE
SUITE G
CHARLOTTE NC 28226

In re Application of :
Hansen :
Application No.: 61/362,931 : ON PETITION
Filed: July 9, 2010 :
Attorney Docket No.

This is in response to the petition under 37 CFR 1.137(b) filed July 5, 2011.

The petition under 37 CFR 1.137(b) is **granted**.

A "Notice to File Missing Parts of Provisional Application" (the "Notice") was mailed by the Office on July 20, 2010, allowing a shortened period of reply of two-months from its mailing date. Extensions of time set for reply were available pursuant to 37 CFR 1.136(a). No response was received within allowed period, and the application became abandoned on September 21, 2010. A Notice of Abandonment was mailed on April 4, 2011.

The surcharge of $25.00 is noted as having been received on July 5, 2011.

It is noted that the provisional application expired July 9, 2011, by operation of law.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO CA 94403

MAILED
NOV 15 2010
OFFICE OF PETITIONS

In re Application of
Argento et al.
Application No. 61/363,155
Deposited: July 9, 2010
Attorney Docket No. 10283-713.101
Title of Invention: Intraocular Lens Delivery Systems

DECISION DISMISSING PETITION

This is a decision on the petition filed September 16, 2010, requesting that the above-identified provisional application be accorded a filing date of July 9, 2010.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

The petition is **DISMISSED**.

The merits of the petition have not been reviewed because petitioner has failed to provide the appropriate petition fee. The $400.00 petition fee is a prerequisite to review of the petition.

A review of the electronic acknowledgment receipt confirms the Office is not in receipt of the $400.00 petition fee. Further a general authorization to charge deposit account 50-4050 has not been provided.

Further correspondence with respect to this matter may be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450

	Alexandria, VA 22313-1450
By facsimile:	(571)273-8300
By delivery service: FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petition Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

DEC 15 2010

OFFICE OF PETITIONS

SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO CA 94403

In re Application of Argento et al. Application No. 61/363,155 Deposited: July 9, 2010 Attorney Docket No. 10283-713.101 Title of Invention: Intraocular Lens Delivery Systems	DECISION GRANTING PETITION

This is a decision on the renewed petition filed November 19, 2010, requesting that the above-identified provisional application be accorded a filing date of July 9, 2010.

The application was deposited on July 9, 2010. However, on July 16, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" advising applicant that the application papers had not been accorded a filing date because the application was deposited without a specification as prescribed by 35 USC 112.

In response, on September 16 2010, the present petition was filed. Petitioners argue that the text submitted on petition describes that which is clearly and inherently shown in figures 1-13 which were filed on July 9, 2010. In essence petitioner states that the drawings are sufficient to satisfy the embodiment of the invention. Petitioner has also provided a detailed description of the invention on a separate page. Petitioner states the detailed description of the invention submitted on petition does not add new matter.

It is the practice of the Office to accord a filing date to an application that appears to comply with the requirements for according a filing date. As such drawings alone may be sufficient to provide the written description requirement of 35 USC 112. *See Vas-Cath, Inc. v. Maharkur*, 935 F.2d 155, 19 U.S.P.Q.2d 1111 (Fed. Cir. 1991). The present provisional application appears to

comply with the requirements for a filing date. It is not necessary to now determine whether this provisional application will adequately support any non-provisional application claiming the benefit of its filing date. In this instance, the thirteen(13)pages of drawings will be construed as the written description required by 35 USC 112.

Petitioner is also reminded, the filing date of a provisional application is the date on which a specification as prescribed by the first paragraph of 35 U.S.C. 112, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No amendment, other than to make the provisional application comply with the patent statute and all applicable regulations, may be made to the provisional application after the filing date of the provisional application. See 35 U.S.C. 111(b)(4) and 37 C.F.R. 1.53(c). Thus, in a provisional application, petitioner does not have the option of amending the application on the basis that the specification does not constitute new matter. Pursuant to 37 CFR 1.121(k),amendments in provisional applications are not usually made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.

As such only the application papers filed on July 9, 2010 will be considered part of the application. The "Detailed Description of the Invention" submitted on September 16, 2010 will not be considered part of the application.

The petition is **granted** to the extent indicated.

The petition fee will not be refunded because the petition was not necessitated by Office error.

The application will be processed with only the papers present on filing and is hereby accorded a filing date of **July 9, 2010**.

The application is being returned to the Office of Patent Application Processing for further processing.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petition 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

ATT: GREGORY D. LEIBOLD
MERCHANT & GOULD P.C.
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

MAILED
SEP 17 2010
OFFICE OF PETITIONS

In re Application of Shahar Prish Application No. 61/363,254 Filed: July 11, 2010 Attorney Docket No. 14917.1552USP1/330170.01	: : : : : :	DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181 (no fee), fled September 3, 2010, requesting refund of the filing fee for the above-identified application.

The petition is **GRANTED**.

Petitioner asserts that the instant application was an unintended duplicate filing via EFS-Web.

37 CFR 1.26(a) states, in part: "The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee."

However, the Office may find a mistake pursuant to 37 CFR 1.26, waive the presumption in 37 CFR 1.26 that applications are not entitled to filing fee refunds, and refund the filing fees associated with unintended duplicate application filings via EFS-Web.

The Office has accepted petitioner's statement as an assertion that the duplicate application was filed by mistake. Accordingly, the filing fee of $220.00, submitted on July 11, 2010, has been credited to petitioner's deposit account number as requested.

As no further action will be taken in this application, this matter is being referred to the Office of Patent Publication for express abandonment of the subject application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
61/363,446	07/12/2010	Alan Daniel Brown	PC71697	8398

7590 01/24/2011

PFIZER INC.
PATENT DEPARTMENT
Bld 114 M/S 9114
EASTERN POINT ROAD
GROTON, CT 06340

EXAMINER

ART UNIT	PAPER NUMBER

NOTIFICATION DATE	DELIVERY MODE
01/24/2011	ELECTRONIC

Decision Granting Petition under 37 CFR 1.138(c)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(c), for express abandonment to avoid publication of the above-identified application.

The petition is granted.

The express abandonment is recognized and the application has been withdrawn from publication.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Kaletus Buchana

Patent Publication Branch
Office of Data Management

FORM PET650G (Rev. 08/07)

UNITED STATES 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 11 2011
OFFICE OF PETITIONS

WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re
TenHouten, et al.
Application No. 61/363,470
Filed: July 12, 2010
Attorney Docket No. C1316.70005US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $135, representing $110 for the provisional application filing fee and $25 surcharge, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
61/363,508	07/12/2010	David James Rawson	PC71698	8649

EXAMINER

7590 01/24/2011

PFIZER INC.
PATENT DEPARTMENT
Bld 114 M/S 9114
EASTERN POINT ROAD
GROTON, CT 06340

ART UNIT	PAPER NUMBER

NOTIFICATION DATE	DELIVERY MODE
01/24/2011	ELECTRONIC

Decision Granting Petition under 37 CFR 1.138(c)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(c), for express abandonment to avoid publication of the above-identified application.

The petition is granted.

The express abandonment is recognized and the application has been withdrawn from publication.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Patent Publication Branch
Office of Data Management

FORM PET650G (Rev. 08/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

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PATENT SERVICES
101 COLUMBIA ROAD
P.O. BOX 2245
MORRISTOWN, NJ 07962

MAILED

OCT 3 1 2011

OFFICE OF PETITIONS

In re Application of :
CLAUDIA HANSEN et al :
Application No. 61/363,871 :
Filed: July 13, 2010 :
AttorneyDocketNo.:H0027965/8364/112753/3280 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed, August 22, 2011, to change the name of inventors "Andre Piesker" and "Tomy Hofmann" to "Andrea Barbara Piesker" and "Tomy Theodor Hofmann" respectively.

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 the undersigned at (571) 272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: HUSCH BLACKWELL LLP
120 SOUTH RIVERSIDE PLAZA-SUITE 2200
CHICAGO, ILLINOIS, 60606-3912

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
61/363,871	07/13/2010		220	H0027965/8364/112753/3280		

CONFIRMATION NO. 1208

CORRECTED FILING RECEIPT

OC000000050693708

92556
HONEYWELL/HUSCH
Patent Services
101 Columbia Road
P.O.Box 2245
Morrlstown, NJ 07962

Date Mailed: 10/31/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Claudia Hansen, Gersfeld, GERMANY;
Andrea Barbara Piesker, Kuenzell, GERMANY;
Tomy Theodor Hofmann, Fulda, GERMANY;
Grigori Gossen, Gersfeld, GERMANY;

Power of Attorney:
Paul Vargo--29116

If Required, Foreign Filing License Granted: 07/28/2010
The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/363,871**
Projected Publication Date: None, application is not eligible for pre-grant publication
Non-Publication Request: No
Early Publication Request: No
Title

Chemical Protective Glove

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing

of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of

State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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LANDO & ANASTASI, LLP
Z2011
ONE MAIN STREET, SUITE 1100
CAMBRIDGE MA 02142

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Sheldon S. White et al.	:	
Application No. 61/363,876	:	NOTICE
Filed: July 13, 2010	:	
Attorney Docket No. **Z2011-700700**	:	

This is a notice regarding your request filed August 4, 2010, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

JoAnne Burke
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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DRINKER BIDDLE & REATH
ATTN: INTELLECTUAL PROPERTY GROUP
ONE LOGAN SQUARE, SUITE 2000
PHILADELPHIA PA 19103-6996

MAILED

MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
Robb Fujioka	:	
Application No. 61/365,038	:	DECISION ON PETITION
Filed: July 16, 2010	:	TO WITHDRAW
Attorney Docket No. 203103-0022-00-P1 448583	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 14, 2011.

The request is **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 McWilliams, on behalf of all attorneys/agents of record. All attorneys/agents of record 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: Robb Fujioka
1710 N. Meadows Avenue
Manhattan Beach, CA 90266

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
61/365,038	07/16/2010	Robb Fujioka	203103-0022-00-P1 448583

CONFIRMATION NO. 5240

POWER OF ATTORNEY NOTICE

23973
DRINKER BIDDLE & REATH
ATTN: INTELLECTUAL PROPERTY GROUP
ONE LOGAN SQUARE, SUITE 2000
PHILADELPHIA, PA 19103-6996

OC000000047560307

Date Mailed: 05/09/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/14/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/kainabinet/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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MAY 19 2011
OFFICE OF PETITIONS

VALAUSKAS CORDER LLC
150 SOUTH WACKER DRIVE
SUITE 620
CHICAGO IL 60606

In re Application of	:	
Zhe Chen	:	
Application No. 61/365,175	:	ON PETITION
Filed: July 16, 2010	:	
Attorney Docket No. 7805/67	:	

This is a decision on the petition to revive under 37 CFR 1.137(a), filed May 6, 2011, which is being 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-identified application became abandoned for failure to timely file a reply in response to the Notice to File Missing Parts, mailed August 5, 2010. This Notice set an extendable period for reply of two (2) months for applicant to submit a provisional application cover sheet, together with a $25 surcharge for its late filing. No reply having been received, the application became abandoned on October 6, 2010. The Office mailed a Notice of Abandonment on April 12, 2011.

Petitioner states that he did not receive the August 5, 2010 Notice to File Missing Parts. In support thereof, petitioner has included a copy of a master docket report, showing all of the firm's replies docketed for due dates between August 1, 2010 to November 30, 2010.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.[1] A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."[2] "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."[3]

Petitioner has met the above requirements. Accordingly, it is concluded that petitioner did not receive the August 5, 2010 Notice to File Missing Parts.

Receipt of the provisional application cover sheet and $25 surcharge is acknowledged.

The provisional application is being forwarded to the Office of Patent Application Processing for completion of processing.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

---

[1] See MPEP 711.03(c)(II).

[2] Id.

[3] Id.

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OCT 11 2011
OFFICE OF PETITIONS

WOLF GREENFIELD & SACKS PC
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re
Trenne, et al.
Application No. 61/365,213
Filed: July 16, 2010
Attorney Docket No. C1316.70002US00

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 22, 2011.

The fee deficiency submission under 37 CFR 1.28 of $380, representing $110 for the provisional application filing fee, $25 surcharge, and $245 extension of time fee, is hereby accepted.

The change of status to large entity has been entered.

Deposit Account No. 23-2825 has been charged $135, as authorized.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450

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JUN 14 2011
OFFICE OF PETITIONS

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

In re Application of	:	
Ilan REUVEN	:	DECISION DISMISSING PETITION
Application No. 61/365,898	:	UNDER 37 CFR 1.137(b)
Filed: July 20, 2010	:	
Atty. Docket No.: 12808.110FPP1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 5, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Petitioner is given TWO (2) MONTHS from the mailing date of this decision to reply, correction the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.137(b)," and should only address the deficiencies noted below. Any extensions of time will be governed by 37 CFR 1.136(a).

The application became abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed August 4, 2010 (Notice), which set a period of reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on October 5, 2010.

A grantable petition under 37 CFR 1.137(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 in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The present petition lacks item (1).

Regarding item (1), whereas Petitioner has filed a supplemental application data statement (ADS) on May 5, 2011, the supplemental ADS has not been signed in accordance with 37 CFR 1.33(b). Therefore, the reply is inappropriate and the petition is not grantable.

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 Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571)273-8300**.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

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JUL 19 2011
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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

In re Application of	:	
Ilan REUVEN	:	DECISION GRANTING PETITION
Application No. 61/365,898	:	UNDER 37 CFR 1.137(b)
Filed: July 20, 2010	:	
Atty. Docket No.: 12808.110FPP1	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 6, 2011.

The petition is **GRANTED.**

The application became abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed August 4, 2010 (Notice), which set a period of reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on October 5, 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a response to the Notice mailed August 4, 2010, (2) a petition fee of $1620, and (3) a statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

Ramesh Krishnamurthy
for Anthony Knight
Director
Office of Petitions

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Alexandria, VA 22313-1450
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JUN 27 2011

OFFICE OF PETITIONS

ERICKSON LAW GROUP, PC
1749 S. NAPERVILLE ROAD
SUITE 202
WHEATON, IL 60189

In re Application of	:	
Lindee et al.	:	
Application No. 61/366,033	:	ON PETITION
Filed: July 20, 2010	:	
Attorney Docket No. 2188P0970US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 26, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely file a reply to the Notice to File Missing Parts of Provisional Application, mailed August 5, 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 October 6, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The petition fee of $810 as set forth in 37 CFR 1.17(m) to revive an unintentionally abandoned application will be charged to the deposit account as authorized.

While the Office recognizes that the petitioner submitted the provisional application cover sheet and surcharge of $50, the petition lacks item (3) the statement of unintentional delay. Petitioner must submit 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."

Accordingly, this application cannot be revived until the required statement of unintentional delay is submitted.

Petitioner is reminded that this application will not be regarded as pending under any circumstances after twelve months from its filing date of July 20, 2010. See 35 USC 119(e)(3).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By Internet: EFS-Web[1]

The centralized facsimile number is **(571) 273-8300.**

Any questions concerning this matter may be directed to the undersigned at (571) 272-6059.

Alicia Kelley-Collier
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 Patent and Trademark Office
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ERICKSON LAW GROUP, PC
1749 S. NAPERVILLE ROAD
SUITE 202
WHEATON, IL 60189

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AUG 22 2011

OFFICE OF PETITIONS

In re Application of	:	
Lindee et al.	:	
Application No. 61/366,033	:	ON PETITION
Filed: July 20, 2010	:	
Attorney Docket No. 2188P0970US	:	

This is a decision on the petition filed April 26, 2011 and supplemented on June 27, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely file a reply to the Notice to File Missing Parts of Provisional Application, mailed August 5, 2010. The Notice set a period for reply of two (2) months from the mail date of the Notice. Accordingly, a reply was due on or before October 5, 2010. A Notice of Abandonment was mailed on April 26, 2011.

Petitioner asserts that a timely reply was filed on November 5, 2010 via the Electronic Filing System (EFS) and therefore requests that the abandonment be rescinded. To support this assertion the petitioner has submitted a copy of the previously filed response, which includes the following: The Provisional Application Cover Sheet, processing fee of $50, surcharge of $50 and accompanied by a copy of the Electronic Acknowledgment Receipt.

A review of the file record indicates that the Office did in fact receive the response submitted on November 5, 2010, via the Electronic Filing System which was accompanied by an Electronic Acknowledgment Receipt that provided authorization to charge fees under 37 CFR 1.16, 1.17, 1.19, 1.20 and 1.21. Since the Office was given authorization to charge the deposit account for the one (1) month extension of time due on November 5, 2010, the response is considered as being timely filed.

Accordingly, the holding of abandonment for failure to timely file a reply to the Notice to File Missing Parts of Provisional Application mailed August 5, 2010, is hereby withdrawn and the application restored to pending status.

The fee in the amount of $745 will be refunded to the deposit account in due course.

Petitioner is reminded that this application will not be regarded as pending under any circumstances after twelve months from its filing date of July 20, 2010. See 35 USC 119(e)(3).

This application file is being referred to the Office of Patent Application Processing (OPAP) for further pre-examination processing.

Telephone inquiries concerning this decision should be directed to Alicia Kelley-Collier at (571) 272-6059. Telephone inquiries related to OPAP processing should be directed to their hotline at (571) 272-4000

Liana Walsh
Petitions Examiner
Office of Petitions

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TODD S. PARKHURST
HUGHES SOCOL PIERS RESNICK & DYM LTD.
THREE FIRST NATIONAL PLAZA
70 WEST MADISON, SUITE 4000
CHICAGO IL 60602

MAILED

JUN 02 2011

OFFICE OF PETITIONS

In re Application of
Patty Fu-Giles
Application No. 61/366,350
Filed: July 21, 2010
Attorney Docket No. 20602.201261

ON PETITION

This is a decision on the petition filed April 29, 2011, to revive the above identified application under 37 CFR 1.137(b)[1].

The petition is **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 "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned on October 13, 2010, for failure to file a timely response to the Notice to File Missing Parts "Notice" mailed August 9, 2010, which set a two (2) month shortened statutory period for reply. Accordingly, a Notice of Abandonment was mailed April 14, 2011.

A response to the Notice to File Missing Parts has been provided however, the city of "UNIVERSITY PA", does not exist. Petitioners have therefore not fully complied with the Notice to File Missing Parts which required a Provisional Cover Sheet that includes the

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[1] A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The 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)).

inventor's residence city. If petitioner intends for the residence city to be "UNIVERSITY PARK", IL, a corrected Provisional Cover Sheet and the surcharge for late filing should be filed.

The request for reconsideration with the appropriate fees should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No.

Martin S. Zemitis
48 Bacon Court
Lafeyette CA 94549

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SEP 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Martin Zemitis	:	DECISION ON PETITION
Application No. 61/366,921	:	
Filed: July 22, 2010	:	
Title: FLEXIBLE HOLLOW POLE	:	
SLEEVE FRAME STRUCTURE WITH	:	
INTEGRAL FABRIC HUB	:	
INTERSECTIONS	:	

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)" filed May 4, 2011.

The petition is **GRANTED**.

The above-identified provisional application became abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application mailed August 5, 2010. The Notice set a two-month period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply received and no extension of time obtained, the application became abandoned effective October 6, 2010. A courtesy Notice of Abandonment was mailed on April 11, 2011.

In response, applicant filed the instant petition, requesting revival based on unintentional delay. The petition included the required reply in the form of payment of the filing fee and late surcharge; the required statement of unintentional delay; and the petition fee for revival pursuant to 37 CFR 1.137(b).

This petition is granted to revive this provisional application for the 12-month period following the filing of the provisional

application. This provisional application is not considered pending after 12 months from its filing date.

The application is being returned to the Office of Patent Application Processing for processing of the response to the Notice to File Missing Parts, payment of the required fees, filed May 4, 2011.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MORGAN, LEWIS & BOCKIUS, LLP (SF)
One Market, Spear Street Tower, Suite 2800
San Francisco, CA 94105

MAILED

JAN 04 2011

OFFICE OF PETITIONS

In re Application of
Kurt Jarnagin, et. al.
Application No. 61/368,205
Filed: July 27, 2010
Attorney Docket No. 064507-5067-PR

DECISION GRANTNG PETITION

This is a decision on the petition filed October 15, 2010 requesting that the above-identified provisional application be accorded a filing date of July 27, 2010.

The instant petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Tuan N. Nguyen appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The application was deposited on July 27, 2010. However, on August 17, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (Notice) requiring drawings and stating that the filing date of the application would be the date of receipt of the omitted drawings.

In response, on October 15, 2010, the present petition was filed. Petitioner states "..., because the disclosed subject matter is described in a manner that can be understood by one of skill in the art, it is believed that the furnishing of drawings is not necessary under 35 USC 113." and, therefore, the application should be accorded the filing date of July 27, 2010.

Since the petition contains a statement that the drawings are not necessary, the petition is **granted**.

In view of the above, the petition fee of $400 has been credited to petitioner's deposit account.

This application file is being referred to the Office of Patent Application Processing for further processing with a filing date of July 27, 2010.

Telephone inquiries concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of
Glenn Belcher
Application No. 61/368,562
Filed: July 28, 2010
Attorney Docket No. VIPO/0002L

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed, August 17, 2010, to change the name of inventor "Glenn Belcher" to -- Garry Glenn Belcher, Jr. --.

The petition is **DISMISSED**.

The petition under 37 CFR 1.182 to change an inventor's name must include (1) an appropriate petition fee, (2) a statement signed by the inventor setting forth both names and (3) the procedure whereby the change of name was effected, or a copy of the court order.

Petitioner has failed to comply with item (2) above, which requires the inventor to submit a statement as set forth under MPEP section 605.04(c).

In view of the above, the petition to change the inventor's name under 37 CFR 1.182 cannot be granted at this time.

Additionally, petitioner's deposit account has been charged the $400.00 required petition fee as authorized on August 17, 2010.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITIONS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By 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.**

Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Glenn Belcher, Jr.	:	
Application No. 61/368,562	:	ON PETITION
Filed: July 28, 2010	:	
Attorney Docket No. VIPO/0002L	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.182, filed March 24, 2011, to change the name of an inventor.

The petition is **GRANTED**.

The name will be changed from "Glenn Belcher" to – Glenn Belcher, Jr. --.

Telephone inquiries regarding this decision should be directed to Joan Olszewski at (571) 272-7751. All other inquiries should be directed to the Technology Center.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/368,562	07/28/2010		110	VIPO/0002L		

CONFIRMATION NO. 1359

CORRECTED FILING RECEIPT

26290
PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON, TX 77056

OC000000047010521

Date Mailed: 04/07/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

GLENN BELCHER JR., Jamestown, NC;

Power of Attorney:
Keith Tackett--32008

If Required, Foreign Filing License Granted: 08/06/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/368,562**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****
Title

POLYETHYLENE CAPPING MATERIAL FOR WOOD COMPOSITE

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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Alexandria, VA 22313-1450
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PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056

MAILED
APR 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Glenn Belcher, Jr.	:	
Application No. 61/368,562	:	ON PETITION
Filed: July 28, 2010	:	
Attorney Docket No. VIPO/0002L	:	

CORRECTED DECISION

This is a decision on the renewed petition under 37 C.F.R. § 1.182, filed April 21, 2011, to change the name of an inventor.

The petition is **GRANTED**.

The name will be changed from "Glenn Belcher" to -- Garry Glenn Belcher, Jr. --.

Telephone inquiries regarding this decision should be directed to Joan Olszewski at (571) 272-7751. All other inquiries should be directed to the Technology Center.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/368,562	07/28/2010		110	VIPO/0002L		

CONFIRMATION NO. 1359

CORRECTED FILING RECEIPT

26290
PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON, TX 77056

OC000000047376103

Date Mailed: 04/27/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

GARRY GLENN BELCHER JR., Jamestown, NC;

Power of Attorney:
Keith Tackett--32008

If Required, Foreign Filing License Granted: 08/06/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/368,562**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****
Title

POLYETHYLENE CAPPING MATERIAL FOR WOOD COMPOSITE

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET, SUITE 1800
SAN ANTONIO TX 78205-1521

MAILED

OCT 04 2011

OFFICE OF PETITIONS

In re application of	:	NOTICE
Mark Kevin Hennig	:	
Application No. 61/368,960	:	
Filed: July 29, 2010	:	
Attorney Docket No. 30610.88	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 on September 19, 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 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) 272-3208.

/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

MAILED

OCT 17 2011

OFFICE OF PETITIONS

COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET, SUITE 1800
SAN ANTONIO, TX 78205-1521

In re Application of	:	
Frank Joseph Sonzala, et al.	:	
Application No. 61/369,537	:	NOTICE
Filed: July 30, 2010	:	
Attorney Docket No.: 30610.80	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed September 19, 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**.

Status as a small entity has been changed.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Michael J. Lang
1234 East Monte Cristo
Phoenix AZ 85022

MAILED

JUL 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Peter Barthe et al.	:	
Application No. 61/369,782	:	DECISION ON PETITION
Filing Date: August 2, 2010	:	
Attorney Docket No.	:	

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**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisonal Application (Notice), mailed August 13, 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 October 14, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the basic filing fee and surcharge, (2) the petition fee of $810 (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 Patent Application Processing.

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

CHOATE/NOVOMER
TWO INTERNATIONAL PLACE
BOSTON MA 02110

MAILED

FEB 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Scott D. ALLEN et al.	:	
Application No. 61/369,853	:	DECISION ON PETITION
Filed: August 02, 2010	:	
Attorney Docket No. NOV-004	:	

This is a decision on the petition under 37 CFR 1.53(e), filed October 15, 2010, to accord a filing date.

On August 17, 2010, the Office mailed a Notice of Incomplete Provisional Application, stating that a filing date has not been accorded to the above-identified application, indicating that the application was deposited without drawings application.

Petitioner asserts that no drawings are necessary for the filing of the subject provisional application under 35 USC 113 (first sentence), pursuant to MPEP 601.01 (f).

A review of the Office records indicates that drawings are in fact **not necessary** for the filing of the subject application and that the requirements under 35 USC 113 (first sentence) pursuant to MPEP 601.01(f) have been met.

Accordingly, this application is entitled to a filing date of August 02, 2010, and has been so accorded.

In view of the above, the petition is **GRANTED**. The petition fee of $400.00 will be credited to petitioner's deposit account.

This application file is being referred to the Office of Patent Application Processing.

Telephone inquiries relating to this decision 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

JUSTIN B. BENDER, ESQ.
445 PARK AVENUE, 9TH FLOOR
NEW YORK NY 10022

MAILED

JUL 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Michael Francis DOLAN	:	
Application No. 61/370,015	:	DECISION ON PETITION
Filed: August 02, 2010	:	
Attorney Docket No. 012-021/US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 19, 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 Provisional Application (Notice), mailed August 16, 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 October 17, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item **(1)**.

The $25.00 surcharge (for late submission filing fee or cover sheet) was not submitted as required by the notice mailed August 16, 2010.

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) 272-4231.

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

JUSTIN B. BENDER, ESQ.
445 PARK AVENUE, 9TH FLOOR
NEW YORK NY 10022

MAILED
JUL 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Michael Francis DOLAN	:	
Application No. 61/370,015	:	DECISION ON PETITION
Filed: August 02, 2010	:	
Attorney Docket No. 012-021/US	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed July 08, 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 Provisional Application (Notice), mailed August 16, 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 October 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 the required fees, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice to File Missing Parts of Provisional Application of August 16, 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 the Office of Patent Application Processing.

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

Ilanit Abehsera
1200 S Crescent Heights B
Los Angeles, CA 90035

MAILED

SEP 23 2011

OFFICE OF PETITIONS

In re Application of :
Ilanit Abehsera :
Application No. 61/370,464 : ON PETITION
Filed: August 4, 2010 :
Attorney Docket No. N/A :

This is a decision on the communication filed July 1, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee), to withdraw the holding of abandonment in the above-identified application.

The petition is **dismissed**.

This application was held abandoned for failure to respond to the Notice to File Missing Parts of Provisional Application (Notice) mailed August 17, 2010. A Notice of Abandonment was mailed on April 26, 2011.

Petitioner asserts "The delay in responding to Notice to File Missing Parts (08/17/2010) was unintentional, since we never received such notice."

Since a review of the record indicates no irregularity in the mailing of the Notice mailed August 17, 2010, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. Therefore, the burden of proof is upon petitioner to prove to the Office that the Notice of August 17, 2010, was never received[1].

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where

[1] To complete petitioner's records, a courtesy copy of the Notice mailed August 17, 2010, is enclosed with this decision.

petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice of August 17, 2010, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after August 17, 2010, to demonstrate non-receipt of the Notice. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to correspondence from the Office, and where petitioner would have entered the receipt date of the Notice had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Notice, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the Notice was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after August 17, 2010; the period when he would have received the Notice.

In the present petition, petitioner did not submit any documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the Notice. Thus, the petition to withdraw the holding of abandonment cannot be granted at this time.

ALTERNATIVE VENUE

If petitioner cannot supply the necessary evidence needed to show non-receipt of the Notice mailed August 17, 2010, as required by 37 CFR 1.181, then petitioner may wish to file an alternative petition under 37 CFR 1.137(b) and pay the $930 petition fee[2]. The form for filing a petition to revive under 37 CFR 1.137(b) accompanies this decision for petitioner's convenience.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by: (1) The reply required to the outstanding Office action or notice, unless previously filed;(2) The **$930** petition fee as set forth in 37 CFR 1.17(m); and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional[3].

Any request for reconsideration of this decision should be submitted within **TWO (2) MONTHS** from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

---

[2] Effective September 26, 2011, the petition fee was increased from $810 to $930.

[3] The Director may require additional information where there is a question whether the delay was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosures: Courtesy copy of the Notice to File Missing Parts of Provisional Application mailed August 17, 2010; Privacy Act Statement and a Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b) (Form PTO/SB/64).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP
1800 WEST PARK DRIVE, SUITE 400
WESTBOROUGH MA 01581-3596

MAILED
MAY 10 2011
OFFICE OF PETITIONS

In re Application of	:	
Moll, Rainer	:	
Application No. 61/370,524	:	ON PETITION
Filed: August 4, 2010	:	
Attorney Docket No. 13797-01029	:	

This is a notice regarding your request, April 5, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This 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.

Liana Walsh
Petitions Examiner
Office of Petitions

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DEQIANG NIU
30 GRAPEVINE AVE
LEXINGTON MA 02421

MAILED

NOV 16 2010

OFFICE OF PETITIONS

In re Application:	:	
Niu et al.	:	
Application No. 61/371,396	:	ON PETITION
Filed: August 6, 2010	:	
Attorney Docket No. 2007878-0089	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 29, 2010.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Further, the address given on the petition differs from the new address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: John P. Rearick
Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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www.uspto.gov

Fanelli Strain & Haag PLLC
1455 Pennsylvania Ave., N.W., Suite 400
Washington DC 20004

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of :
HAACK et al. :
Application No. 61/371,525 : ON PETITION
Filed: August 6, 2010 :
Attorney Docket No. 00053-0006-001 :

This is a decision on the PETITION UNDER 37 CFR 1.53(c) TO RECONSIDER NOTICE OF OMITTED ITEM(S) IN A PROVISIONAL APPLICATION, filed November 10, 2010, which is being treated as a request to withdraw that the Notice of Omitted Item(s) in a Provisional Application mailed September 17, 2010.

On August 6, 2010, applicants filed the above-identified application. However, on September 17, 2010, the Office mailed a Notice of Omitted Item(s) in a Provisional Application, stating that the application had been accorded a filing date of August 6, 2010, and advising applicant that Figures 1A and 1B described in the specification appeared to have been omitted.

In response, on November 10, 2010, applicants filed the present petition and the petition fee. Applicants assert that Figures 1A and 1B were not omitted from the application papers as filed on August 6, 2010. Applicants explain:

> With regard to the description of Figure 1, the specification indicates on page 5, line 16 to page 6, line 4 and on page 42, lines 15-17 that Figure 1 comprises two exposures (1A and 1B) of a Western Blot. *See* attached EXHIBIT D and EXHIBIT E. Figure 1 shows the results of a Western Blot that was exposed for 1 second and 15 seconds, as labeled in the right column of Figure 1. *See* attached EXHIBIT A. Thus, when observing Figure 1, it is clear that the two Western Blot exposures referenced in the specification as Figure 1A and 1B are present in Figure 1, as filed. Consequently, Applicants assert that Figure(s) 1A and 1B were not omitted from the application as filed and therefore request reconsideration of the Notice of Omitted Item(s).

Petition, pp. 1-2.

Upon considering applicants' argument, it appears that no drawings were actually missing on August 6, 2010. However, the Notice of Omitted Item(s) in a Provisional Application was correct in stating that Figures 1A and 1B described in the specification appeared to have been omitted. Therefore, the Notice of Omitted Item(s) in a Provisional Application was properly mailed and will not be withdrawn.

Accordingly, the petition is dismissed.

The petition fee will not be refunded because the present petition was not necessitated by any error on the part of the USPTO.

The Office reminds applicants that amendments, other than those required to make the provisional application comply with applicable regulations, are not permitted after the filing date of the provisional application. MPEP 601.01(b). Likewise, in view of the relatively low filing fee for provisional applications, and the desire of the USPTO to minimize the processing of provisional applications, the USPTO will not grant petitions under 37 CFR 1.182 to accept omitted page(s) or drawing(s) and accord an application filing date as of the date of such submission in provisional applications. The applicant should simply file a new completed provisional application. MPEP 601.01(d).

This matter is being referred to the Office of Patent Application Processing to process the application with a filing date of August 6, 2010, using the papers filed on that date.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JOSEPH L. STRABALA, ESQ.
ONE EMBARCADERO CENTER
SUITE 1020
SAN FRANCISCO CA 94111

MAILED

JAN 27 2011

OFFICE OF PETITIONS

In re Application of	:	
LANDMAN et al.	:	ON PETITION
Application No. 61/371,670	:	
Filed: 08/07/2010	:	
Attorney Docket No. 1416.6	:	

This is in response to the petition under 37 CFR 1.137(a), filed November 15, 2010, to revive the above-identified application.

The petition is **dismissed as moot**.

On August 19, 2010, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, which set a period of two months from the date of the Notice within which to submit a $110.00 statutory basic filing fee and a $25.00 surcharge. The Notice indicated that extensions of this time period could be obtained by under the provisions of 37 CFR 1.136(a). On November 15, 2010, applicants filed the present petition.

As stated above, the Notice to File Missing Parts set a two-month extendable period from August 19, 2010 (the mail date of the decision), for applicants to submit the statutory basic filing fee and the surcharge. Applicants were permitted to extend the period for response up to five months under 37 CFR 1.136(a) (i.e. on or before March 19, 2011).

The record shows that applicants submitted the missing requirements in response to the Notice on November 15, 2010, within the extendable period for reply. Accordingly, the reply is considered timely filed with a one-month extension of time and fee. As the application is not abandoned, the petition fee of $270.00 is not required. Therefore, the Office will apply this fee toward the necessary one month extension of time fee of $65.00. The balance of $205.00 will be refunded in due course.

The application remains in pending status in view of the fact that a reply was timely filed on November 15, 2010, with a one month extension of time.

This matter is being referred to the Office of Patent Application Processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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MAILED

AUG 25 2011

OFFICE OF PETITIONS

WILLIAM J. KOLEGRAFF
3119 TURNBERRY WAY
JAMUL CA 91935

In re Application of
Jun
Application No.: 61/372,038
Filed: August 9, 2010
Attorney Docket No. JUA-01

ON PETITION

This is in response to the petition under 37 CFR 1.137(b) filed August 8, 2011.

The petition under 37 CFR 1.137(b) is **granted**.

A "Notice to File Missing Parts of Provisional Application" (the "Notice") was mailed by the Office on August 16, 2010, allowing a shortened period of reply of two-months from its mailing date. Extensions of time set for reply were available pursuant to 37 CFR 1.136(a). No response was received within allowed period, and the application became abandoned on October 17, 2010. A Notice of Abandonment was mailed on April 25, 2011.

The surcharge of $25.00 and filing fee are noted as having been received on August 8, 2011. The provisional application coversheet was also received on August8, 2011.

It is noted that the provisional application will expire at midnight on August 9, 2011, by operation of law.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
DEC 03 2010
OFFICE OF PETITIONS

WESTERN DIGITAL CORPORATION
ATTN: LESLEY NING/IP LAW DEPARTMENT
3355 MICHELSON DRIVE, SUITE 100
IRVINE CA 92612

In re Application of	:	
William B. Boyle et al	:	
Application No. 61/372,045	:	DECISION ON PETITION
Filed: August 9, 2010	:	
Attorney Docket No. T4393.P	:	

This is a decision on the request filed August 11, 2010 and resubmitted on August 16, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting refund of the filing fee for the above-identified application.

The petition is **GRANTED**.

Petitioner asserts that the instant application was an unintended duplicate filing via EFS-Web.

37 CFR 1.26(a) states, in part: "The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee."

However, the Office may find a mistake pursuant to 37 CFR 1.26, waive the presumption in 37 CFR 1.26 that applications are not entitled to filing fee refunds, and refund the filing fees associated with unintended duplicate application filings via EFS-Web.

The Office has accepted petitioner's statement as an assertion that the duplicate application was filed by mistake. Accordingly, the filing fee of $220.00, submitted on August 9, 2010, has been credited to petitioner's deposit account no. 23-1209 as authorized.

The request for refund of the filing fee will normally be construed as a request to expressly abandon the above-mentioned application. It is noted that the instant application is already abandoned, either by operation of law, or through the filing of a declaration of express abandonment by applicant. Accordingly, no further action will be taken in this application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitioner 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

THEMIS LAW
7979 IVANHOE AVE STE 400
LA JOLLA CA 92037

MAILED
JAN 11 2011
OFFICE OF PETITIONS

In re Application of
Carol A. Kruse
Application No. 61/372,067
Filed: August 9, 2010
Attorney Docket No. 10162.00009

: ON PETITION

This is a decision on the petition filed under 37 CFR 1.182 on September 23, 2010, requesting that the above-identified application be accorded a filing date of August 9, 2010, in response to the Notice of Omitted Items mailed September 23, 2010.

The petition is **DISMISSED**.

On August 9, 2010, the application was filed. On September 23, 2010, the Office of Data Management mailed a Notice of Omitted Items in a Provisional Application stating that the application had been accorded a filing date of August 9, 2010, but that Figures 10-11 described in the specification appeared to have been omitted.

In response, petitioner concedes that Figures 10-11 were inadvertently omitted and argues that "the omission was due to a technical glitch during the conversion from a Word file to the PDF file used for EFS submission. Accordingly, the omission of FIGS. 10 and 11 was inadvertent and without deceptive intent." Petitioners request that the application, including Figures 10-11, be accorded a filing date of August 9, 2010.

As Figures 10-11 were not filed with the application, and since this was all due to applicant's filing error, the Notice of Omitted Items correctly stated that Figures 10-11 appeared to have been omitted.

Petitioners are advised that for provisional applications, the option to take the later filing date, *i.e.*, the date of submission of the omitted page(s) or drawing(s), is not available.[1] As such, if petitioners desire to have Figures 10-11 considered as part

[1] MPEP 601.01(d). In view of the relatively low filing fee for provisional applications, and the USPTO's desire to minimize the processing of provisional applications, the USPTO will not grant petitions under 37 CFR 1.182 to accept omitted page(s) or drawing(s) and accord an application filing date as of the date of submission in provisional applications. The applicant should simply file a new completed provisional application. Id.

of the application, petitioners should simply file a new completed provisional application, including Figures 10-11.

In view of the above, the petition fee is non-refundable.

The application is being forwarded to the Office of Patent Application Processing for further processing with a filing date of August 9, 2010, using the application papers filed on that date. The drawings filed with the petition will not be used and will not be added to the drawings filed with the application on August 9, 2010.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

John Alumit
16830 Ventura Blvd. Suite 360
Encino CA 91364

MAILED

JUN 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Burton et al.	:	
Application No. 61/372,659	:	DECISION ON PETITION
Filed: August 11, 2010	:	
Attorney Docket No. 23471-001	:	

This is a decision on the petition, filed May 13, 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 **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notice to File Missing Parts of Provisional Application (Notice), mailed August 23, 2010, which set a two (2) month shortened statutory period for reply. A Notice of Abandonment was mailed on April 29, 2011.

Petitioners assert that the Notice dated August 23, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the August 23, 2010 Notice and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received.

The showing required to establish non-receipt of an Office communication must include:

(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 non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt 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 fails to satisfy all of the above-stated requirements. The petition lacks items (1) and (3) above.

Accordingly, absent the required evidence to establish non-receipt of the Notice of August 23, 2010, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioners cannot supply the evidence necessary to withdraw the holding of abandonment, or simply do not wish to, petitioners should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

A copy of the August 23, 2010 Notice to File Missing Parts of Provisional Application is enclosed for petitioners' convenience.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: copy of Notice to File Missing Parts of Nonprovisional Application dated August 23, 2010; copy of filing receipt dated August 23, 2010

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
61/372,659	08/11/2010	Marc Burton	23471-001

CONFIRMATION NO. 8046

FORMALITIES LETTER

81841
John Alumit
16830 Ventura Blvd. Suite 360
Encino, CA 91436

OC000000043110759

Date Mailed: 08/23/2010

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The provisional application cover sheet under 37 CFR 1.51(c)(1), which may be an application data sheet (37 CFR 1.76), is required identifying:
  - either city and state, or city and foreign country, of the residence of each inventor.

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- To avoid abandonment, a surcharge (for late submission of filing fee or cover sheet) as set forth in 37 CFR 1.16(g) of **$25** for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this notice.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **$25** for a small entity
- **$25** Surcharge.

Replies should be mailed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.
https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at http://www.uspto.gov/ebc.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

/amanalac/

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 NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/372,659	08/11/2010		110	23471-001		

CONFIRMATION NO. 8046

FILING RECEIPT

81841
John Alumit
16830 Ventura Blvd. Suite 360
Encino, CA 91436

OC000000043110758

Date Mailed: 08/23/2010

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Marc Burton, Residence Not Provided;
Jeffery Smith, Residence Not Provided;

Power of Attorney:
John Valentino Alumit--62690

If Required, Foreign Filing License Granted: 08/18/2010
The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/372,659**
Projected Publication Date: None, application is not eligible for pre-grant publication
Non-Publication Request: No
Early Publication Request: No
**** SMALL ENTITY ****
Title

DOOR PEEPHOLE BLOCKING DEVICE

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international

patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and

Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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www.uspto.gov

John Alumit
16830 Ventura Blvd. Suite 360
Encino CA 91364

MAILED
JUL 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Burton et al.	:	
Application No. 61/372,659	:	DECISION ON PETITION
Filed: August 11, 2010	:	
Attorney Docket No. 23471-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 24, 2011, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is not a final agency decision.

This application was held abandoned for failure to reply to the Notice to File Missing Parts of Provisional Application (Notice), mailed August 23, 2010, which set a two (2) month shortened statutory period to submit a provisional cover sheet and a $25.00 surcharge. No reply or extensions of time under 37 CFR 1.136(a) being filed, the application became abandoned on October 24, 2010. A Notice of Abandonment was mailed on April 29, 2011.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed.;

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may

require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

Petitioners have not submitted the $25.00 late declaration surcharge that was required by the August 23, 2010 Notice.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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John Alumit
16830 Ventura Blvd. Suite 360
Encino CA 91364

MAILED

AUG 16 2011

OFFICE OF PETITIONS

In re Application of :
Burton et al. :
Application No. 61/372,659 : DECISION ON PETITION
Filed: August 11, 2010 :
Attorney Docket No. 23471-001 :

This is a decision on the constructive renewed petition under 37 CFR 1.137(b), filed August 1, 2011 and resubmitted on August 2, 2011, to revive the above-identified application.

The petition is **dismissed** and the merits of the constructive petition will not be addressed because it is not signed by a proper party.

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)." Petitioners are advised that this is not a final agency decision.

37 CFR 1.33(b) states that any amendments and other papers filed in an application must be signed by (1) an appointed registered attorney or agent; (2) a registered attorney or agent not appointed, but acting in a representative capacity, (3) an assignee under 3.71(b); or (4) all of the named inventors.

The constructive petition is signed by Jay Scoma. Jay Scoma has not provided an attorney registration number and a review of Office records does not reveal that a person named Jay Scoma has been assigned a registration number. Jay Scoma has not shown that he is an authorized representative of an assignee who has right to take action.

In short, Jay Scoma has not established that he is permitted to file amendments and other papers in this application.

In any reconsideration petition, applicants are encouraged to file a reconsideration petition selecting **one** of the following courses of action: Either (a) submit Jay Scoma's registration number; (b) submit an appropriate 3.73(b) statement on behalf of the assignee (if there is one) establishing ownership of the invention signed by a person authorized to act on behalf of the

assignee (the person authorized to act on behalf of the assignee should be Jay Scoma and in this manner, the signature on the instant constructive petition will be ratified); (c) submit a renewed petition signed by both joint inventors; OR (d) submit a renewed petition signed by a registered practitioner.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
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Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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John Alumit
16830 Ventura Blvd. Suite 360
Encino CA 91364

MAILED
SEP 06 2011
OFFICE OF PETITIONS

In re Application of	:	
Burton et al.	:	
Application No. 61/372,659	:	DECISION ON PETITION
Filed: August 11, 2010	:	
Attorney Docket No. 23471-001	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 19, 2011, to revive the above-identified application.

The petition is **granted**.

This application was held abandoned for failure to reply to the Notice to File Missing Parts of Provisional Application (Notice), mailed August 23, 2010, which set a two (2) month shortened statutory period to submit a provisional cover sheet and a $25.00 surcharge. No reply or extensions of time under 37 CFR 1.136(a) being filed, the application became abandoned on October 24, 2010. A Notice of Abandonment was mailed on April 29, 2011.

Applicants have submitted a proper reply to the August 23, 2010 Notice in the form of a completed provisional application for patent cover sheet and $25.00 surcharge for its late filing, a proper statement of the unintentional nature of the delay in responding to the August 23, 2010 Notice, and the $810.00 petition fee. Accordingly, the petition under 37 CFR 1.137(b) is granted.

After the mailing of this decision, the file will be returned to the Office of Patent Application Processing for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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KING & SPALDING LLP
401 CONGRESS AVENUE
SUITE 3200
AUSTIN TX 78701

MAILED
JAN 04 2011
OFFICE OF PETITIONS

In re
Jia, et al.
Application No. 61/372,714
Filed: August 11, 2010
Attorney Docket No. 17421.105001

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed December 2, 2010.

The fee deficiency submission under 37 CFR 1.28 of $110 is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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UNISYS CORPORATION
Office of the General Counsel
801 Lakeview Drive, Suite 100
MailStop: 2NW
BLUE BELL PA 19422

MAILED

JUN 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Michael A. Salsburg	:	
Application No. 61/372,928	:	ON PETITION
Filed: August 12, 2010	:	
Attorney Docket No. **10-003**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 31, 2011, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Provisional Application (Notice), mailed August 24, 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. The application became abandoned on October 25, 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 provisional cover sheet and surcharge, (2) the petition fee of $1,620, (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 Patent Application Processing.

JoAnne Burke
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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IRELL & MANELLA LLP
1800 AVENUE OF THE STARS
SUITE 900
LOS ANGELES CA 90067

MAILED
JUL 20 2011
OFFICE OF PETITIONS

In re Application of	:	
MCRAE, James Duncan II.	:	
Application No. 61/373,407	:	DECISION ON PETITION
Filed: August 13, 2010	:	TO WITHDRAW
Attorney Docket No. **161650-0002**	:	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 07, 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 Greg Gardella on behalf of all attorneys of record who are associated with customer No. 29000. All attorneys/agents associated with the Customer Number 29000 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the inventor James Mcrae 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: **JAMES D. MCRAE, II.**
1204 KELSO BLVD.
WINDERMERE FL 34786

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Application of	:	
Roozbeh Atarius	:	
Application No. 61/373731	:	
Filing or 371(c) Date: 08/13/2010	:	
Attorney Docket Number:	:	DECISION
102511P1	:	ON PETITION

This is a decision on the "Petition to Withdraw Holding of Incomplete Provisional Application with Petition Fee Set Forth in 37 CFR 1.17(f)," filed September 2, 2010. The petition is properly treated under 37 CFR 1.53.

The petition is granted.

The application was filed on August 13, 2010. On August 30, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition and avers that the detailed description includes specific details for the purpose of providing a thorough understanding of applicants' disclosure.

A review of the file reveals that the specification contains method claims. As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process, method or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the Notice mailed August 30, 2010, was mailed in error and is hereby withdrawn.

This application is being referred to the Office of Patent Application Processing, Customer Corrections, for further processing, with the filing date of August 13, 2010, and an indication that no drawings were present or required on filing.

The petition fee has been refunded to Petitioner's deposit account.

Telephone inquiries concerning this matter should be directed to the undersigned at (571-272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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401 CONGRESS AVENUE
SUITE 3200
AUSTIN TX 78701

MAILED
DEC 21 2010
OFFICE OF PETITIONS

In re Application of	:	
ZHIJUN, Jia et al.	:	
Application No. 61/373,743	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: August 13, 2010	:	
Attorney Docket No. **17421.105002**	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GUY ZENTNER
32 JOSEPH KARO ST.
TEL AVIV 67014 IL

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of
Guy Zentner
Application No. 61/373,879
Filed: August 16, 2010
For: FAST HEATING ELECTRIC STOVE TOP

DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed August 23, 2010.

The request is **DISMISSED**.

The request filed August 23, 2010, is not signed. Applicant is encouraged to note 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, the request for refund in the above application (the first provisional application (61/373,879)) cannot be refunded since that filing fee was not a fee paid by mistake. However, applicant is advised to file a properly signed request for refund in the duplicate application (**61/374,289**) requesting that the fee paid in the duplicate application be refunded.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GUY ZENTNER
32 JOSEPH KARO ST.
TEL AVIV 67014 IL

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of Guy Zentner Application No. 61/374,289 Filed: August 17, 2010 For: FAST HEATING ELECTRIC STOVE TOP	:	DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed November 10, 2010.

The request is **DISMISSED**.

The request is dismissed at this time because applicant failed to request that the above application be expressly abandoned. Further, applicant states that the above application is a duplicate filing of Application No. 61/373,879.

In the previous request for refund filed on August 23, 2010, applicant filed the request in the duplicate Application No. 61/373,879 and requested that the application be abandoned. The request was dismissed and applicant was advised to file the request in the above application, since the first application was not filed by mistake under 37 CFR 1.26. The Office now requests a statement from applicant as to which application is to be abandoned to be made of record.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NOV 23 2011
OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of	:	
Yaron ILAN et al.	:	
Application No. 61/374,328	:	ON PETITION
Filed: August 17, 2010	:	
Attorney Docket No. 31327-0002P01	:	

This is a decision on the petition under 37 CFR 1.182, filed November 4, 2011, to change the name of the inventor.

The petition is **GRANTED**.

The name of the inventor has been changed for the following inventors:

Yaron IIAN to Yaron ILAN
Gad LALAZAR to Gadi LALAZAR

The application file is being referred to the Office of Data Management for further processing.

Our records have been updated and a corrected Filing Receipt, which sets forth the changes as requested. A copy will be attached to this decision.

This application is being forwarded to the Office of Data Management for further processing.

Telephone inquiries regarding this decision may be directed to Kimberly Inabinet (571) 272-4618.

/Carl Friedman/
Carl Friedman
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 NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/374,328	08/17/2010		380	31327-0002P01		

CONFIRMATION NO. 4489

CORRECTED FILING RECEIPT

26161
FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

OC000000051078375

Date Mailed: 11/21/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Yaron ILAN, Jerusalem, ISRAEL;
Gadi LALAZAR, Mevasseret Zion, ISRAEL;
Tomer ADAR, Modi'in, ISRAEL;
Meir MIZRAHI, Modi'in, ISRAEL;
Ami BEN-YA'ACOV, Jerusalem, ISRAEL;

Power of Attorney: The patent practitioners associated with Customer Number 26161

If Required, Foreign Filing License Granted: 08/27/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/374,328**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

ANTI-LPS ENRICHED IMMUNOGLOBULIN PREPARATION FOR USE IN TREATMENT AND/OR PROPHYLAXIS OF A PATHOLOGIC DISORDER

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).

SelectUSA

The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation and commercialization of new technologies. The USA offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to encourage, facilitate, and accelerate business investment. To learn more about why the USA is the best country in the world to develop technology, manufacture products, and grow your business, visit SelectUSA.gov.

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Paper No.

MAILED
JUN 22 2011
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STONEMAN LAW PATENT GROUP
P.O. BOX 40070
PHOENIX AZ 85067-0070

In re Application of :
Richard Senatro :
Application Number: 61/374,572 :
Filing or 371(c) Date: 08/17/2010 :
Attorney Docket Number: PP10223-2 :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission, which is treated under 37 CFR 1.28, filed on May 11, 2011.

The Office no longer investigates or rejects original or reissue patents 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) 272-3231.

D Wood
Douglas Wood
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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PARASTOO FAZELI
630 PARK STREET APT D
CHARLOTTESVILLE, VA 22902

MAILED

SEP 08 2011

OFFICE OF PETITIONS

In re Application of	:	
Parastoo Fazeli, et al.	:	
Application No. 61/374,581	:	DECISION ON PETITION
Filed: August 17, 2010	:	
Attorney Docket No.	:	

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed May 13, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unavoidable delay or to accept an unavoidably delayed payment of a fee for issuing a patent. In this instance, the fee required by law is $540. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated. See 37 CFR 1.27.

Petitioner has not submitted the required fee or authorization to charge any fee deficiencies to a deposit account. The payment of the required petition fee in full is a prerequisite to the filing of a petition to revive pursuant to 37 CFR 1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. *See* MPEP 711.03(c)(II)(B), which sets forth, in to:

> 35 U.S.C. 41(a)(7) provides that a petition for revival of an unintentionally abandoned or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), **the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.**

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this diction are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

The phrase "unless the petition is filed under [35 U.S.C.] 133 OR 151" signifies that petition to revive filed on the basis of "unavoidable" delay (under 35 U.S.C. 133 or 151) are a subset of petitions to revive filed on the basis of unintentional delay. That is, "unavoidable" delay and "unintentional" delay is the epitome of "unintentional" delay. Any petition to revive an abandoned application or lapsed patent must meet the minimal "unintentional" delay threshold, and an applicant need only pay the fee specified in 37 CFR 1.17(l) (rather than the fee specified in 37 CFR 1.17(m)) if the petition is also accompanied by an adequate showing that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a), was unavoidable.

The petition in the above-identified application was **not** accompanied by payment of the required fee. No consideration on the merits can be given that petition until the required fee is received.

Any further petition to revive must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the April M. Wise at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Patent Application Processing at their hotline 571-272-4000.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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SEP 30 2011
OFFICE OF PETITIONS

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

In re Application of	:	
Wentik, et al.	:	
Application No. 61/374,885	:	DECISION
Filed/Deposited: 18 August, 2010	:	
Attorney Docket No. 102596P1	:	

This is a decision on the petition filed on 19 September, 2011, pursuant to 37 C.F.R. §1.53.

For the reasons set forth below, the petition pursuant to 37 C.F.R. §1:53 is **DISMISSED**.

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

BACKGROUND

The instant application was deposited on 18 August, 2010.

On 2 September, 2010, the Office mailed a Notice of Incomplete Application for failure to include at least one drawing as required pursuant to 35 U.S.C. §113 (first sentence).

OPAP indicated that Petitioner might:

- contend via petition that the drawing s were submitted (and evidence same with a copy of a date-stamped receipt card (see: MPEP §503)), or that drawings were not necessary for a filing date; or

- submit the drawing (with a new application) and accept the later date of submission as the filing date.

OPAP set a two- (2-) month period for reply.

Petitioner failed to reply timely and properly to the Notice of Incomplete Application mailed on 2 September, 2010, with reply due absent extension of time on or before 2 November, 2010.

The application went abandoned after midnight 2 November, 2010.

On 19 September, 2011, Petitioner filed the instant petition and suggested—without explicitly so stating—that drawings were not necessary for an understanding of the subject matter sought to be patented.

However, as noted above, the application went abandoned after midnight 2 November, 2010.

On any renewed petition, Petitioner must overcome these deficiencies.

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]

CONCLUSION

The petition is **dismissed**; the fees are not waived because the petition is not a result of Office error. Petitioner is given **ONE MONTH, not less than 30 days,** to reply to this decision.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Application No. 61/374,885

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[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[2] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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Paper No.

NEC LABORATORIES AMERICA, INC.
4 INDEPENDENCE WAY
Suite 200
PRINCETON NJ 08540

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SEP 29 2011

OFFICE OF PETITIONS

In re Application of	:	
Djordjevic et al.	:	
Application No. 61/375,313	:	DECISION ON PETITION
Filed: August 20, 2010	:	PURSUANT TO
Attorney Docket No. 10032P	:	37 C.F.R. § 1.137(B)
Title: REVERSE CONCATENATED	:	
CODED MODULATION FOR HIGH-SPEED	:	
OPTICAL COMMUNICATION	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed August 10, 2011, 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 fully reply in a timely manner to the Notice of Missing Parts (notice), mailed September 2, 2010, which set a shortened statutory period for reply of two 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 November 3, 2010. A notice of abandonment was mailed on June 27, 2011.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply

until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;

(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted the provisional application filing fee along with the surcharge that is associated with the late submission of the same, the petition fee, and the proper statement of unintentional delay.

The first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Office of Patent Application Processing (OPAP) will be notified of this decision, and jurisdiction over the application is transferred to OPAP, so that the application may receive further processing. Petitioner will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OPAP.

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 OPAP 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 OPAP where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

The general phone number for OPAP is 571-272-4000. Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.[2]

Paul Shanoski
Senior Attorney
Office of Petitions

1 See Rule 1.137(d).
2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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BALLARD SPAHR LLP
SUITE 1000
999 PEACHTREE STREET
ATLANTA GA 30309-3915

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FEB 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Andy Fant	:	
Application No: 61/375,420	:	DECISION ON PETITION
Filing Date: August 20, 2010	:	
Attorney Docket	:	
No.:16225.0002U1	:	

This is in response to the petition under 37 C.F.R. 1.53(e), filed on October 22, 2010, concerning the Office handling of the above-identified application.

The petition is **DISMISSED**.

On August 20, 2010, the application was filed. However, on September 1, 2010, the Office of Patent Application Processing mailed a Notice Of Omitted (Item(s) In a Provisional Application stating that the application had been accorded a filing date (August 20, 2010), but that Figure(s) 6, 7B-7G described in the specification appeared to have been omitted from the application. A two (2)-month period for reply was set.

In response, the present petition was filed. Petitioners states that "Figures 7B-7G were submitted as part of the above identified application as filed, and, pursuant to 35 U.S.C. 113, Figure 6 is not necessary for the understanding of the subject matter sought to be patented."

With regards to Figure 6, petitioner apparently concedes that Figure 6 was not present on filing. Further, in regards to Figures 7B-7G, the figures are not properly labeled.

37 CFR 1.84(u)(1) states that the different views must be numbered in consecutive Arabic numerals, starting with 1, independent of the numbering of the sheets and, if possible, in the order in which they appear on the drawing sheet(s). Partial views intended to form one complete view, on one or several

sheets, must be identified by the same number followed by a capital letter. View numbers must be preceded by the abbreviation "FIG." Where only a single view is used in an application to illustrate the claimed invention, it must not be numbered and the abbreviation "FIG." must not appear.

View numbers 7B-7G are not preceded by the abbreviation "Fig." Since the drawings were not properly labeled in accordance with 1.84, the Figures appeared to have been omitted due to applicant's filing error.

It is obvious from the petition that drawing Figures 7B-7G were simply mislabeled as a result of the applicants' filing error. However, the "Notice" mailed on September 1, 2010, was correct in stating that Figures 6 and 7 7B-7G described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

As the present petition was not necessitated by an error on the part of the Office, the petition fee will not be refunded.

The application will be processed using only the application papers filed on August 20, 2010. The copy of the drawing sheet(s) supplied with the present petition on October 22, 2010, will not be used for processing, but will be retained in the application file.

The application is being referred to the Office of Patent Application Processing for further processing with a filing date of August 20, 2010, using only the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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LAW OFFICE OF RONALD SHEA
P.O. BOX 5584
SHERMAN OAKS CA 91413

MAILED

JUL 01 2011

OFFICE OF PETITIONS

In re Application of :
Leddy, et al. :
Application No. 61/375,876 : DECISION
Filed: 23 August, 2010 :
Attorney Docket No. LEDDY-P002-P2 :

This is a decision on the petition, filed on 21 May, 2011, to revive pursuant to 37 C.F.R. §1.137(b) and alleging abandonment due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

BACKGROUND

The record reflects that:

Applicant, failed to reply timely and properly to a Notice to File Missing Parts (fees, surcharge) mailed on 8 September 2010, with reply due absent an extension of time on or before 8 November, 2010.

The application went abandoned after midnight 8 November, 2010.

The Office mailed the Notice of Abandonment on 16 May, 2011.

On 21 May, 2011, Petitioner filed a petition with fee pursuant to 37 C.F.R. §1.137(b), a reply in the form of a reply in the form of fees due and surcharge, and made the statement of

unintentional delay. (It is noted that the Application Data Sheet (ADS), apparently submitted *in lieu* of a provisional transmittal sheet, was submitted on 6 September, 2010.)

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.

Application No. 61/375,876

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 Office of Patent Application Processing 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 OPAP in response to this decision. It is noted that all inquiries with regard to status need be directed to the OPAP 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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CONNOLLY BOVE
LODGE & HUTZ LLP
P.O. BOX 2207
WILMINGTON DE 19899

MAILED
JAN 18 2011
OFFICE OF PETITIONS

In re Application of :
Winston :
Application No. 61/376,047 : DECISION
Filed/Deposited: 23 August, 2010 :
Attorney Docket No. 70532-00003 :

This is a decision on the petition filed on 24 September, 2010, pursuant to 37 C.F.R. §1.53.

For the reasons set forth below, the petition pursuant to 37 C.F.R. §1.53 is **DISMISSED**.

BACKGROUND

The instant application was deposited on 23 August, 2010.

On 1 September, 2010, the Office mailed a Notice of Omitted Items, indicating therein that the application had been accorded a filing date but without drawing FIGS. 1, 2 15 described in the specification.

Thus, the application was accorded a filing date but without drawing FIGS. 1, 2, 15 described in the specification.

OPAP indicated that Petitioner might: contend via petition (with support, *inter alia*, of e.g., a date-stamped receipt card (*see*: MPEP §503)) that the drawing FIG.S 1, 2 15 were present on deposit, and provide a copy of the drawing figures; submit the drawings and accept the date of submission as the filing date; or accept the application as deposited.

OPAP set a two- (2-) month period for reply.

On 24 September, 2010, Petitioner Billy A. Robbins (Reg. 18,313) submitted a petition with fee and an averment, *inter alia*, that Petitioner wished to "include copies of Figures 1, 2, 15 previously omitted in the present application."

Notably, Petitioner did not state that he is willing to accept the deposit date of the drawing FIGS. 1, 2, 15 as the filing date of the application.

The Office will not attempt to intuit or otherwise fathom Petitioner's intent.

Petitioner must be express and specific as to his intent in the instant matter.

CONCLUSION

The petition is **dismissed**; Petitioner is given one (1) month, not less than 30 days to correct the deficiencies in his petition, including that described above.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[1] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 2207
WILMINGTON DE 19899

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OFFICE OF PETITIONS

In re Application of :
Winston :
Application No. 61/376,047 : DECISION
Filed/Deposited: 23 August, 2010 :
Attorney Docket No. 70532-00003 :

This is a decision on the petition filed on 4 February, 2011, pursuant to 37 C.F.R. §1.53.

For the reasons set forth below, the petition pursuant to 37 C.F.R. §1.53 is **GRANTED**.

BACKGROUND

The instant application was deposited on 23 August, 2010.

On 1 September, 2010, the Office mailed a Notice of Omitted Items, indicating therein that the application had been accorded a filing date but without drawing FIGS. 1, 2 and 15 described in the specification.

Thus, the application was accorded a filing date but without drawing FIGS. 1, 2 and 15 described in the specification.

OPAP indicated that Petitioner might: contend via petition (with support, *inter alia*, of e.g., a date-stamped receipt card (*see*: MPEP §503)) that the drawing FIG.S 1, 2 and 15 were present on deposit, and provide a copy of the drawing figures; submit the drawings and accept the date of submission as the filing date; or accept the application as deposited.

OPAP set a two- (2-) month period for reply.

On 24 September, 2010, Petitioner Billy A. Robbins (Reg. 18,313) submitted a petition with fee and an averment, *inter alia*, that Petitioner wished to "include copies of Figures 1, 2 and 15 previously omitted in the present application."

Notably, Petitioner did not state that he is willing to accept the deposit date of the drawing FIGS. 1, 2 and 15 as the filing date of the application. Petitioner was reminded that the Office would not attempt to intuit or otherwise fathom Petitioner's intent, and that Petitioner must be express and specific as to his intent in the instant matter. The petition was dismissed on 18 January, 2011.

On 4 February, 2011, Petitioner re-advanced his petition with the statement that he would accept the date on which he deposited drawings—24 September, 2010—as the filing date.

CONCLUSION

The petition is **granted**; the petition fee is not waived because the error was not that of the Office.

This application is released to OPAP for further processing with a filing date of 24 September, 2010, for the entire application including three (3) sheets of drawing FIGS. (1, 2 and 15) figures described in the specification and oath/declaration using:

- **pages 1–6 of the specification (description) and three (3) sheets of drawing Figs, 3-14, deposited on 23 August, 2010; and**
- **three (3) sheets of black and white drawings FIGS. 1, 2 and 15 deposited on 24 September, 2010; and further,**

with direction to OPAP to correct Office records and provide to Petitioner a corrected filing receipt setting forth a filing date of 24 September, 2010, and reflecting therein that 6 pages of specification (description), and 6 sheets of black and white drawings (FIGS. 1 – 15) were present on filing.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's/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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COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET, SUITE 1800
SAN ANTONIO TX 78205-1521

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of :
Mark Kevin Hennig :
Application No. 61/376,144 :
Filed: August 23, 2010 :
Attorney Docket No. 30610.94 :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

MAILED

FEB 04 2011

OFFICE OF PETITIONS

In re Application of	:	
Chi Wang	:	
Application No. 61/376219	:	
Filing or 371(c) Date: 08/23/2010	:	
Attorney Docket Number:	:	DECISION
52649-213798	:	ON PETITION

This is a decision on the "Petition for Accordance of Filing Date Under 37 C.F.R. § 1.53(e)(2)," filed November 1, 2010, requesting this Office accord the application a filing date of August 23, 2010.

The petition is granted.

The application was filed on August 23, 2010. On September 2, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition and avers that drawings are not necessary for an understanding of the invention.

A review of the file reveals that the specification contains method claims. As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process, method or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the Notice mailed September 2, 2010, was mailed in error and is hereby withdrawn.

This application is being referred to the Office of Patent Application Processing, Customer Corrections, for further processing, with the filing date of August 23, 2010, and an indication that no drawings were present or required on filing.

The petition fee has been refunded to Petitioner's deposit account.

Telephone inquiries concerning this matter should be directed to the undersigned at 571-272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Adli Law Group P.C.
633 West Fifth Street
Suite 6900
Los Angeles CA 90071

MAILED

NOV 16 2011

OFFICE OF PETITIONS

In re Application of :
Huang :
Application No. 61/376,442 :
Filed: August 24, 2010 :
Attorney Docket No. 1022.103 :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 7, 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) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Judie Travers
122 Rue Jardin
Deer Park IL 60010

MAILED

JUN 27 2011

OFFICE OF PETITIONS

In re Application of
Travers
Application No. 61/376,660
Filed: August 24, 2010
Attorney Docket No. N/A
For: "PEEK-A-POO" DOG WASTE BAG CONCEALING COVERLET AND LEASH ACCESSORY

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed May 24, 2011, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The Office contends that the above-identified application became abandoned for failure to submit a reply to the September 3, 2010 Notice to File Missing Parts of Provisional Application (Notice), which set a two month period for reply. No reply being received, the Office considered this application abandoned on November 4, 2010. A Notice of Abandonment was mailed on May 13, 2011.

Applicant asserts that she did send the required fees on September 29, 2010. Therefore, applicant argues the application did not go abandoned and the holding of abandonment should be withdrawn.

Applicant has provided a copy of a cancelled check with application number at the top and memo statement at bottom. A close review of the cancelled check reveals that it was filed in response to a formalities notice that was mailed in **Application No. 61/376,244**. It is noted that a Notice to File Missing Parts of Provisional Application was mailed in Application No. 61/376,244 on September 1, 2010 and a response of $135.00 was received by the Office on October 4, 2010.

In short, the evidence presented does not support applicant's assertion. The evidence presented speaks to a timely response to the Notice to File Missing Parts of Provisional Application mailed on September 1, 2010 in Application No. 61/376,244.

The petition under 37 CFR 1.181 is dismissed.

Petitioner is should consider filing a petition to revive under the unintentional standard of 137(b). The current small entity petition fee is $810.00. A blank copy of the form PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNIINTENTIONALLY UNDER 37 CFR 1.137(b) is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop PETITION Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	U.S. Patent and Trademark Office Customer Service Window, Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314
By FAX:	(571) 273-8300 - ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Telephone inquiries may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: blank copy of the form PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) – PTO/SB/64

Privacy Act Statement

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

MAILED
AUG 12 2011
OFFICE OF PETITIONS

EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON MA 02205

In re Application of :
Ravi et al. :
Application No. 61/377,306 :
Filed: August 26, 2010 :
Attorney Docket No.: :
84897P(42579) :
Title: CRYSTAL GROWTH APPARATUS :
WITH CERAMIC COATING AND :
METHODS FOR PREVENTING MOLTEN :
MATERIAL BREACH IN A CRYSTAL :
GROWTH APPARATUS :

DECISION ON PETITION
PURSUANT TO
37 C.F.R. § 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on July 27, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

The deficiency payment of $110 is acknowledged.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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NOVARTIS
CORPORATE INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 101/2
EAST HANOVER NJ 07936-1080

MAILED

JUL 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Carola Friedman et al.	:	
Application No. 61/377,572	:	DECISION ON PETITION
Filing Date: August 27, 2010	:	
Attorney Docket No. **PAT054195-US-PSP**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 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 Notice to File Missing Parts of Provisonal Application (Notice), mailed September 17, 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 November 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 provisional cover sheet and surcharge, (2) the petition fee of $1,620 (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 be acknowledged as attorney of record regarding this application, the appropriate power of attorney document must be submitted.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at 571-272-4584.

This application is being referred to the Office of Patent Application Processing.

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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MARTIN D. MOYNIHAN D/B/A PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

MAILED

JAN 13 2011

OFFICE OF PETITIONS

ON PETITION

In re Application:	:
Vinocur et al.	:
Application No. 61/378,003	:
Filed: August 30, 2010	:
Attorney Docket No. 49300	:

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 16, 2010.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Telephone 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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED
OCT 20 2011
OFFICE OF PETITIONS

In re Application of :
Erik Sojka et al. :
Application No. 61/378,177 : ON PETITION
Filed: August 30, 2010 :
Attorney Docket No. MIT5127USPSP :

This is a decision on the petition under 37 CFR 1.182, filed October 6, 2011, to change the name of the inventors.

The petition is **GRANTED**.

The name of the inventor has been changed from **Erik Sojka** to **Erik Sebastian Sojka, Arthur Stephen** to **Arthur G. Stephen, Mark Wolfson** to **Mark W. Wolfson, Brian Henri Ortrando** to **Brian Henri Otrando, Daniel Gamache** to **Daniel Paul Gamache and Justin Piccirillo** to **Justin M. Piccirillo**.

The application file is being referred to the Office of Data Management for further processing.

Telephone inquiries regarding this decision may be directed to Kimberly Inabinet (571) 272-4618.

/Carl Friedman/
Carl Friedman
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 NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/378,177	08/30/2010		220	MIT5127USPSP		

CONFIRMATION NO. 1663

CORRECTED FILING RECEIPT

OC000000050432898

27777
PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

Date Mailed: 10/18/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Erik Sebastian Sojka, Raynham, MA;
Arthur G. Stephen, Raynham, MA;
Andre Francisco-Guilherme, Raynham, MA;
Mark W. Wolfson, Raynham, MA;
Brian Henri Otrando, Raynham, MA;
Daniel Paul Gamache, Raynham, MA;
Justin M. Piccirillo, Raynham, MA;

Power of Attorney:
Andrew Farmer--35868

Permission to Access - A proper **Authorization to Permit Access to Application by Participating Offices** (PTO/SB/39 or its equivalent) has been received by the USPTO.

If Required, Foreign Filing License Granted: 09/08/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/378,177**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

ANCHOR DRIVER WITH SUTURE CLUTCH

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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DARSELL KARRINGTEN
105 ARBOUR CREST TERRACE N.W.
CALGARY, ALBERTA
CANADA T3G 5A2

MAILED
SEP 15 2011
OFFICE OF PETITIONS

In re Application of
Darsell Karringten
Application No. 61/378,377
Filed: August 30, 2010
Attorney Docket No.: **195 1AL-10-US**

ON PETITION

This is a decision on the petition filed September 2, 2011 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned on November 16, 2010, for failure to timely reply to the Notice to File Missing Parts, mailed September 14, 2010, which set a two (2) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed November 29, 2010.

The filing of the response to the Notice to File Missing Parts mailed May 25, 2011 is acknowledged.

All other requirements having been met, this matter is being referred to the Office of Patent Application Processing for further pre-examination processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Tevis R. Ignacio
327 Blossom Valley Drive
Los Gatos CA 95032

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of	:	
IGNACIO	:	LETTER
Application No. 61/378,460	:	RE
Filed: August 31, 2010	:	FORMA PAUPERIS STATUS
Attorney Docket No.	:	

This is a letter in response to applicant's request for *forma pauperis* status, filed August 31, 2010, in the above-identified provisional application.

On August 31, 2010, the above-identified application was filed with the United States Patent and Trademark Office (USPTO). In lieu of payment of the filing fee, the application was accompanied by a request that applicant be accorded *forma pauperis* status on the basis that applicant "cannot afford the fee(s) at this time".

On October 5, 2010, the USPTO mailed a Notice to File Missing Parts of Provisional Application requiring applicant to submit a complete specification and a $220.00 statutory basic filing fee. The Notice accorded applicant two months from the October 5, 2010 mailing date to submit the above fees to avoid abandonment.

For applicant's information, the requirement that an application "be accompanied by the fee required by law" is a requirement of the statute. 35 U.S.C. 111(b)(3) (copy enclosed). While the statute permits the Director to accept payment of the filing fee at a time subsequent to the date of receipt of the specification and drawings, the filing fee remains a necessary component of a complete application. The Director has no authority to waive a requirement of the statutes. See Boyden v. Commissioner, 441 F.2d 1041, 168 USPQ 680 (D.C. Cir. 1971), copy enclosed.

The extendable two month time period set in the October 5, 2010 Notice continues to run and will expire at midnight on December 6, 2010 (December 5, 2010 is a Sunday). Extensions of this two month time period may be obtained, in one month increments, by filing a petition under 37 CFR 1.136(a) (copy enclosed) requesting an extension of time along with payment of the applicable extension of time fee. A copy of the current fee schedule is enclosed. Under no circumstance can this time period be extended past the statutory deadline of six months from the October 5, 2010 mailing date of the Notice, or April 5, 2011. 35 U.S.C. 133 (copy enclosed).

As set forth on Page 2 of the October 5, 2010 Notice,

> "Replies should be mailed to:
>
> Mail Stop Missing Parts
> Commissioner of Patents
> P.O. Box 1450
> Alexandria, VA 22313-1450".

Failure to timely submit the compete specification and the requisite fee will result in ABANDONMENT of the application.

Telephone inquiries related to this decision may be directed to Brian W. Brown at (571) 272-5338.

Anthony Knight
Director
Office of Petitions

Enclosures: 35 U.S.C. 111(b)(3)
35 U.S.C. 133
37 CFR 1.136(a)
Current Fee Schedule
Boyden v. Commissioner, 441 F.2d 1041 (D.C. Cir. 1971)

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 14, 1975, Public Law 94-131, sec. 6, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 403(a), 98 Stat. 3392; Dec. 8, 1993, Public Law 103-182, sec. 331, 107 Stat. 2113; Dec. 8, 1994, Public Law 103-465, sec. 531(a), 108 Stat. 4982; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 105 Inventions in outer space.

(a) Any invention made, used, or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used, or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used, or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Nov. 15, 1990, Public Law 101-580, sec. 1(a), 104 Stat. 2863.)

CHAPTER 11 — APPLICATION FOR PATENT

Sec.

111 Application.
112 Specification.
113 Drawings.
114 Models, specimens.
115 Oath of applicant.
116 Inventors.
117 Death or incapacity of inventor.
118 Filing by other than inventor.
119 Benefit of earlier filing date; right of priority.
120 Benefit of earlier filing date in the United States.
121 Divisional applications.
122 Confidential status of applications; publication of patent applications.

35 U.S.C. 111 Application.

(a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title; and

(C) an oath by the applicant as prescribed by section 115 of this title.

(3) FEE AND OATH.—The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) FAILURE TO SUBMIT.—Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

(A) a specification as prescribed by the first paragraph of section 112 of this title; and

(B) a drawing as prescribed by section 113 of this title.

(2) CLAIM.—A claim, as required by the second through fifth paragraphs of section 112, shall not be required in a provisional application.

(3) FEE.—

(A) The application must be accompanied by the fee required by law.

(B) The fee may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(C) Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee was unavoidable or unintentional.

(4) FILING DATE.—The filing date of a provisional application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.

(6) OTHER BASIS FOR PROVISIONAL APPLICATION.—Subject to all the conditions in this subsection and section 119(e) of this title, and as prescribed by the Director, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) NO RIGHT OF PRIORITY OR BENEFIT OF EARLIEST FILING DATE.—A provisional application shall not be entitled to the right of priority of any other application under section 119 or 365(a) of this title or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c) of this title.

(8) APPLICABLE PROVISIONS.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to sections 115, 131, 135, and 157 of this title.

(Amended Aug. 27, 1982, Public Law 97-247, sec. 5, 96 Stat. 319; Dec. 8, 1994, Public Law 103-465, sec. 532(b)(3), 108 Stat. 4986; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582, 588 (S. 1948 secs. 4732(a)(10)(A), 4801(a)).)

35 U.S.C. 112 Specification.

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

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 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.

(Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 134 Appeal to the Board of Patent Appeals and Interferences.

(a) PATENT APPLICANT.— An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(b) PATENT OWNER.— A patent owner in any reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(c) THIRD-PARTY.— A third-party requester in an inter partes proceeding may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.

(Amended Nov. 8, 1984, Public Law 98-622, sec. 204(b)(1), 98 Stat. 3388; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-570 (S. 1948 sec. 4605(b)); subsections (a)-(c) amended Nov. 2, 2002, Public Law 107-273, secs. 13106 and 13202, 116 Stat. 1901.)

35 U.S.C. 135 Interferences.

(a) Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Director shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Director may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office.

(b)(1)A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Director may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Director shall give notice to the parties or their attorneys of record, a reasonable time prior to

within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Director.

(2) An interview for the discussion of the patentability of a pending application will not occur before the first Office action, unless the application is a continuing or substitute application or the examiner determines that such an interview would advance prosecution of the application.

(3) The examiner may require that an interview be scheduled in advance.

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office actions as specified in §§ 1.111 and 1.135.

[Para. (b) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; para. (a)(1) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(2) revised, 70 FR 56119, Sept. 26, 2005, effective Nov. 25, 2005]

TIME FOR REPLY BY APPLICANT; ABANDONMENT OF APPLICATION

§ 1.134 Time period for reply to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

[47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

[Paras. (a), (b), and (c), 47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; para. (d) deleted, 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted

an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences.

(3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

(c) If an applicant is notified in a "Notice of Allowability" that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the "Notice of Allowability" or in an Office action having a mail date on or after the mail date of the "Notice of Allowability":

(1) The period for submitting an oath or declaration in compliance with § 1.63;

(2) The period for submitting formal drawings set under § 1.85(c); and

(3) The period for making a deposit set under § 1.809(c).

[47 FR 41277, Sept. 17, 1982, effective Oct. 1, 1982; 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; 54 FR 29551, July 13, 1989, effective Aug. 20, 1989; para. (a) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) added, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (a)(2) and (b) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; para. (c) revised, 66 FR 21090, Apr. 27, 2001, effective May 29, 2001; paras. (a)(1), (a)(2), and (b) revised, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004; para. (b) revised, 69 FR 56481, Sept. 21, 2004, effective Nov. 22, 2004; para. (b) revised, 70 FR 3880, Jan. 27, 2005, effective Dec. 8, 2004; para. (a)(1) revised, 72 FR 46716, Aug. 21, 2007 (implementation enjoined and never became effective); para. (a)(1) revised, 74 FR 52686, Oct. 14, 2009, effective Oct. 14, 2009 (to remove changes made by the final rules in 72 FR 46716 from the CFR)]

§ 1.137 Revival of abandoned application, terminated or limited reexamination prosecution, or lapsed patent.

(a) *Unavoidable.* If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(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

UNITED STATES PATENT AND TRADEMARK OFFICE
Effective October 2, 2008

Any fee amount paid on or after October 2, 2008, must be paid as shown in the revised fee schedule.
The fees subject to reduction for small entities that have established status (37 CFR 1.27) are shown in a separate column.
For additional information, please call the USPTO Contact Center at (571) 272-1000 or (800) 786-9199.

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Application Filing Fees				
1011/2011	1.16(a)(1)	Basic filing fee - Utility *filed on or after December 8, 2004*	330.00	165.00
4011†	1.16(a)(1)	Basic filing fee - Utility (electronic filing) *filed on or after December 8, 2004*	N/A	82.00
1001/2001	1.16(a)(2)	Basic filing fee - Utility *filed before December 8, 2004*	850.00	425.00
1201/2201	1.16(h)	Independent claims in excess of three	220.00	110.00
1202/2202	1.16(i)	Claims in excess of 20	52.00	26.00
1203/2203	1.16(j)	Multiple dependent claim	390.00	195.00
1051/2051	1.16(f)	Surcharge - Late filing fee or oath or declaration	130.00	65.00
1081/2081	1.16(s)	Utility Application Size Fee - for each additional 50 sheets	270.00	135.00
1012/2012	1.16(b)(1)	Basic filing fee - Design *filed on or after December 8, 2004*	220.00	110.00
1002/2002	1.16(b)(2)	Basic filing fee - Design *filed before December 8, 2004*	380.00	190.00
1017/2017	1.16(b)(1)	Basic filing fee - Design (CPA) *filed on or after December 8, 2004*	220.00	110.00
1007/2007	1.16(b)(2)	Basic filing fee - Design (CPA) *filed before December 8, 2004*	380.00	190.00
1082/2082	1.16(s)	Design Application Size Fee - for each additional 50 sheets	270.00	135.00
1013/2013	1.16(c)(1)	Basic filing fee - Plant *filed on or after December 8, 2004*	220.00	110.00
1003/2003	1.16(c)(2)	Basic filing fee - Plant *filed before December 8, 2004*	600.00	300.00
1083/2083	1.16(s)	Plant Application Size Fee – for each additional 50 sheets	270.00	135.00
1014/2014	1.16(e)(1)	Basic filing fee - Reissue *filed on or after December 8, 2004*	330.00	165.00
1004/2004	1.16(e)(2)	Basic filing fee - Reissue *filed before December 8, 2004*	850.00	425.00
1019/2019	1.16(e)(1)	Basic filing fee - Design Reissue (CPA) *filed on or after December 8, 2004*	330.00	165.00
1009/2009	1.16(e)(2)	Basic filing fee - Design Reissue (CPA) *filed before December 8, 2004*	850.00	425.00
1204/2204	1.16(h)	Reissue independent claims in excess of three	220.00	110.00
1205/2205	1.16(i)	Reissue claims in excess of 20	52.00	26.00
1084/2084	1.16(s)	Reissue Application Size Fee – for each additional 50 sheets	270.00	135.00
1005/2005	1.16(d)	Provisional application filing fee	220.00	110.00
1085/2085	1.16(s)	Provisional Application Size Fee - for each additional 50 sheets	270.00	135.00
1052/2052	1.16(g)	Surcharge - Late provisional filing fee or cover sheet	50.00	25.00
1053	1.17(i)	Non-English specification	130.00	
Patent Search Fees				
1111/2111	1.16(k)	Utility Search Fee	540.00	270.00
1112/2112	1.16(l)	Design Search Fee	100.00	50.00
1113/2113	1.16(m)	Plant Search Fee	330.00	165.00
1114/2114	1.16(n)	Reissue Search Fee	540.00	270.00
Patent Examination Fees				
1311/2311	1.16(o)	Utility Examination Fee	220.00	110.00
1312/2312	1.16(p)	Design Examination Fee	140.00	70.00
1313/2313	1.16(q)	Plant Examination Fee	170.00	85.00
1314/2314	1.16(r)	Reissue Examination Fee	650.00	325.00
Patent Post-Allowance Fees				
1501/2501	1.18(a)	Utility issue fee	1,510.00	755.00
1502/2502	1.18(b)	Design issue fee	860.00	430.00
1503/2503	1.18(c)	Plant issue fee	1,190.00	595.00
1511/2511	1.18(a)	Reissue issue fee	1,510.00	755.00
1504	1.18(d)	Publication fee for early, voluntary, or normal publication	300.00	
1505	1.18(d)	Publication fee for republication	300.00	

† The 4000 series fee code may be used via EFS-Web at *www.uspto.gov/ebc/efs/*.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Maintenance Fees				
1551/2551	1.20(e)	Due at 3.5 years	980.00	490.00
1552/2552	1.20(f)	Due at 7.5 years	2,480.00	1,240.00
1553/2553	1.20(g)	Due at 11.5 years	4,110.00	2,055.00
	1.20(h)	Surcharge - Late payment within 6 months	130.00	65.00
1557	1.20(i)(1)	Surcharge after expiration - Late payment is unavoidable	700.00	
1558	1.20(i)(2)	Surcharge after expiration - Late payment is unintentional	1,640.00	
Miscellaneous Patent Fees				
1801/2801	1.17(e)	Request for Continued Examination (RCE) (see 37 CFR 1.114)	810.00	405.00
1808	1.17(i)	Processing fee, except in provisional applications	130.00	
1803	1.17(i)	Request for voluntary publication or republication	130.00	
1802	1.17(k)	Request for expedited examination of a design application	900.00	
1804	1.17(n)	Request for publication of SIR - Prior to examiner's action	920.00*	
1805	1.17(o)	Request for publication of SIR - After examiner's action	1,840.00*	
1806	1.17(p)	Submission of an Information Disclosure Statement	180.00	
1807	1.17(q)	Processing fee for provisional applications	50.00	
1809/2809	1.17(r)	Filing a submission after final rejection (see 37 CFR 1.129(a))	810.00	405.00
1810/2810	1.17(s)	For each additional invention to be examined (see 37 CFR 1.129(b))	810.00	405.00
Post Issuance Fees				
1811	1.20(a)	Certificate of correction	100.00	
1812	1.20(c)(1)	Request for ex parte reexamination	2,520.00	
1813	1.20(c)(2)	Request for inter partes reexamination	8,800.00	
1821/2821	1.20(c)(3)	Reexamination independent claims in excess of three	220.00	110.00
1822/2822	1.20(c)(4)	Reexamination claims in excess of 20	52.00	26.00
1814/2814	1.20(d)	Statutory disclaimer	140.00	70.00
Patent Extensions of Time Fees				
1251/2251	1.17(a)(1)	Extension for response within first month	130.00	65.00
1252/2252	1.17(a)(2)	Extension for response within second month	490.00	245.00
1253/2253	1.17(a)(3)	Extension for response within third month	1,110.00	555.00
1254/2254	1.17(a)(4)	Extension for response within fourth month	1,730.00	865.00
1255/2255	1.17(a)(5)	Extension for response within fifth month	2,350.00	1,175.00
Patent Appeals/Interference Fees				
1401/2401	41.20(b)(1)	Notice of appeal	540.00	270.00
1402/2402	41.20(b)(2)	Filing a brief in support of an appeal	540.00	270.00
1403/2403	41.20(b)(3)	Request for oral hearing	1,080.00	540.00
Patent Petition Fees				
1462	1.17(f) 1.182	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	400.00	
1463	1.17(g)	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II)	200.00	
1464	1.17(h)	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	130.00	
1451	1.17(j)	Petition to institute a public use proceeding	1,510.00	
1452/2452	1.17(l)	Petition to revive unavoidably abandoned application	540.00	270.00
1453/2453	1.17(m)	Petition to revive unintentionally abandoned application	1,620.00	810.00
1454	1.17(t)	Acceptance of an unintentionally delayed claim for priority, or for filing a request for the restoration of the right of priority	1,410.00	
1455	1.18(e)	Filing an application for patent term adjustment	200.00	
1456	1.18(f)	Request for reinstatement of reduced term	400.00	
1457	1.20(j)(1)	Extension of term patent	1,120.00	
1458	1.20(j)(2)	Initial application for interim extension (see 37 CFR 1.790)	420.00	
1459	1.20(j)(3)	Subsequent application for interim extension (see 37 CFR 1.790)	220.00	

'8(c) Lenevoe fee

* Reduced by basic filing fee paid.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
PCT Fees - National Stage				
1631/2631	1.492(a)	Basic National Stage Fee	330.00	165.00
1641/2641	1.492(b)(2)	National Stage Search Fee - U.S. was the ISA	100.00	50.00
1642/2642	1.492(b)(3)	National Stage Search Fee - search report prepared and provided to USPTO	430.00	215.00
1632/2632	1.492(b)(4)	National Stage Search Fee - all other situations	540.00	270.00
1633/2633	1.492(c)(2)	National Stage Examination Fee - all other situations	220.00	110.00
1614/2614	1.492(d)	Claims - extra independent (over three)	220.00	110.00
1615/2615	1.492(e)	Claims - extra total (over 20)	52.00	26.00
1616/2616	1.492(f)	Claims - multiple dependent	390.00	195.00
1681/2681	1.492(j)	National Stage Application Size Fee - for each additional 50 sheets	270.00	135.00
1617/2617	1.492(h)	Oath or declaration after 30 months from priority date	130.00	65.00
1618	1.492(i)	English translation after 30 months from priority date	130.00	
PCT Fees - International Stage				
1601	1.445(a)(1)	Transmittal fee	300.00	
1602	1.445(a)(2)	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	1,800.00	
1604	1.445(a)(3)	Supplemental search fee when required, per additional invention	1,800.00	
1605	1.482(a)(1)	Preliminary examination fee - U.S. was the ISA	600.00	
1606	1.482(a)(1)	Preliminary examination fee - U.S. was not the ISA	750.00	
1607	1.482(a)(2)	Supplemental examination fee per additional invention	600.00	
1619		Late payment fee	VARIABLE	
1621		Transmitting application to Intl. Bureau to act as receiving office	300.00	
PCT Fees to Foreign Offices *				
1701		International filing fee (first 30 pages) – filed in paper w/ PCT Easy zip file or electronically w/o PCT Easy zip file	1,237.00	
1702		International filing fee (first 30 pages)	1,338.00	
1703		Supplemental international filing fee (for each page over 30)	15.00	
1704		International search (EPO)	2,665.00	
1705		Handling fee	171.00	
1706		Handling fee – 90% reduction, if applicant(s) meets criteria specified at: *www.wipo.int/pct/en/fees/fee_reduction.pdf*	17.10	
1708		International CD applications	6,000.00	
1709		International search (KIPO)	244.00	
1710		International filing fee (first 30 pages) – filed electronically w/ PCT Easy zip file	1,137.00	
Patent Enrollment Fees				
9001	1.21(a)(1)(i)	Application fee (non-refundable)	40.00	
9003	1.21(a)(2)	Registration to practice or grant limited recognition under §11.9(b) or (c)	100.00	
9004	1.21(a)(3)	Reinstatement to practice	40.00	
9005	1.21(a)(4)	Certificate of good standing as an attorney or agent	10.00	
9006	1.21(a)(4)	Certificate of good standing as an attorney or agent, suitable for framing	20.00	
9010	1.21(a)(1)(ii)(A)	For test administration by commercial entity	200.00	
9011	1.21(a)(1)(ii)(B)	For test administration by the USPTO.	450.00	
9012	1.21(a)(5)(i)	Review of decision by the Director of Enrollment and Discipline under §11.2(c)	130.00	
9013	1.21(a)(5)(ii)	Review of decision of the Director of Enrollment and Discipline under §11.2(d)	130.00	
9014	1.21(a)(10)	Application fee for person disciplined, convicted of a felony or certain misdemeanors under §11.7(h)	1,600.00	
9024	1.21(k)	Unspecified other services, excluding labor	AT COST	

* PCT Fees to Foreign Offices are subject to periodic change due to fluctuations in exchange rates. Refer to the *Official Gazette of the United States Patent and Trademark Office* for current amounts.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Patent Service Fees			
8001	1.19(a)(1)	Printed copy of patent w/o color, delivery by USPS, USPTO Box, or electronic means	3.00
8003	1.19(a)(2)	Printed copy of plant patent in color	15.00
8004	1.19(a)(3)	Color copy of patent (other than plant patent) or SIR containing a color drawing	25.00
8005	1.19(a)(1)	Patent Application Publication (PAP)	3.00
8007	1.19(b)(1)(i)(A)	Copy of patent application as filed	20.00
8008	1.19(b)(1)(i)(B)	Copy of patent-related file wrapper and paper contents of 400 or fewer pages	200.00
8009	1.19(b)(1)(i)(C)	Each additional 100 pages of patent-related file wrapper and (paper) contents, or portion thereof	40.00
8010	1.19(b)(1)(i)(D)	Certification of patent-related file wrapper and (paper) contents	25.00
8011	1.19(b)(1)(ii)(B)	Copy of patent-related file wrapper and contents if provided electronically or on a physical electronic medium as specified in § 1.19(b)(1)(ii)	55.00
8012	1.19(b)(1)(ii)(C)	Each continuing physical electronic medium in single order of § 1.19(b)(1)(ii)(B)	15.00
8041	1.19(b)(2)(i)(A)	Copy of patent-related file wrapper contents, other than as available in § 1.19(b)(1); first physical electronic medium in a single order	55.00
8042	1.19(b)(2)(i)(B)	Each continuing copy of patent-related file wrapper and contents as specified in § 1.19(b)(2)(i)(A)	15.00
8043	1.19(b)(2)(ii)	Copy of patent-related file wrapper contents other than as available in § 1.19(b)(1); provided electronically other than on a physical electronic medium	55.00
8013	1.19(b)(3)	Copy of office records, except copies of applications as filed	25.00
8014	1.19(b)(4)	For assignment records, abstract of title and certification, per patent	25.00
8904	1.19(c)	Library service	50.00
8015	1.19(d)	List of U.S. patents and SIRs in subclass	3.00
8016	1.19(e)	Uncertified statement re status of maintenance fee payments	10.00
8017	1.19(f)	Copy of non-U.S. document	25.00
8050	1.19(g)	Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits	AT COST
8019	1.21(d)	Local delivery box rental, annually	50.00
8020	1.21(e)	International type search report	40.00
8902	1.21(g)	Self-service copy charge, per page	0.25
8021	1.21(h)	Recording each patent assignment, agreement or other paper, per property	40.00
8022	1.21(i)	Publication in *Official Gazette*	25.00
8023	1.21(j)	Labor charges for services, per hour or fraction thereof	40.00
8024	1.21(k)	Unspecified other services, excluding labor	AT COST
8025	1.21(l)	Retaining abandoned application	130.00
8026	1.21(n)	Handling fee for incomplete or improper application	130.00
8027	1.296	Handling fee for withdrawal of SIR	130.00

GENERAL FEES

Finance Service Fees			
9201	1.21(b)(1) or 2.6(b)(13)(i)	Establish deposit account	10.00
9202	1.21(b)(2) or 2.6(b)(13)(ii)	Service charge for below minimum balance	25.00
9202	1.21(b)(3)	Service charge for below minimum balance restricted subscription deposit account	25.00
9101	1.21(m) or 2.6(b)(12)	Processing each payment refused or charged back	50.00
Computer Service Fees			
8031/8531		Computer records	AT COST

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Trademark Processing Fees *			
6001	2.6(a)(1)(i)	Application for registration, per international class (paper filing)	375.00
7001	2.6(a)(1)(ii)	Application for registration, per international class (electronic filing)	325.00
7007	2.6(a)(1)(iii)	Application for registration, per international class (electronic filing, TEAS Plus)	275.00
6002/7002	2.6(a)(2)	Filing an Amendment to Allege Use under § 1(c), per class	100.00
6003/7003	2.6(a)(3)	Filing a Statement of Use under § 1(d)(1), per class	100.00
6004/7004	2.6(a)(4)	Filing a Request for a Six-month Extension of Time for Filing a Statement of Use under § 1(d)(1), per class	150.00
6005/7005	2.6(a)(15)	Petitions to the Director	100.00
6006	2.6(a)(19)	Dividing an application, per new application (file wrapper) created	100.00
6008/7008	2.6(a)(1)(iv)	Additional fee for application that doesn't meet TEAS Plus filing requirements, per class	50.00
6201/7201	2.6(a)(5)	Application for renewal, per class	400.00
6203/7203	2.6(a)(6)	Additional fee for filing renewal application during grace period, per class	100.00
6204	2.6(a)(21)	Correcting a deficiency in a renewal application	100.00
6205/7205	2.6(a)(12)	Filing § 8 affidavit, per class	100.00
6206/7206	2.6(a)(14)	Additional fee for filing § 8 affidavit during grace period, per class	100.00
6207	2.6(a)(20)	Correcting a deficiency in a § 8 affidavit	100.00
6208/7208	2.6(a)(13)	Filing § 15 affidavit, per class	200.00
6210	2.6(a)(7)	Publication of mark under § 12(c), per class	100.00
6211	2.6(a)(8)	Issuing new certificate of registration	100.00
6212/7212	2.6(a)(9)	Certificate of correction, registrant's error	100.00
6213	2.6(a)(10)	Filing disclaimer to registration	100.00
6214	2.6(a)(11)	Filing amendment to registration	100.00
6401/7401	2.6(a)(16)	Petition for cancellation, per class	300.00
6402/7402	2.6(a)(17)	Notice of opposition, per class	300.00
6403/7403	2.6(a)(18)	Ex parte appeal, per class	100.00
Trademark Madrid Protocol Fees *			
6901/7901	7.6(a)(1)	International application based on single application or registration, per class	100.00
6902/7902	7.6(a)(2)	Certifying an International application based on more than one basic application	150.00
6903/7903	7.6(a)(3)	Transmitting a Request to Record an Assignment or restriction under § 7.23 or 7.24	100.00
6904/7904	7.6(a)(4)	Filing a Notice of Replacement, per class	100.00
6905/7905	7.6(a)(5)	Filing an affidavit under § 71 of the Act	100.00
6906/7906	7.6(a)(6)	Surcharge for filing affidavit under § 71 of the Act during grace period, per class	100.00
6907/7907	7.6(a)(7)	Transmitting a subsequent designation	100.00
Trademark Service Fees			
8501	2.6(b)(1)	Printed copy of registered mark, delivery by USPS, USPTO Box, or electronic means	3.00
8503	2.6(b)(4)(i)	Certified copy of registered mark, with title and/or status, regular service	15.00
8504	2.6(b)(4)(ii)	Certified copy of registered mark, with title and/or status, expedited local service	30.00
8507	2.6(b)(2)	Certified copy of trademark application as filed	15.00
8508	2.6(b)(3)	Certified or uncertified copy of trademark-related file wrapper and contents	50.00
8513	2.6(b)(5)	Certified or uncertified copy of trademark document, unless otherwise provided	25.00
8514	2.6(b)(7)	For assignment records, abstracts of title and certification per registration	25.00
8902	2.6(b)(9)	Self-service copy charge, per page	0.25
8521	2.6(b)(6)	Recording trademark assignment, agreement or other paper, first mark per document	40.00
8522	2.6(b)(6)	For second and subsequent marks in the same document	25.00
8523	2.6(b)(10)	Labor charges for services, per hour or fraction thereof	40.00
8524	2.6(b)(11)	Unspecified other services, excluding labor	AT COST
Fastener Quality Act Fees			
6991	2.7(a)	Recordal application fee	20.00
6992	2.7(b)	Renewal application fee	20.00
6993	2.7(c)	Late fee for renewal application	20.00
6994	2.7(a)	Application fee for reactivation of insignia, per request	20.00

* The 7000 series fee code (e.g., 7001, 7002, etc.) is used for electronic filings via TEAS, which is available at *www.uspto.gov/teas/*.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

INTELLECTUAL PROPERTY LAW
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Source: USPQ, 1st Series (1929 - 1986) > U.S. Court of Appeals, District of Columbia Circuit > Boyden v. Commissioner of Patents, 168 USPQ 680 (D.C. Cir. 1971)

168 USPQ 680
Boyden v. Commissioner of Patents
U.S. Court of Appeals District of Columbia Circuit

No. 22238

Decided February 18, 1971

441 F2d 1041

Headnotes

PATENTS

[1] Jurisdiction of courts - In general (▶ 43.01)

District court has jurisdiction, pursuant to 28 U.S.C. 1338(a) of action seeking to compel Commissioner of Patents to accept and examine patent application.

[2] Fees - Patent Office (▶ 37.7)

Commissioner must charge fees specified in 35 U.S.C. 41.

[3] Fees - Patent Office (▶ 37.7)

Patent grant - In general (▶ 50.01)

No person has a vested right to a patent, but is privileged to seek the protected monopoly only upon compliance with conditions imposed by Congress; rule applies to payment of fees required for administration of patent laws just as it demands compliance with other conditions, statutorily imposed; powers of Congress in patent field are plenary for they stem directly from Constitution.

[4] Fees - Patent Office (▶ 37.7)

Indigent applicant may not proceed in forma pauperis before Patent Office without payment of statutory filing fee; Commissioner's duty to require fee stems from statutory requirement; there is no grant of discretionary power to him.

Case History and Disposition

Appeal from District Court for the District of Columbia.

Action by Gerald Glen Boyden to compel the Commissioner of Patents to accept and examine a patent application. From judgment dismissing complaint, plaintiff appeals.

Affirmed; Leventhal, Circuit Judge, concurring with opinion.

Attorneys

John F. Witherspoon and Charles A. Wendel (EdwinR. Hutchinson on the brief) all of Washington, D.C., for appellant.

Jere W. Sears, Joseph Schimmel, and Lutrelle F. Parker (S. Wm. Cochran on the brief) for appellee.

Judge

Before Danaher, Senior Circuit Judge, and Leventhal and Robb, Circuit Judges.

Opinion Text

Opinion By:

Danaher, Senior Circuit Judge.

[1] This appellant on April 20, 1967 tendered to the Commissioner an application for a patent which the Patent Office declined to file since the application was not accompanied by the $95 filing fee required by law. Appellant thereupon sought an order in the nature of mandamus to compel the Commissioner to accept and examine his patent application without payment of the statutory filing fee or, alternatively, that he be awarded damages in the sum of $100,000 with interest and costs. The District Court quite properly allowed [1] the appellant to proceed in forma pauperis upon his showing of indigency. The Commissioner moved to dismiss, alleging lack of jurisdiction over the subject matter and failure to state a claim upon which relief could be granted. Thereafter that motion was granted. We allowed an appeal in forma pauperis and appointed counsel who have here diligently represented this appellant's interests.

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[1] Despite the inartful pleading, we are satisfied that the appellant showed he was authorized to proceed in the District Court pursuant to 28 U.S.C. § 1915(a), Sikora v. Brenner, 126 U.S.App.D.C. 357, 379 F.2d 134, 136, 153 USPQ 585, 586-587 (1967), and that the court had jurisdiction of the action pursuant to 28 U.S.C. § 1338(a). The Commissioner's action here we take to be final. Cf. Commissioner v. Whiteley, 71 U.S. (4 Wall.) 522, 533 (1866). See generally, Adkins v. Du Pont Co., 335 U.S. 331 (1948), and the interesting outline in Smith v. Johnston, 109 F.2d 152 (9 Cir. 1940).

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35 U.S.C. § 111 provides that an application for patent shall include a specification as prescribed by § 112, a drawing as prescribed by § 113, an oath as prescribed by § 115 and concludes, the "application *must be signed* by the applicant and *accompanied* by the fee required by law." (Emphasis added).

I

[2] None of various grounds for reversal urged upon us requires extended discussion, for we deem to be controlling as a necessary conclusion that appellant had failed to state a claim upon which relief could be granted. The district judge correctly so perceived, and we are bound to affirm his order of dismissal. It seems clear enough that the "Commissioner *shall* charge" (emphasis ours) the fees as specified in 35 U.S.C. § 41. [2] Note also that 35 U.S.C. § 42 provides that all "patent fees *shall* be paid to the Commissioner who *shall* deposit the same in the Treasury of the United States * * *" [3] (Emphasis added).

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[2] The appellant has made no contention that he is entitled somehow to financial assistance in complying with the intricate requirements of 35 U.S.C. §§ 112, 113 and 114 to the extent applicable. Compare Leighton v. Coe, 76 U.S.App.D.C. 212, 130 F.2d 841, 54 USPQ 471 (1942), where an in forma pauperis applicant sought an allowance for expenses to appear in the district court then reviewing Patent Office proceedings. We there observed that the court made no such allowance for it had no power under the statutes to do so.

[3] "Shall" is the language of command, Escoe v. Zerbst, 295 U.S. 490, 493 (1935) as Mr. Justice Cardozo observed for a unanimous court. And see the discussion by Mr. Justice Stone in Richbourg Motor Co. v. United States, 281 U.S. 528, 534 (1930).

We may note in passing that 35 U.S.C. § 145 in authorizing a civil action against the commissioner provides that "[a]ll the expenses of the proceedings *shall* be paid by the applicant." (Emphasis added). See Robertson v. Cooper, 46 F.2d 766, 769, 8 USPQ 31, 33-34 (4 Cir. 1931), and Watson v. Allen, 107 U.S.App.D.C. 25, 274 F.2d 87, 123 USPQ 330 (1959).

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[3] No person has a vested right to a patent, see McClurg v. Kingsland, 42 U.S. (1 Howard) 202, 206 (1843), but is privileged to seek the protected monopoly only upon compliance with the conditions which Congress has imposed. That rule applies to the payment of fees required for the

administration of the patent laws just as it demands compliance with other conditions, statutorily imposed. Certainly the powers of Congress in the patent law field are plenary for they stem directly from the Constitution. [4]

[4] As to other comparable instances see Currin v. Wallace, 306 U.S. 1, 13-14 (1939), and Detroit Bank v. United States, 317 U.S. 329, 337-338 (1943).

II

But, the appellant argues, granting that Sections 41(a) and 111 are not unconstitutional on their face, the Commissioner's treatment of the appellant's patent application brings it about "that poor people may

be cavalierly discriminated against." He accordingly argues that he has been denied the Fourteenth Amendment's assurance of equal protection and the Fifth Amendment's guaranty of due process. [5] He relies upon such cases as Harris v. Harris, 137 U.S.App.D.C. 318, 424 F.2d 806 (1970), and Griffin v. Illinois, 351 U.S. 12 (1956), as typical and as illustrative of principles [6] which, if here applied, would remedy his situation and would serve "a social need."

[5] He realizes that the Fifth Amendment does not contain the equal protection clause to be found in the Fourteenth Amendment, applicable to the states, but treats the two concepts as elided, claiming that, basically, discrimination underlies either approach. Bolling v. Sharpe, 347 U.S. 497, 499 (1954); cf. Lee v. Habib, 137 U.S.App.D.C. 403, 413-414, 424 F.2d 891, 901-902 (1970).

[6] But in Harris we noted the existence of a statutory right to file an action for divorce, and in Griffin the court had recognized a constitutional requirement which must be met.

[4] Thus, he asks us to order the Commissioner to proceed with the examination of his application, even though he has not paid the fee prescribed by Congress and although Congress has accorded no authority to the Commissioner to waive the prescribed payment. [7] He asks us, in effect, to *order* the Commissioner to permit him to proceed in the Patent Office just as pursuant to 28 U.S.C. § 1915(a), he has been permitted to proceed in our courts. But that section clearly does not apply to the Patent Office. Its explicit language applies only to the Federal Courts: any court of the United States may authorize in forma pauperis proceedings as to any action "therein."

[7] Cf. Miller v. United States, 317 U.S. 192, 198 (1942); Douglas v. Green, 327 F.2d 661 (6 Cir. 1964); In re Fullam, 80 U.S.App.D.C. 273, 152 F.2d 141 (1945). And further compare Lee v. Habib, supra, n. 5, 137 U.S.App.D.C. at 416-417, 424 F.2d at 904-905.

We perceive here no constitutional deprivation, no arbitrariness on the part of the Commissioner, and no predicate for the appellant's claims. Accordingly, we decline to enter the order the appellant seeks. Rather, we do say that Congress has granted a privilege, open to all, and has created no requirements which can be said to be unnecessary to what Congress in the exercise of its plenary power deems essential to the effective working of the patent system. Obviously, there are differences in the economic circumstances of our citizenry which exist quite apart from any exercise of the privilege which Congress has conferred. Congress simply has here done nothing to alleviate the consequences of those differences.

This applicant in effect has asked this court to order discrimination in his favor. He asks to be permitted without charge to do what all others must pay for. [8] Thus, where the *law* has not discriminated against him, he would have us say that the Commissioner is bound to discriminate to his advantage.

[8] We doubt that it could effectively be contended that one in appellant's circumstances would be entitled, without fee, to register an automobile in the District of Columbia when all others must pay a registration fee. Again, the Supreme Court has found no such invidious discrimination against an indigent as to render invalid a state law requiring him to provide compulsory liability insurance. See Ex parte Poresky, 290 U.S. 30 (1933).

III

To recapitulate, it is apparent that the duty of the Commissioner stems from a clear statutory requirement. There is no grant of discretionary power to him. Of course, if he had such power and had declined to exercise it, a very different question would be presented. [9] Under the circumstances here presented, mandamus surely is not available [10] to us to the end that we substitute by our order a result for which Congress has made no provision. [11]

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[9] Coe v. United States ex rel. Remington Rand, Inc., 65 App.D.C. 387, 84 F.2d 240, 29 USPQ 227 (1936).

[10] Hammond v. Hull, 76 U.S.App.D.C. 301, 303, 131 F.2d 23, 25 (1942), *cert. denied*, 318 U.S. 777 (1943); cf. Procter & Gamble Co. v. Coe, 68 App.D.C. 246, 249, 96 F.2d 518, 521, 36 USPQ 461 (1938).

[11] Compare Brenner v. Ebbert, 130 U.S.App.D.C. 168, 170, 398 F.2d 762, 764, 157 USPQ 609 , 610-611 *cert. denied* 393 U.S. 926, 159 USPQ 799 (1968).

This appellant's petition in the respects under consideration must be addressed to the law-making authority. [12] We have given him carefully the only consideration open to us and find ourselves forced to the conclusion that he has failed to state a claim for which relief may be had. [13]

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[12] Policy questions in this field are singularly the concern of Congress. United States v. Dubilier Condenser Corp., 289 U.S. 178, 198, 17 USPQ 154, 162 (1933).

[13] His claim for money damages is frivolous. Spalding v. Vilas, 161 U.S. 483 (1896); Barr v. Matteo, 360 U.S. 564 (1959); Gregoire v. Biddle, 177 F.2d 579, 581 (2 Cir. 1949), *cert. denied* 339 U.S. 949 (1950).

The order of the District Court is affirmed

Concurring Opinion Text

Concurrence By:

Leventhal, Circuit Judge, joining and concurring.

I join in Judge Danaher's opinion, adding some observations because they help give

Page 683

me additional perspective for denying petitioner's claim of constitutional right, as an indigent, to process a patent application without payment of the statutory fee.

Equal protection concepts begin with the requirement of a standard that is non-discriminatory; here the statute obviously requires one and all to pay the fee. Constitutional requrements also dictate that in some matters the weak and helpless be relieved of burdens that may be and are applied generally without constitutional hindrance.

Thus the Supreme Court has held that an indigent who is a defendant in a criminal case has the constitutional right to have the state supply him, without payment of fees, counsel and a transcript [1] for which others must pay. In Harper, [2] invalidating the poll tax, the Court said there is close scrutiny and careful confinement of classifications that affect "fundamental rights and liberties," that wealth "is not germane" to voting and the right to vote is "too precious, too fundamental" to be conditioned on a fee. Harper indicates that the area of "fundamental rights" is not limited by the assumptions of the past. In Sniadach [3] the Court invalidated pre-judgment wage garnishments. The Boddie case involves the right of an indigent to access to civil courts for a divorce without payment of fee. [4]

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[1] Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

[2] Harper v. Bd. of Elections, 383 U.S. 663 (1966).

[3] Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

[4] On appeal from Boddie v. Connecticut, 286 F.Supp. 968 (D. Conn., 3-judge court, 1968),

the Supreme Court noted probable jurisdiction, 395 U.S. 974 (1969).

By no means, however, does the Constitution embody as a present requirement an egalitarian philosophy that supposes that all men can be put in exactly equal condition as to all matters involving the Government. As the learning cited by Judge Danaher indicates, a man cannot insist that his indigency establishes a constitutional right to drive a car without, e.g., paying the cost of insurance required for the protection of others, [5] or of safety devices and government inspection services. [6]

[5] Ex parte Poresky, 290 U.S. 30 (1933).

[6] The validity of a driver's license fee was impliedly admitted in Harper, 383 U.S. at 668.

Drawing the line between what is constitutionally permitted and prohibited will be an ongoing process. I think it clear, however, that in the case of a fee required as an incident to the Government's processing a request for an award of a monopoly of commercial value, there is no "fundamental right", that carves a constitutional exception for the indigent. [7]

[7] It may be that even where some fees are permissible, an indigent could raise a separate constitutional question protesting an invidious and unnecessary hardship wrought by a fee requirement totally disproportionate to any justified state interest. It seems obvious that the statutory fees, less than $100 for petitioner, make only a modest payment toward the cost to the Government of processing patent applications. There is no contention before us to the contrary.

- End of Case -

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

Tevis R. Ignacio
327 Blossom Valley Drive
Los Gatos CA 95032

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OFFICE OF PETITIONS

In re Application of	:	
IGNACIO	:	LETTER
Application No. 61/378,468	:	RE
Filed: August 31, 2010	:	FORMA PAUPERIS STATUS
Attorney Docket No.	:	

This is a letter in response to applicant's request for *forma pauperis* status, filed August 31, 2010 and September 3, 2010, in the above-identified provisional application.

On August 31, 2010, the above-identified application was filed with the United States Patent and Trademark Office (USPTO). In lieu of payment of the filing fee, the application was accompanied by a request that applicant be accorded *forma pauperis* status on the basis that applicant "cannot afford the fee(s) at this time".

On September 23, 2010, the USPTO mailed a Notice to File Missing Parts of Provisional Application requiring applicant to submit a $110.00 statutory basic filing fee and a $25.00 surcharge. The Notice accorded applicant two months from the September 23, 2010 mailing date to submit the above fees to avoid abandonment.

For applicant's information, the requirement that an application "be accompanied by the fee required by law" is a requirement of the statute. 35 U.S.C. 111(b)(3) (copy enclosed). While the statute permits the Director to accept payment of the filing fee at a time subsequent to the date of receipt of the specification and drawings, the filing fee remains a necessary component of a complete application. The Director has no authority to waive a requirement of the statutes. See Boyden v. Commissioner, 441 F.2d 1041, 168 USPQ 680 (D.C. Cir. 1971), copy enclosed.

The extendable two month time period set in the September 23, 2010 Notice continues to run and will expire at midnight on November 23, 2010 (December 5, 2010 is a Sunday). Extensions of this two month time period may be obtained, in one month increments, by filing a petition under 37 CFR 1.136(a) (copy enclosed) requesting an extension of time along with payment of the applicable extension of time fee. A copy of the current fee schedule is enclosed. Under no circumstance can this time period be extended past the statutory deadline of six months from the September 23, 2010 mailing date of the Notice, or March 23, 2011. 35 U.S.C. 133 (copy enclosed).

As set forth on Page 2 of the September 23, 2010 Notice,

"Replies should be mailed to:

Mail Stop Missing Parts
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450".

Failure to timely submit the requisite fees will result in ABANDONMENT of the application.

Telephone inquiries related to this decision may be directed to Brian W. Brown at (571) 272-5338.

Anthony Knight
Director
Office of Petitions

Enclosures: 35 U.S.C. 111(b)(3)
35 U.S.C. 133
37 CFR 1.136(a)
Current Fee Schedule
Boyden v. Commissioner, 441 F.2d 1041 (D.C. Cir. 1971)

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 14, 1975, Public Law 94-131, sec. 6, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 403(a), 98 Stat. 3392; Dec. 8, 1993, Public Law 103-182, sec. 331, 107 Stat. 2113; Dec. 8, 1994, Public Law 103-465, sec. 531(a), 108 Stat. 4982; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 105 Inventions in outer space.

(a) Any invention made, used, or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used, or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used, or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Nov. 15, 1990, Public Law 101-580, sec. 1(a), 104 Stat. 2863.)

CHAPTER 11 — APPLICATION FOR PATENT

Sec.

111 Application.
112 Specification.
113 Drawings.
114 Models, specimens.
115 Oath of applicant.
116 Inventors.
117 Death or incapacity of inventor.
118 Filing by other than inventor.
119 Benefit of earlier filing date; right of priority.
120 Benefit of earlier filing date in the United States.
121 Divisional applications.
122 Confidential status of applications; publication of patent applications.

35 U.S.C. 111 Application.

(a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title; and

(C) an oath by the applicant as prescribed by section 115 of this title.

(3) FEE AND OATH.—The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) FAILURE TO SUBMIT.—Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

(A) a specification as prescribed by the first paragraph of section 112 of this title; and

(B) a drawing as prescribed by section 113 of this title.

(2) CLAIM.—A claim, as required by the second through fifth paragraphs of section 112, shall not be required in a provisional application.

(3) FEE.—

(A) The application must be accompanied by the fee required by law.

(B) The fee may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(C) Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee was unavoidable or unintentional.

(4) FILING DATE.—The filing date of a provisional application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.

(6) OTHER BASIS FOR PROVISIONAL APPLICATION.—Subject to all the conditions in this subsection and section 119(e) of this title, and as prescribed by the Director, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) NO RIGHT OF PRIORITY OR BENEFIT OF EARLIEST FILING DATE.—A provisional application shall not be entitled to the right of priority of any other application under section 119 or 365(a) of this title or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c) of this title.

(8) APPLICABLE PROVISIONS.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to sections 115, 131, 135, and 157 of this title.

(Amended Aug. 27, 1982, Public Law 97-247, sec. 5, 96 Stat. 319; Dec. 8, 1994, Public Law 103-465, sec. 532(b)(3), 108 Stat. 4986; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582, 588 (S. 1948 secs. 4732(a)(10)(A), 4801(a)).)

35 U.S.C. 112 Specification.

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

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 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.

(Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 134 Appeal to the Board of Patent Appeals and Interferences.

(a) PATENT APPLICANT.— An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(b) PATENT OWNER.— A patent owner in any reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(c) THIRD-PARTY.— A third-party requester in an inter partes proceeding may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.

(Amended Nov. 8, 1984, Public Law 98-622, sec. 204(b)(1), 98 Stat. 3388; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-570 (S. 1948 sec. 4605(b)); subsections (a)-(c) amended Nov. 2, 2002, Public Law 107-273, secs. 13106 and 13202, 116 Stat. 1901.)

35 U.S.C. 135 Interferences.

(a) Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Director shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Director may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office.

(b)(1)A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Director may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Director shall give notice to the parties or their attorneys of record, a reasonable time prior to

within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Director.

(2) An interview for the discussion of the patentability of a pending application will not occur before the first Office action, unless the application is a continuing or substitute application or the examiner determines that such an interview would advance prosecution of the application.

(3) The examiner may require that an interview be scheduled in advance.

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office actions as specified in §§ 1.111 and 1.135.

[Para. (b) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; para. (a)(1) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(2) revised, 70 FR 56119, Sept. 26, 2005, effective Nov. 25, 2005]

TIME FOR REPLY BY APPLICANT; ABANDONMENT OF APPLICATION

§ 1.134 Time period for reply to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

[47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

[Paras. (a), (b), and (c), 47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; para. (d) deleted, 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted

an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences.

(3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

(c) If an applicant is notified in a "Notice of Allowability" that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the "Notice of Allowability" or in an Office action having a mail date on or after the mail date of the "Notice of Allowability":

(1) The period for submitting an oath or declaration in compliance with § 1.63;

(2) The period for submitting formal drawings set under § 1.85(c); and

(3) The period for making a deposit set under § 1.809(c).

[47 FR 41277, Sept. 17, 1982, effective Oct. 1, 1982; 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; 54 FR 29551, July 13, 1989, effective Aug. 20, 1989; para. (a) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) added, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (a)(2) and (b) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; para. (c) revised, 66 FR 21090, Apr. 27, 2001, effective May 29, 2001; paras. (a)(1), (a)(2), and (b) revised, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004; para. (b) revised, 69 FR 56481, Sept. 21, 2004, effective Nov. 22, 2004; para. (b) revised, 70 FR 3880, Jan. 27, 2005, effective Dec. 8, 2004; para. (a)(1) revised, 72 FR 46716, Aug. 21, 2007 (implementation enjoined and never became effective); para. (a)(1) revised, 74 FR 52686, Oct. 14, 2009, effective Oct. 14, 2009 (to remove changes made by the final rules in 72 FR 46716 from the CFR)]

§ 1.137 Revival of abandoned application, terminated or limited reexamination prosecution, or lapsed patent.

(a) *Unavoidable.* If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(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

UNITED STATES PATENT AND TRADEMARK OFFICE
Effective October 2, 2008

Any fee amount paid on or after October 2, 2008, must be paid as shown in the revised fee schedule.
The fees subject to reduction for small entities that have established status (37 CFR 1.27) are shown in a separate column.
For additional information, please call the USPTO Contact Center at (571) 272-1000 or (800) 786-9199.

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Application Filing Fees				
1011/2011	1.16(a)(1)	Basic filing fee - Utility *filed on or after December 8, 2004*	330.00	165.00
4011†	1.16(a)(1)	Basic filing fee - Utility (electronic filing) *filed on or after December 8, 2004*	N/A	82.00
1001/2001	1.16(a)(2)	Basic filing fee - Utility *filed before December 8, 2004*	850.00	425.00
1201/2201	1.16(h)	Independent claims in excess of three	220.00	110.00
1202/2202	1.16(i)	Claims in excess of 20	52.00	26.00
1203/2203	1.16(j)	Multiple dependent claim	390.00	195.00
1051/2051	1.16(f)	Surcharge - Late filing fee or oath or declaration	130.00	65.00
1081/2081	1.16(s)	Utility Application Size Fee - for each additional 50 sheets	270.00	135.00
1012/2012	1.16(b)(1)	Basic filing fee - Design *filed on or after December 8, 2004*	220.00	110.00
1002/2002	1.16(b)(2)	Basic filing fee - Design *filed before December 8, 2004*	380.00	190.00
1017/2017	1.16(b)(1)	Basic filing fee - Design (CPA) *filed on or after December 8, 2004*	220.00	110.00
1007/2007	1.16(b)(2)	Basic filing fee - Design (CPA) *filed before December 8, 2004*	380.00	190.00
1082/2082	1.16(s)	Design Application Size Fee - for each additional 50 sheets	270.00	135.00
1013/2013	1.16(c)(1)	Basic filing fee - Plant *filed on or after December 8, 2004*	220.00	110.00
1003/2003	1.16(c)(2)	Basic filing fee - Plant *filed before December 8, 2004*	600.00	300.00
1083/2083	1.16(s)	Plant Application Size Fee – for each additional 50 sheets	270.00	135.00
1014/2014	1.16(e)(1)	Basic filing fee - Reissue *filed on or after December 8, 2004*	330.00	165.00
1004/2004	1.16(e)(2)	Basic filing fee - Reissue *filed before December 8, 2004*	850.00	425.00
1019/2019	1.16(e)(1)	Basic filing fee - Design Reissue (CPA) *filed on or after December 8, 2004*	330.00	165.00
1009/2009	1.16(e)(2)	Basic filing fee - Design Reissue (CPA) *filed before December 8, 2004*	850.00	425.00
1204/2204	1.16(h)	Reissue independent claims in excess of three	220.00	110.00
1205/2205	1.16(i)	Reissue claims in excess of 20	52.00	26.00
1084/2084	1.16(s)	Reissue Application Size Fee – for each additional 50 sheets	270.00	135.00
1005/2005	1.16(d)	Provisional application filing fee	220.00	110.00
1085/2085	1.16(s)	Provisional Application Size Fee - for each additional 50 sheets	270.00	135.00
1052/2052	1.16(g)	Surcharge - Late provisional filing fee or cover sheet	50.00	25.00
1053	1.17(i)	Non-English specification	130.00	
Patent Search Fees				
1111/2111	1.16(k)	Utility Search Fee	540.00	270.00
1112/2112	1.16(l)	Design Search Fee	100.00	50.00
1113/2113	1.16(m)	Plant Search Fee	330.00	165.00
1114/2114	1.16(n)	Reissue Search Fee	540.00	270.00
Patent Examination Fees				
1311/2311	1.16(o)	Utility Examination Fee	220.00	110.00
1312/2312	1.16(p)	Design Examination Fee	140.00	70.00
1313/2313	1.16(q)	Plant Examination Fee	170.00	85.00
1314/2314	1.16(r)	Reissue Examination Fee	650.00	325.00
Patent Post-Allowance Fees				
1501/2501	1.18(a)	Utility issue fee	1,510.00	755.00
1502/2502	1.18(b)	Design issue fee	860.00	430.00
1503/2503	1.18(c)	Plant issue fee	1,190.00	595.00
1511/2511	1.18(a)	Reissue issue fee	1,510.00	755.00
1504	1.18(d)	Publication fee for early, voluntary, or normal publication	300.00	
1505	1.18(d)	Publication fee for republication	300.00	

† The 4000 series fee code may be used via EFS-Web at *www.uspto.gov/ebc/efs/*.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Maintenance Fees				
1551/2551	1.20(e)	Due at 3.5 years	980.00	490.00
1552/2552	1.20(f)	Due at 7.5 years	2,480.00	1,240.00
1553/2553	1.20(g)	Due at 11.5 years	4,110.00	2,055.00
	1.20(h)	Surcharge - Late payment within 6 months	130.00	65.00
1557	1.20(i)(1)	Surcharge after expiration - Late payment is unavoidable	700.00	
1558	1.20(i)(2)	Surcharge after expiration - Late payment is unintentional	1,640.00	
Miscellaneous Patent Fees				
1801/2801	1.17(e)	Request for Continued Examination (RCE) (see 37 CFR 1.114)	810.00	405.00
1808	1.17(i)	Processing fee, except in provisional applications	130.00	
1803	1.17(i)	Request for voluntary publication or republication	130.00	
1802	1.17(k)	Request for expedited examination of a design application	900.00	
1804	1.17(n)	Request for publication of SIR - Prior to examiner's action	920.00*	
1805	1.17(o)	Request for publication of SIR - After examiner's action	1,840.00*	
1806	1.17(p)	Submission of an Information Disclosure Statement	180.00	
1807	1.17(q)	Processing fee for provisional applications	50.00	
1809/2809	1.17(r)	Filing a submission after final rejection (see 37 CFR 1.129(a))	810.00	405.00
1810/2810	1.17(s)	For each additional invention to be examined (see 37 CFR 1.129(b))	810.00	405.00
Post Issuance Fees				
1811	1.20(a)	Certificate of correction	100.00	
1812	1.20(c)(1)	Request for ex parte reexamination	2,520.00	
1813	1.20(c)(2)	Request for inter partes reexamination	8,800.00	
1821/2821	1.20(c)(3)	Reexamination independent claims in excess of three	220.00	110.00
1822/2822	1.20(c)(4)	Reexamination claims in excess of 20	52.00	26.00
1814/2814	1.20(d)	Statutory disclaimer	140.00	70.00
Patent Extensions of Time Fees				
1251/2251	1.17(a)(1)	Extension for response within first month	130.00	65.00
1252/2252	1.17(a)(2)	Extension for response within second month	490.00	245.00
1253/2253	1.17(a)(3)	Extension for response within third month	1,110.00	555.00
1254/2254	1.17(a)(4)	Extension for response within fourth month	1,730.00	865.00
1255/2255	1.17(a)(5)	Extension for response within fifth month	2,350.00	1,175.00
Patent Appeals/Interference Fees				
1401/2401	41.20(b)(1)	Notice of appeal	540.00	270.00
1402/2402	41.20(b)(2)	Filing a brief in support of an appeal	540.00	270.00
1403/2403	41.20(b)(3)	Request for oral hearing	1,080.00	540.00
Patent Petition Fees				
1462	1.17(f) 1.182	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	400.00	
1463	1.17(g)	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II)	200.00	
1464	1.17(h)	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	130.00	
1451	1.17(j)	Petition to institute a public use proceeding	1,510.00	
1452/2452	1.17(l)	Petition to revive unavoidably abandoned application	540.00	270.00
1453/2453	1.17(m)	Petition to revive unintentionally abandoned application	1,620.00	810.00
1454	1.17(t)	Acceptance of an unintentionally delayed claim for priority, or for filing a request for the restoration of the right of priority	1,410.00	
1455	1.18(e)	Filing an application for patent term adjustment	200.00	
1456	1.18(f)	Request for reinstatement of reduced term	400.00	
1457	1.20(j)(1)	Extension of term patent	1,120.00	
1458	1.20(j)(2)	Initial application for interim extension (see 37 CFR 1.790)	420.00	
1459	1.20(j)(3)	Subsequent application for interim extension (see 37 CFR 1.790)	220.00	

8(c) Leneve fee

* Reduced by basic filing fee paid.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
PCT Fees - National Stage				
1631/2631	1.492(a)	Basic National Stage Fee	330.00	165.00
1641/2641	1.492(b)(2)	National Stage Search Fee - U.S. was the ISA	100.00	50.00
1642/2642	1.492(b)(3)	National Stage Search Fee - search report prepared and provided to USPTO	430.00	215.00
1632/2632	1.492(b)(4)	National Stage Search Fee - all other situations	540.00	270.00
1633/2633	1.492(c)(2)	National Stage Examination Fee - all other situations	220.00	110.00
1614/2614	1.492(d)	Claims - extra independent (over three)	220.00	110.00
1615/2615	1.492(e)	Claims - extra total (over 20)	52.00	26.00
1616/2616	1.492(f)	Claims - multiple dependent	390.00	195.00
1681/2681	1.492(j)	National Stage Application Size Fee - for each additional 50 sheets	270.00	135.00
1617/2617	1.492(h)	Oath or declaration after 30 months from priority date	130.00	65.00
1618	1.492(i)	English translation after 30 months from priority date	130.00	
PCT Fees - International Stage				
1601	1.445(a)(1)	Transmittal fee	300.00	
1602	1.445(a)(2)	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	1,800.00	
1604	1.445(a)(3)	Supplemental search fee when required, per additional invention	1,800.00	
1605	1.482(a)(1)	Preliminary examination fee - U.S. was the ISA	600.00	
1606	1.482(a)(1)	Preliminary examination fee - U.S. was not the ISA	750.00	
1607	1.482(a)(2)	Supplemental examination fee per additional invention	600.00	
1619		Late payment fee	VARIABLE	
1621		Transmitting application to Intl. Bureau to act as receiving office	300.00	
PCT Fees to Foreign Offices *				
1701		International filing fee (first 30 pages) – filed in paper w/ PCT Easy zip file or electronically w/o PCT Easy zip file	1,237.00	
1702		International filing fee (first 30 pages)	1,338.00	
1703		Supplemental international filing fee (for each page over 30)	15.00	
1704		International search (EPO)	2,665.00	
1705		Handling fee	171.00	
1706		Handling fee – 90% reduction, if applicant(s) meets criteria specified at: *www.wipo.int/pct/en/fees/fee_reduction.pdf*	17.10	
1708		International CD applications	6,000.00	
1709		International search (KIPO)	244.00	
1710		International filing fee (first 30 pages) – filed electronically w/ PCT Easy zip file	1,137.00	
Patent Enrollment Fees				
9001	1.21(a)(1)(i)	Application fee (non-refundable)	40.00	
9003	1.21(a)(2)	Registration to practice or grant limited recognition under §11.9(b) or (c)	100.00	
9004	1.21(a)(3)	Reinstatement to practice	40.00	
9005	1.21(a)(4)	Certificate of good standing as an attorney or agent	10.00	
9006	1.21(a)(4)	Certificate of good standing as an attorney or agent, suitable for framing	20.00	
9010	1.21(a)(1)(ii)(A)	For test administration by commercial entity	200.00	
9011	1.21(a)(1)(ii)(B)	For test administration by the USPTO.	450.00	
9012	1.21(a)(5)(i)	Review of decision by the Director of Enrollment and Discipline under §11.2(c)	130.00	
9013	1.21(a)(5)(ii)	Review of decision of the Director of Enrollment and Discipline under §11.2(d)	130.00	
9014	1.21(a)(10)	Application fee for person disciplined, convicted of a felony or certain misdemeanors under §11.7(h)	1,600.00	
9024	1.21(k)	Unspecified other services, excluding labor	AT COST	

* PCT Fees to Foreign Offices are subject to periodic change due to fluctuations in exchange rates. Refer to the *Official Gazette of the United States Patent and Trademark Office* for current amounts.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Patent Service Fees			
8001	1.19(a)(1)	Printed copy of patent w/o color, delivery by USPS, USPTO Box, or electronic means	3.00
8003	1.19(a)(2)	Printed copy of plant patent in color	15.00
8004	1.19(a)(3)	Color copy of patent (other than plant patent) or SIR containing a color drawing	25.00
8005	1.19(a)(1)	Patent Application Publication (PAP)	3.00
8007	1.19(b)(1)(i)(A)	Copy of patent application as filed	20.00
8008	1.19(b)(1)(i)(B)	Copy of patent-related file wrapper and paper contents of 400 or fewer pages	200.00
8009	1.19(b)(1)(i)(C)	Each additional 100 pages of patent-related file wrapper and (paper) contents, or portion thereof	40.00
8010	1.19(b)(1)(i)(D)	Certification of patent-related file wrapper and (paper) contents	25.00
8011	1.19(b)(1)(ii)(B)	Copy of patent-related file wrapper and contents if provided electronically or on a physical electronic medium as specified in § 1.19(b)(1)(ii)	55.00
8012	1.19(b)(1)(ii)(C)	Each continuing physical electronic medium in single order of § 1.19(b)(1)(ii)(B)	15.00
8041	1.19(b)(2)(i)(A)	Copy of patent-related file wrapper contents, other than as available in § 1.19(b)(1); first physical electronic medium in a single order	55.00
8042	1.19(b)(2)(i)(B)	Each continuing copy of patent-related file wrapper and contents as specified in § 1.19(b)(2)(i)(A)	15.00
8043	1.19(b)(2)(ii)	Copy of patent-related file wrapper contents other than as available in § 1.19(b)(1); provided electronically other than on a physical electronic medium	55.00
8013	1.19(b)(3)	Copy of office records, except copies of applications as filed	25.00
8014	1.19(b)(4)	For assignment records, abstract of title and certification, per patent	25.00
8904	1.19(c)	Library service	50.00
8015	1.19(d)	List of U.S. patents and SIRs in subclass	3.00
8016	1.19(e)	Uncertified statement re status of maintenance fee payments	10.00
8017	1.19(f)	Copy of non-U.S. document	25.00
8050	1.19(g)	Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits	AT COST
8019	1.21(d)	Local delivery box rental, annually	50.00
8020	1.21(e)	International type search report	40.00
8902	1.21(g)	Self-service copy charge, per page	0.25
8021	1.21(h)	Recording each patent assignment, agreement or other paper, per property	40.00
8022	1.21(i)	Publication in *Official Gazette*	25.00
8023	1.21(j)	Labor charges for services, per hour or fraction thereof	40.00
8024	1.21(k)	Unspecified other services, excluding labor	AT COST
8025	1.21(l)	Retaining abandoned application	130.00
8026	1.21(n)	Handling fee for incomplete or improper application	130.00
8027	1.296	Handling fee for withdrawal of SIR	130.00

GENERAL FEES

Finance Service Fees			
9201	1.21(b)(1) or 2.6(b)(13)(i)	Establish deposit account	10.00
9202	1.21(b)(2) or 2.6(b)(13)(ii)	Service charge for below minimum balance	25.00
9202	1.21(b)(3)	Service charge for below minimum balance restricted subscription deposit account	25.00
9101	1.21(m) or 2.6(b)(12)	Processing each payment refused or charged back	50.00
Computer Service Fees			
8031/8531		Computer records	AT COST

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Trademark Processing Fees *			
6001	2.6(a)(1)(i)	Application for registration, per international class (paper filing)	375.00
7001	2.6(a)(1)(ii)	Application for registration, per international class (electronic filing)	325.00
7007	2.6(a)(1)(iii)	Application for registration, per international class (electronic filing, TEAS Plus)	275.00
6002/7002	2.6(a)(2)	Filing an Amendment to Allege Use under § 1(c), per class	100.00
6003/7003	2.6(a)(3)	Filing a Statement of Use under § 1(d)(1), per class	100.00
6004/7004	2.6(a)(4)	Filing a Request for a Six-month Extension of Time for Filing a Statement of Use under § 1(d)(1), per class	150.00
6005/7005	2.6(a)(15)	Petitions to the Director	100.00
6006	2.6(a)(19)	Dividing an application, per new application (file wrapper) created	100.00
6008/7008	2.6(a)(1)(iv)	Additional fee for application that doesn't meet TEAS Plus filing requirements, per class	50.00
6201/7201	2.6(a)(5)	Application for renewal, per class	400.00
6203/7203	2.6(a)(6)	Additional fee for filing renewal application during grace period, per class	100.00
6204	2.6(a)(21)	Correcting a deficiency in a renewal application	100.00
6205/7205	2.6(a)(12)	Filing § 8 affidavit, per class	100.00
6206/7206	2.6(a)(14)	Additional fee for filing § 8 affidavit during grace period, per class	100.00
6207	2.6(a)(20)	Correcting a deficiency in a § 8 affidavit	100.00
6208/7208	2.6(a)(13)	Filing § 15 affidavit, per class	200.00
6210	2.6(a)(7)	Publication of mark under § 12(c), per class	100.00
6211	2.6(a)(8)	Issuing new certificate of registration	100.00
6212/7212	2.6(a)(9)	Certificate of correction, registrant's error	100.00
6213	2.6(a)(10)	Filing disclaimer to registration	100.00
6214	2.6(a)(11)	Filing amendment to registration	100.00
6401/7401	2.6(a)(16)	Petition for cancellation, per class	300.00
6402/7402	2.6(a)(17)	Notice of opposition, per class	300.00
6403/7403	2.6(a)(18)	Ex parte appeal, per class	100.00
Trademark Madrid Protocol Fees *			
6901/7901	7.6(a)(1)	International application based on single application or registration, per class	100.00
6902/7902	7.6(a)(2)	Certifying an International application based on more than one basic application	150.00
6903/7903	7.6(a)(3)	Transmitting a Request to Record an Assignment or restriction under § 7.23 or 7.24	100.00
6904/7904	7.6(a)(4)	Filing a Notice of Replacement, per class	100.00
6905/7905	7.6(a)(5)	Filing an affidavit under § 71 of the Act	100.00
6906/7906	7.6(a)(6)	Surcharge for filing affidavit under § 71 of the Act during grace period, per class	100.00
6907/7907	7.6(a)(7)	Transmitting a subsequent designation	100.00
Trademark Service Fees			
8501	2.6(b)(1)	Printed copy of registered mark, delivery by USPS, USPTO Box, or electronic means	3.00
8503	2.6(b)(4)(i)	Certified copy of registered mark, with title and/or status, regular service	15.00
8504	2.6(b)(4)(ii)	Certified copy of registered mark, with title and/or status, expedited local service	30.00
8507	2.6(b)(2)	Certified copy of trademark application as filed	15.00
8508	2.6(b)(3)	Certified or uncertified copy of trademark-related file wrapper and contents	50.00
8513	2.6(b)(5)	Certified or uncertified copy of trademark document, unless otherwise provided	25.00
8514	2.6(b)(7)	For assignment records, abstracts of title and certification per registration	25.00
8902	2.6(b)(9)	Self-service copy charge, per page	0.25
8521	2.6(b)(6)	Recording trademark assignment, agreement or other paper, first mark per document	40.00
8522	2.6(b)(6)	For second and subsequent marks in the same document	25.00
8523	2.6(b)(10)	Labor charges for services, per hour or fraction thereof	40.00
8524	2.6(b)(11)	Unspecified other services, excluding labor	AT COST
Fastener Quality Act Fees			
6991	2.7(a)	Recordal application fee	20.00
6992	2.7(b)	Renewal application fee	20.00
6993	2.7(c)	Late fee for renewal application	20.00
6994	2.7(a)	Application fee for reactivation of insignia, per request	20.00

* The 7000 series fee code (e.g., 7001, 7002, etc.) is used for electronic filings via TEAS, which is available at *www.uspto.gov/teas/*.

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Source: USPQ, 1st Series (1929 - 1986) > U.S. Court of Appeals, District of Columbia Circuit > Boyden v. Commissioner of Patents, 168 USPQ 680 (D.C. Cir. 1971)

168 USPQ 680
Boyden v. Commissioner of Patents
U.S. Court of Appeals District of Columbia Circuit

No. 22238

Decided February 18, 1971

441 F2d 1041

Headnotes

PATENTS

[1] Jurisdiction of courts - In general (▶ 43.01)

District court has jurisdiction, pursuant to 28 U.S.C. 1338(a) of action seeking to compel Commissioner of Patents to accept and examine patent application.

[2] Fees - Patent Office (▶ 37.7)

Commissioner must charge fees specified in 35 U.S.C. 41.

[3] Fees - Patent Office (▶ 37.7)

Patent grant - In general (▶ 50.01)

No person has a vested right to a patent, but is privileged to seek the protected monopoly only upon compliance with conditions imposed by Congress; rule applies to payment of fees required for administration of patent laws just as it demands compliance with other conditions, statutorily imposed; powers of Congress in patent field are plenary for they stem directly from Constitution.

[4] Fees - Patent Office (▶ 37.7)

Indigent applicant may not proceed in forma pauperis before Patent Office without payment of statutory filing fee; Commissioner's duty to require fee stems from statutory requirement; there is no grant of discretionary power to him.

Case History and Disposition

Appeal from District Court for the District of Columbia.

Action by Gerald Glen Boyden to compel the Commissioner of Patents to accept and examine a patent application. From judgment dismissing complaint, plaintiff appeals.

Affirmed; Leventhal, Circuit Judge, concurring with opinion.

Attorneys

John F. Witherspoon and Charles A. Wendel (EdwinR. Hutchinson on the brief) all of Washington, D.C., for appellant.

Jere W. Sears, Joseph Schimmel, and Lutrelle F. Parker (S. Wm. Cochran on the brief) for appellee.

Judge

Before Danaher, Senior Circuit Judge, and Leventhal and Robb, Circuit Judges.

Opinion Text

Opinion By:

Danaher, Senior Circuit Judge.

[1] This appellant on April 20, 1967 tendered to the Commissioner an application for a patent which the Patent Office declined to file since the application was not accompanied by the $95 filing fee required by law. Appellant thereupon sought an order in the nature of mandamus to compel the Commissioner to accept and examine his patent application without payment of the statutory filing fee or, alternatively, that he be awarded damages in the sum of $100,000 with interest and costs. The District Court quite properly allowed [1] the appellant to proceed in forma pauperis upon his showing of indigency. The Commissioner moved to dismiss, alleging lack of jurisdiction over the subject matter and failure to state a claim upon which relief could be granted. Thereafter that motion was granted. We allowed an appeal in forma pauperis and appointed counsel who have here diligently represented this appellant's interests.

[1] Despite the inartful pleading, we are satisfied that the appellant showed he was authorized to proceed in the District Court pursuant to 28 U.S.C. § 1915(a), Sikora v. Brenner, 126 U.S.App.D.C. 357, 379 F.2d 134, 136, 153 USPQ 585, 586-587 (1967), and that the court had jurisdiction of the action pursuant to 28 U.S.C. § 1338(a). The Commissioner's action here we take to be final. Cf. Commissioner v. Whiteley, 71 U.S. (4 Wall.) 522, 533 (1866). See generally, Adkins v. Du Pont Co., 335 U.S. 331 (1948), and the interesting outline in Smith v. Johnston, 109 F.2d 152 (9 Cir. 1940).

35 U.S.C. § 111 provides that an application for patent shall include a specification as prescribed by § 112, a drawing as prescribed by § 113, an oath as prescribed by § 115 and concludes, the "application *must be signed* by the applicant and *accompanied* by the fee required by law." (Emphasis added).

I

[2] None of various grounds for reversal urged upon us requires extended discussion, for we deem to be controlling as a necessary conclusion that appellant had failed to state a claim upon which relief could be granted. The district judge correctly so perceived, and we are bound to affirm his order of dismissal. It seems clear enough that the "Commissioner *shall* charge" (emphasis ours) the fees as specified in 35 U.S.C. § 41. [2] Note also that 35 U.S.C. § 42 provides that all "patent fees *shall* be paid to the Commissioner who *shall* deposit the same in the Treasury of the United States * * *" [3] (Emphasis added).

[2] The appellant has made no contention that he is entitled somehow to financial assistance in complying with the intricate requirements of 35 U.S.C. §§ 112, 113 and 114 to the extent applicable. Compare Leighton v. Coe, 76 U.S.App.D.C. 212, 130 F.2d 841, 54 USPQ 471 (1942), where an in forma pauperis applicant sought an allowance for expenses to appear in the district court then reviewing Patent Office proceedings. We there observed that the court made no such allowance for it had no power under the statutes to do so.

[3] "Shall" is the language of command, Escoe v. Zerbst, 295 U.S. 490, 493 (1935) as Mr. Justice Cardozo observed for a unanimous court. And see the discussion by Mr. Justice Stone in Richbourg Motor Co. v. United States, 281 U.S. 528, 534 (1930).

We may note in passing that 35 U.S.C. § 145 in authorizing a civil action against the commissioner provides that "[a]ll the expenses of the proceedings *shall* be paid by the applicant." (Emphasis added). See Robertson v. Cooper, 46 F.2d 766, 769, 8 USPQ 31, 33-34 (4 Cir. 1931), and Watson v. Allen, 107 U.S.App.D.C. 25, 274 F.2d 87, 123 USPQ 330 (1959).

[3] No person has a vested right to a patent, see McClurg v. Kingsland, 42 U.S. (1 Howard) 202, 206 (1843), but is privileged to seek the protected monopoly only upon compliance with the conditions which Congress has imposed. That rule applies to the payment of fees required for the

administration of the patent laws just as it demands compliance with other conditions, statutorily imposed. Certainly the powers of Congress in the patent law field are plenary for they stem directly from the Constitution. [4]

[4] As to other comparable instances see Currin v. Wallace, 306 U.S. 1, 13-14 (1939), and Detroit Bank v. United States, 317 U.S. 329, 337-338 (1943).

II

But, the appellant argues, granting that Sections 41(a) and 111 are not unconstitutional on their face, the Commissioner's treatment of the appellant's patent application brings it about "that poor people may

be cavalierly discriminated against." He accordingly argues that he has been denied the Fourteenth Amendment's assurance of equal protection and the Fifth Amendment's guaranty of due process. [5] He relies upon such cases as Harris v. Harris, 137 U.S.App.D.C. 318, 424 F.2d 806 (1970), and Griffin v. Illinois, 351 U.S. 12 (1956), as typical and as illustrative of principles [6] which, if here applied, would remedy his situation and would serve "a social need."

[5] He realizes that the Fifth Amendment does not contain the equal protection clause to be found in the Fourteenth Amendment, applicable to the states, but treats the two concepts as elided, claiming that, basically, discrimination underlies either approach. Bolling v. Sharpe, 347 U.S. 497, 499 (1954); cf. Lee v. Habib, 137 U.S.App.D.C. 403, 413-414, 424 F.2d 891, 901-902 (1970).

[6] But in Harris we noted the existence of a statutory right to file an action for divorce, and in Griffin the court had recognized a constitutional requirement which must be met.

[4] Thus, he asks us to order the Commissioner to proceed with the examination of his application, even though he has not paid the fee prescribed by Congress and although Congress has accorded no authority to the Commissioner to waive the prescribed payment. [7] He asks us, in effect, to *order* the Commissioner to permit him to proceed in the Patent Office just as pursuant to 28 U.S.C. § 1915(a), he has been permitted to proceed in our courts. But that section clearly does not apply to the Patent Office. Its explicit language applies only to the Federal Courts: any court of the United States may authorize in forma pauperis proceedings as to any action "therein."

[7] Cf. Miller v. United States, 317 U.S. 192, 198 (1942); Douglas v. Green, 327 F.2d 661 (6 Cir. 1964); In re Fullam, 80 U.S.App.D.C. 273, 152 F.2d 141 (1945). And further compare Lee v. Habib, supra, n. 5, 137 U.S.App.D.C. at 416-417, 424 F.2d at 904-905.

We perceive here no constitutional deprivation, no arbitrariness on the part of the Commissioner, and no predicate for the appellant's claims. Accordingly, we decline to enter the order the appellant seeks. Rather, we do say that Congress has granted a privilege, open to all, and has created no requirements which can be said to be unnecessary to what Congress in the exercise of its plenary power deems essential to the effective working of the patent system. Obviously, there are differences in the economic circumstances of our citizenry which exist quite apart from any exercise of the privilege which Congress has conferred. Congress simply has here done nothing to alleviate the consequences of those differences.

This applicant in effect has asked this court to order discrimination in his favor. He asks to be permitted without charge to do what all others must pay for. [8] Thus, where the *law* has not discriminated against him, he would have us say that the Commissioner is bound to discriminate to his advantage.

[8] We doubt that it could effectively be contended that one in appellant's circumstances would be entitled, without fee, to register an automobile in the District of Columbia when all others must pay a registration fee. Again, the Supreme Court has found no such invidious discrimination against an indigent as to render invalid a state law requiring him to provide compulsory liability insurance. See Ex parte Poresky, 290 U.S. 30 (1933).

III

To recapitulate, it is apparent that the duty of the Commissioner stems from a clear statutory requirement. There is no grant of discretionary power to him. Of course, if he had such power and had declined to exercise it, a very different question would be presented. [9] Under the circumstances here presented, mandamus surely is not available [10] to us to the end that we substitute by our order a result for which Congress has made no provision. [11]

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[9] Coe v. United States ex rel. Remington Rand, Inc., 65 App.D.C. 387, 84 F.2d 240, 29 USPQ 227 (1936).

[10] Hammond v. Hull, 76 U.S.App.D.C. 301, 303, 131 F.2d 23, 25 (1942), *cert. denied*, 318 U.S. 777 (1943); cf. Procter & Gamble Co. v. Coe, 68 App.D.C. 246, 249, 96 F.2d 518, 521, 36 USPQ 461 (1938).

[11] Compare Brenner v. Ebbert, 130 U.S.App.D.C. 168, 170, 398 F.2d 762, 764, 157 USPQ 609 , 610-611 *cert. denied* 393 U.S. 926, 159 USPQ 799 (1968).

This appellant's petition in the respects under consideration must be addressed to the law-making authority. [12] We have given him carefully the only consideration open to us and find ourselves forced to the conclusion that he has failed to state a claim for which relief may be had. [13]

---

[12] Policy questions in this field are singularly the concern of Congress. United States v. Dubilier Condenser Corp., 289 U.S. 178, 198, 17 USPQ 154, 162 (1933).

[13] His claim for money damages is frivolous. Spalding v. Vilas, 161 U.S. 483 (1896); Barr v. Matteo, 360 U.S. 564 (1959); Gregoire v. Biddle, 177 F.2d 579, 581 (2 Cir. 1949), *cert. denied* 339 U.S. 949 (1950).

The order of the District Court is affirmed

Concurring Opinion Text

Concurrence By:

Leventhal, Circuit Judge, joining and concurring.

I join in Judge Danaher's opinion, adding some observations because they help give

Page 683

me additional perspective for denying petitioner's claim of constitutional right, as an indigent, to process a patent application without payment of the statutory fee.

Equal protection concepts begin with the requirement of a standard that is non-discriminatory; here the statute obviously requires one and all to pay the fee. Constitutional requrements also dictate that in some matters the weak and helpless be relieved of burdens that may be and are applied generally without constitutional hindrance.

Thus the Supreme Court has held that an indigent who is a defendant in a criminal case has the constitutional right to have the state supply him, without payment of fees, counsel and a transcript [1] for which others must pay. In Harper, [2] invalidating the poll tax, the Court said there is close scrutiny and careful confinement of classifications that affect "fundamental rights and liberties," that wealth "is not germane" to voting and the right to vote is "too precious, too fundamental" to be conditioned on a fee. Harper indicates that the area of "fundamental rights" is not limited by the assumptions of the past. In Sniadach [3] the Court invalidated pre-judgment wage garnishments. The Boddie case involves the right of an indigent to access to civil courts for a divorce without payment of fee. [4]

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[1] Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

[2] Harper v. Bd. of Elections, 383 U.S. 663 (1966).

[3] Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

[4] On appeal from Boddie v. Connecticut, 286 F.Supp. 968 (D. Conn., 3-judge court, 1968),

the Supreme Court noted probable jurisdiction, 395 U.S. 974 (1969).

By no means, however, does the Constitution embody as a present requirement an egalitarian philosophy that supposes that all men can be put in exactly equal condition as to all matters involving the Government. As the learning cited by Judge Danaher indicates, a man cannot insist that his indigency establishes a constitutional right to drive a car without, e.g., paying the cost of insurance required for the protection of others, [5] or of safety devices and government inspection services. [6]

[5] Ex parte Poresky, 290 U.S. 30 (1933).

[6] The validity of a driver's license fee was impliedly admitted in Harper, 383 U.S. at 668.

Drawing the line between what is constitutionally permitted and prohibited will be an ongoing process. I think it clear, however, that in the case of a fee required as an incident to the Government's processing a request for an award of a monopoly of commercial value, there is no "fundamental right" that carves a constitutional exception for the indigent. [7]

[7] It may be that even where some fees are permissible, an indigent could raise a separate constitutional question protesting an invidious and unnecessary hardship wrought by a fee requirement totally disproportionate to any justified state interest. It seems obvious that the statutory fees, less than $100 for petitioner, make only a modest payment toward the cost to the Government of processing patent applications. There is no contention before us to the contrary.

- End of Case -

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APR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Magnus GOERTZ et al.	:	
Application No. 61/379,012	:	DECISION ON PETITION
Filed: September 01, 2010	:	
Attorney Docket No. NEONODE.P015PRV	:	

This is a decision on the petition under 37 CFR 1.182 filed September 30, 2010, in response to the Notice to File Missing Parts of Provisional Application.

The petition is **DISMISSED**.

On September 22, 2010, the Office mailed a Notice to File Missing Parts of Provisional Application indicating that Figure 119 was omitted from the application.

Petitioner states that there are only a total of 118 figures filed in the application. Petitioner also, asserts that the references to figure numbers for the last two figures in the specification were off and that figures 118 and 119 should have been references to figures 117 and 118.

The Office acknowledges the receipt of the fees required by the notice mailed September 22, 2010, however an amendment to the specification is needed to correct the errors indicated by petitioner. Therefore, the petition cannot be granted at this time.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may 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

SOQUEL GROUP, LLC
P.O. BOX 691
SOQUEL CA 95073

MAILED
JUN 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Magnue Goertz et al	:	
Application No. 61/379,012	:	DECISION ON REQUEST FOR REFUND
Filed: September 1, 2010	:	
Attorney Docket No. NEONODE.P015PRV	:	

This is a decision on the Request For Refund filed May 23, 2011.

The request is **GRANTED**.

Applicant filed the above request and states that "On September 1, 2010, applicants filed the subject application, which included exactly 200 pages. The application was filed electronically, and the PAIR system calculator determined an excess pages fee of $270 based on 0.75 * 200 = 150 pages. Applicant paid this fee at the time of filing.

In the Notice to File Missing Parts of Provisional Application issued on September 22, 2010, the USPTO erroneously indicated that the application should have been filed with an extra page, which would raise the excess pages fee by $270. The Notice indicated that if applicants contend, then a petition must be filed within two months. The Notice further indicated that the petition fee of $400 would be refunded if applicants establish that all pages of the application were received by the USPTO at the time of filing."

A review of Office records for the above-identified application indicates that applicants electronically filed 200 pages on September 1, 2010. The Office permits 75% of 200 = 150 pages. 100 pages are permitted. The required fee for excess size fee of $270.00 was paid on September 1, 2010. Note MPEP 607.

In view of the above, the request for refund of the petition fee ($400.00) paid on September 30, 2010 and the ($270.00) excess size fee paid on April 29, 2011, is being credited to applicant's credit card account as it is the method in which the fees were paid.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Tevis R. Ignacio
327 Blossom Valley Drive
Los Gatos CA 95032

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of	:	LETTER
IGNACIO	:	RE
Application No. 61/379,102	:	FORMA PAUPERIS STATUS
Filed: September 1, 2010	:	
Attorney Docket No.	:	

This is a letter in response to applicant's request for *forma pauperis* status, filed September 1, 2010, in the above-identified provisional application.

On September 1, 2010, the above-identified application was filed with the United States Patent and Trademark Office (USPTO). In lieu of payment of the filing fee, the application was accompanied by a request that applicant be accorded *forma pauperis* status on the basis that applicant "cannot afford the fee(s) at this time".

On September 23, 2010, the USPTO mailed a Notice to File Missing Parts of Provisional Application requiring applicant to submit a $110.00 statutory basic filing fee and a $25.00 surcharge. The Notice accorded applicant two months from the September 23, 2010 mailing date to submit the above fees to avoid abandonment.

For applicant's information, the requirement that an application "be accompanied by the fee required by law" is a requirement of the statute. 35 U.S.C. 111(b)(3) (copy enclosed). While the statute permits the Director to accept payment of the filing fee at a time subsequent to the date of receipt of the specification and drawings, the filing fee remains a necessary component of a complete application. The Director has no authority to waive a requirement of the statutes. See Boyden v. Commissioner, 441 F.2d 1041, 168 USPQ 680 (D.C. Cir. 1971), copy enclosed.

The extendable two month time period set in the September 23, 2010 Notice continues to run and will expire at midnight on November 23, 2010. Extensions of this two month time period may be obtained, in one month increments, by filing a petition under 37 CFR 1.136(a) (copy enclosed) requesting an extension of time along with payment of the applicable extension of time fee. A copy of the current fee schedule is enclosed. Under no circumstance can this time period be extended past the statutory deadline of six months from the September 23, 2010 mailing date of the Notice, or March 23, 2011. 35 U.S.C. 133 (copy enclosed).

As set forth on Page 2 of the September 23, 2010 Notice,

> "Replies should be mailed to:
>
> Mail Stop Missing Parts
> Commissioner of Patents
> P.O. Box 1450
> Alexandria, VA 22313-1450".

Failure to timely submit the requisite fees will result in ABANDONMENT of the application.

Telephone inquiries related to this decision may be directed to Brian W. Brown at (571) 272-5338.

Anthony Knight
Director
Office of Petitions

Enclosures: 35 U.S.C. 111(b)(3)
35 U.S.C. 133
37 CFR 1.136(a)
Current Fee Schedule
Boyden v. Commissioner, 441 F.2d 1041 (D.C. Cir. 1971)

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 14, 1975, Public Law 94-131, sec. 6, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 403(a), 98 Stat. 3392; Dec. 8, 1993, Public Law 103-182, sec. 331, 107 Stat. 2113; Dec. 8, 1994, Public Law 103-465, sec. 531(a), 108 Stat. 4982; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 105 Inventions in outer space.

(a) Any invention made, used, or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

(b) Any invention made, used, or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used, or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.

(Added Nov. 15, 1990, Public Law 101-580, sec. 1(a), 104 Stat. 2863.)

CHAPTER 11 — APPLICATION FOR PATENT

Sec.

111 Application.
112 Specification.
113 Drawings.
114 Models, specimens.
115 Oath of applicant.
116 Inventors.
117 Death or incapacity of inventor.
118 Filing by other than inventor.
119 Benefit of earlier filing date; right of priority.
120 Benefit of earlier filing date in the United States.
121 Divisional applications.
122 Confidential status of applications; publication of patent applications.

35 U.S.C. 111 Application.

(a) IN GENERAL.—

(1) WRITTEN APPLICATION.—An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) CONTENTS.—Such application shall include—

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title; and

(C) an oath by the applicant as prescribed by section 115 of this title.

(3) FEE AND OATH.—The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) FAILURE TO SUBMIT.—Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(b) PROVISIONAL APPLICATION.—

(1) AUTHORIZATION.—A provisional application for patent shall be made or authorized to be made by the inventor, except as otherwise provided in this title, in writing to the Director. Such application shall include—

(A) a specification as prescribed by the first paragraph of section 112 of this title; and

(B) a drawing as prescribed by section 113 of this title.

(2) CLAIM.—A claim, as required by the second through fifth paragraphs of section 112, shall not be required in a provisional application.

(3) FEE.—

(A) The application must be accompanied by the fee required by law.

(B) The fee may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(C) Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee was unavoidable or unintentional.

(4) FILING DATE.—The filing date of a provisional application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period.

(6) OTHER BASIS FOR PROVISIONAL APPLICATION.—Subject to all the conditions in this subsection and section 119(e) of this title, and as prescribed by the Director, an application for patent filed under subsection (a) may be treated as a provisional application for patent.

(7) NO RIGHT OF PRIORITY OR BENEFIT OF EARLIEST FILING DATE.—A provisional application shall not be entitled to the right of priority of any other application under section 119 or 365(a) of this title or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c) of this title.

(8) APPLICABLE PROVISIONS.—The provisions of this title relating to applications for patent shall apply to provisional applications for patent, except as otherwise provided, and except that provisional applications for patent shall not be subject to sections 115, 131, 135, and 157 of this title.

(Amended Aug. 27, 1982, Public Law 97-247, sec. 5, 96 Stat. 319; Dec. 8, 1994, Public Law 103-465, sec. 532(b)(3), 108 Stat. 4986; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582, 588 (S. 1948 secs. 4732(a)(10)(A), 4801(a)).)

35 U.S.C. 112 Specification.

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A claim may be written in independent or, if the nature of the case admits, in dependent or multiple dependent form.

Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

A claim in multiple dependent form shall contain a reference, in the alternative only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of the particular claim in relation to which it is being considered.

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 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.

(Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 134 Appeal to the Board of Patent Appeals and Interferences.

(a) PATENT APPLICANT.— An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(b) PATENT OWNER.— A patent owner in any reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(c) THIRD-PARTY.— A third-party requester in an inter partes proceeding may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.

(Amended Nov. 8, 1984, Public Law 98-622, sec. 204(b)(1), 98 Stat. 3388; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-570 (S. 1948 sec. 4605(b)); subsections (a)-(c) amended Nov. 2, 2002, Public Law 107-273, secs. 13106 and 13202, 116 Stat. 1901.)

35 U.S.C. 135 Interferences.

(a) Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Director shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Director may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office.

(b)(1)A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Director may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Director shall give notice to the parties or their attorneys of record, a reasonable time prior to

within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Director.

(2) An interview for the discussion of the patentability of a pending application will not occur before the first Office action, unless the application is a continuing or substitute application or the examiner determines that such an interview would advance prosecution of the application.

(3) The examiner may require that an interview be scheduled in advance.

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office actions as specified in §§ 1.111 and 1.135.

[Para. (b) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; para. (a)(1) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(2) revised, 70 FR 56119, Sept. 26, 2005, effective Nov. 25, 2005]

TIME FOR REPLY BY APPLICANT; ABANDONMENT OF APPLICATION

§ 1.134 Time period for reply to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

[47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

[Paras. (a), (b), and (c), 47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; para. (d) deleted, 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(v) The application is involved in a contested case (§ 41.101(a) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted

an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences.

(3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

(c) If an applicant is notified in a "Notice of Allowability" that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the "Notice of Allowability" or in an Office action having a mail date on or after the mail date of the "Notice of Allowability":

(1) The period for submitting an oath or declaration in compliance with § 1.63;

(2) The period for submitting formal drawings set under § 1.85(c); and

(3) The period for making a deposit set under § 1.809(c).

[47 FR 41277, Sept. 17, 1982, effective Oct. 1, 1982; 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; 54 FR 29551, July 13, 1989, effective Aug. 20, 1989; para. (a) revised, 58 FR 54504, Oct. 22, 1993, effective Jan. 3, 1994; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) added, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (a)(2) and (b) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; para. (c) revised, 66 FR 21090, Apr. 27, 2001, effective May 29, 2001; paras. (a)(1), (a)(2), and (b) revised, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004; para. (b) revised, 69 FR 56481, Sept. 21, 2004, effective Nov. 22, 2004; para. (b) revised, 70 FR 3880, Jan. 27, 2005, effective Dec. 8, 2004; para. (a)(1) revised, 72 FR 46716, Aug. 21, 2007 (implementation enjoined and never became effective); para. (a)(1) revised, 74 FR 52686, Oct. 14, 2009, effective Oct. 14, 2009 (to remove changes made by the final rules in 72 FR 46716 from the CFR)]

§ 1.137 Revival of abandoned application, terminated or limited reexamination prosecution, or lapsed patent.

(a) *Unavoidable.* If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(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

UNITED STATES PATENT AND TRADEMARK OFFICE
Effective October 2, 2008

Any fee amount paid on or after October 2, 2008, must be paid as shown in the revised fee schedule.
The fees subject to reduction for small entities that have established status (37 CFR 1.27) are shown in a separate column.
For additional information, please call the USPTO Contact Center at (571) 272-1000 or (800) 786-9199.

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Application Filing Fees				
1011/2011	1.16(a)(1)	Basic filing fee - Utility *filed on or after December 8, 2004*	330.00	165.00
4011†	1.16(a)(1)	Basic filing fee - Utility (electronic filing) *filed on or after December 8, 2004*	N/A	82.00
1001/2001	1.16(a)(2)	Basic filing fee - Utility *filed before December 8, 2004*	850.00	425.00
1201/2201	1.16(h)	Independent claims in excess of three	220.00	110.00
1202/2202	1.16(i)	Claims in excess of 20	52.00	26.00
1203/2203	1.16(j)	Multiple dependent claim	390.00	195.00
1051/2051	1.16(f)	Surcharge - Late filing fee or oath or declaration	130.00	65.00
1081/2081	1.16(s)	Utility Application Size Fee - for each additional 50 sheets	270.00	135.00
1012/2012	1.16(b)(1)	Basic filing fee - Design *filed on or after December 8, 2004*	220.00	110.00
1002/2002	1.16(b)(2)	Basic filing fee - Design *filed before December 8, 2004*	380.00	190.00
1017/2017	1.16(b)(1)	Basic filing fee - Design (CPA) *filed on or after December 8, 2004*	220.00	110.00
1007/2007	1.16(b)(2)	Basic filing fee - Design (CPA) *filed before December 8, 2004*	380.00	190.00
1082/2082	1.16(s)	Design Application Size Fee - for each additional 50 sheets	270.00	135.00
1013/2013	1.16(c)(1)	Basic filing fee - Plant *filed on or after December 8, 2004*	220.00	110.00
1003/2003	1.16(c)(2)	Basic filing fee - Plant *filed before December 8, 2004*	600.00	300.00
1083/2083	1.16(s)	Plant Application Size Fee – for each additional 50 sheets	270.00	135.00
1014/2014	1.16(e)(1)	Basic filing fee - Reissue *filed on or after December 8, 2004*	330.00	165.00
1004/2004	1.16(e)(2)	Basic filing fee - Reissue *filed before December 8, 2004*	850.00	425.00
1019/2019	1.16(e)(1)	Basic filing fee - Design Reissue (CPA) *filed on or after December 8, 2004*	330.00	165.00
1009/2009	1.16(e)(2)	Basic filing fee - Design Reissue (CPA) *filed before December 8, 2004*	850.00	425.00
1204/2204	1.16(h)	Reissue independent claims in excess of three	220.00	110.00
1205/2205	1.16(i)	Reissue claims in excess of 20	52.00	26.00
1084/2084	1.16(s)	Reissue Application Size Fee – for each additional 50 sheets	270.00	135.00
1005/2005	1.16(d)	Provisional application filing fee	220.00	110.00
1085/2085	1.16(s)	Provisional Application Size Fee - for each additional 50 sheets	270.00	135.00
1052/2052	1.16(g)	Surcharge - Late provisional filing fee or cover sheet	50.00	25.00
1053	1.17(i)	Non-English specification	130.00	
Patent Search Fees				
1111/2111	1.16(k)	Utility Search Fee	540.00	270.00
1112/2112	1.16(l)	Design Search Fee	100.00	50.00
1113/2113	1.16(m)	Plant Search Fee	330.00	165.00
1114/2114	1.16(n)	Reissue Search Fee	540.00	270.00
Patent Examination Fees				
1311/2311	1.16(o)	Utility Examination Fee	220.00	110.00
1312/2312	1.16(p)	Design Examination Fee	140.00	70.00
1313/2313	1.16(q)	Plant Examination Fee	170.00	85.00
1314/2314	1.16(r)	Reissue Examination Fee	650.00	325.00
Patent Post-Allowance Fees				
1501/2501	1.18(a)	Utility issue fee	1,510.00	755.00
1502/2502	1.18(b)	Design issue fee	860.00	430.00
1503/2503	1.18(c)	Plant issue fee	1,190.00	595.00
1511/2511	1.18(a)	Reissue issue fee	1,510.00	755.00
1504	1.18(d)	Publication fee for early, voluntary, or normal publication	300.00	
1505	1.18(d)	Publication fee for republication	300.00	

† The 4000 series fee code may be used via EFS-Web at *www.uspto.gov/ebc/efs/*.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
Patent Maintenance Fees				
1551/2551	1.20(e)	Due at 3.5 years	980.00	490.00
1552/2552	1.20(f)	Due at 7.5 years	2,480.00	1,240.00
1553/2553	1.20(g)	Due at 11.5 years	4,110.00	2,055.00
	1.20(h)	Surcharge - Late payment within 6 months	130.00	65.00
1557	1.20(i)(1)	Surcharge after expiration - Late payment is unavoidable	700.00	
1558	1.20(i)(2)	Surcharge after expiration - Late payment is unintentional	1,640.00	
Miscellaneous Patent Fees				
1801/2801	1.17(e)	Request for Continued Examination (RCE) (see 37 CFR 1.114)	810.00	405.00
1808	1.17(i)	Processing fee, except in provisional applications	130.00	
1803	1.17(i)	Request for voluntary publication or republication	130.00	
1802	1.17(k)	Request for expedited examination of a design application	900.00	
1804	1.17(n)	Request for publication of SIR - Prior to examiner's action	920.00*	
1805	1.17(o)	Request for publication of SIR - After examiner's action	1,840.00*	
1806	1.17(p)	Submission of an Information Disclosure Statement	180.00	
1807	1.17(q)	Processing fee for provisional applications	50.00	
1809/2809	1.17(r)	Filing a submission after final rejection (see 37 CFR 1.129(a))	810.00	405.00
1810/2810	1.17(s)	For each additional invention to be examined (see 37 CFR 1.129(b))	810.00	405.00
Post Issuance Fees				
1811	1.20(a)	Certificate of correction	100.00	
1812	1.20(c)(1)	Request for ex parte reexamination	2,520.00	
1813	1.20(c)(2)	Request for inter partes reexamination	8,800.00	
1821/2821	1.20(c)(3)	Reexamination independent claims in excess of three	220.00	110.00
1822/2822	1.20(c)(4)	Reexamination claims in excess of 20	52.00	26.00
1814/2814	1.20(d)	Statutory disclaimer	140.00	70.00
Patent Extensions of Time Fees				
1251/2251	1.17(a)(1)	Extension for response within first month	130.00	65.00
1252/2252	1.17(a)(2)	Extension for response within second month	490.00	245.00
1253/2253	1.17(a)(3)	Extension for response within third month	1,110.00	555.00
1254/2254	1.17(a)(4)	Extension for response within fourth month	1,730.00	865.00
1255/2255	1.17(a)(5)	Extension for response within fifth month	2,350.00	1,175.00
Patent Appeals/Interference Fees				
1401/2401	41.20(b)(1)	Notice of appeal	540.00	270.00
1402/2402	41.20(b)(2)	Filing a brief in support of an appeal	540.00	270.00
1403/2403	41.20(b)(3)	Request for oral hearing	1,080.00	540.00
Patent Petition Fees				
1462	1.17(f) 1.182	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I)	400.00	
1463	1.17(g)	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II)	200.00	
1464	1.17(h)	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III)	130.00	
1451	1.17(j)	Petition to institute a public use proceeding	1,510.00	
1452/2452	1.17(l)	Petition to revive unavoidably abandoned application	540.00	270.00
1453/2453	1.17(m)	Petition to revive unintentionally abandoned application	1,620.00	810.00
1454	1.17(t)	Acceptance of an unintentionally delayed claim for priority, or for filing a request for the restoration of the right of priority	1,410.00	
1455	1.18(e)	Filing an application for patent term adjustment	200.00	
1456	1.18(f)	Request for reinstatement of reduced term	400.00	
1457	1.20(j)(1)	Extension of term patent	1,120.00	
1458	1.20(j)(2)	Initial application for interim extension (see 37 CFR 1.790)	420.00	
1459	1.20(j)(3)	Subsequent application for interim extension (see 37 CFR 1.790)	220.00	

'8(c) Leave fee

* Reduced by basic filing fee paid.

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Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
PCT Fees - National Stage				
1631/2631	1.492(a)	Basic National Stage Fee	330.00	165.00
1641/2641	1.492(b)(2)	National Stage Search Fee - U.S. was the ISA	100.00	50.00
1642/2642	1.492(b)(3)	National Stage Search Fee - search report prepared and provided to USPTO	430.00	215.00
1632/2632	1.492(b)(4)	National Stage Search Fee - all other situations	540.00	270.00
1633/2633	1.492(c)(2)	National Stage Examination Fee - all other situations	220.00	110.00
1614/2614	1.492(d)	Claims - extra independent (over three)	220.00	110.00
1615/2615	1.492(e)	Claims - extra total (over 20)	52.00	26.00
1616/2616	1.492(f)	Claims - multiple dependent	390.00	195.00
1681/2681	1.492(j)	National Stage Application Size Fee - for each additional 50 sheets	270.00	135.00
1617/2617	1.492(h)	Oath or declaration after 30 months from priority date	130.00	65.00
1618	1.492(i)	English translation after 30 months from priority date	130.00	
PCT Fees - International Stage				
1601	1.445(a)(1)	Transmittal fee	300.00	
1602	1.445(a)(2)	Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16)	1,800.00	
1604	1.445(a)(3)	Supplemental search fee when required, per additional invention	1,800.00	
1605	1.482(a)(1)	Preliminary examination fee - U.S. was the ISA	600.00	
1606	1.482(a)(1)	Preliminary examination fee - U.S. was not the ISA	750.00	
1607	1.482(a)(2)	Supplemental examination fee per additional invention	600.00	
1619		Late payment fee	VARIABLE	
1621		Transmitting application to Intl. Bureau to act as receiving office	300.00	
PCT Fees to Foreign Offices *				
1701		International filing fee (first 30 pages) – filed in paper w/ PCT Easy zip file or electronically w/o PCT Easy zip file	1,237.00	
1702		International filing fee (first 30 pages)	1,338.00	
1703		Supplemental international filing fee (for each page over 30)	15.00	
1704		International search (EPO)	2,665.00	
1705		Handling fee	171.00	
1706		Handling fee – 90% reduction, if applicant(s) meets criteria specified at: *www.wipo.int/pct/en/fees/fee_reduction.pdf*	17.10	
1708		International CD applications	6,000.00	
1709		International search (KIPO)	244.00	
1710		International filing fee (first 30 pages) – filed electronically w/ PCT Easy zip file	1,137.00	
Patent Enrollment Fees				
9001	1.21(a)(1)(i)	Application fee (non-refundable)	40.00	
9003	1.21(a)(2)	Registration to practice or grant limited recognition under §11.9(b) or (c)	100.00	
9004	1.21(a)(3)	Reinstatement to practice	40.00	
9005	1.21(a)(4)	Certificate of good standing as an attorney or agent	10.00	
9006	1.21(a)(4)	Certificate of good standing as an attorney or agent, suitable for framing	20.00	
9010	1.21(a)(1)(ii)(A)	For test administration by commercial entity	200.00	
9011	1.21(a)(1)(ii)(B)	For test administration by the USPTO.	450.00	
9012	1.21(a)(5)(i)	Review of decision by the Director of Enrollment and Discipline under §11.2(c)	130.00	
9013	1.21(a)(5)(ii)	Review of decision of the Director of Enrollment and Discipline under §11.2(d)	130.00	
9014	1.21(a)(10)	Application fee for person disciplined, convicted of a felony or certain misdemeanors under §11.7(h)	1,600.00	
9024	1.21(k)	Unspecified other services, excluding labor	AT COST	

* PCT Fees to Foreign Offices are subject to periodic change due to fluctuations in exchange rates. Refer to the *Official Gazette of the United States Patent and Trademark Office* for current amounts.

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Patent Service Fees			
8001	1.19(a)(1)	Printed copy of patent w/o color, delivery by USPS, USPTO Box, or electronic means	3.00
8003	1.19(a)(2)	Printed copy of plant patent in color	15.00
8004	1.19(a)(3)	Color copy of patent (other than plant patent) or SIR containing a color drawing	25.00
8005	1.19(a)(1)	Patent Application Publication (PAP)	3.00
8007	1.19(b)(1)(i)(A)	Copy of patent application as filed	20.00
8008	1.19(b)(1)(i)(B)	Copy of patent-related file wrapper and paper contents of 400 or fewer pages	200.00
8009	1.19(b)(1)(i)(C)	Each additional 100 pages of patent-related file wrapper and (paper) contents, or portion thereof	40.00
8010	1.19(b)(1)(i)(D)	Certification of patent-related file wrapper and (paper) contents	25.00
8011	1.19(b)(1)(ii)(B)	Copy of patent-related file wrapper and contents if provided electronically or on a physical electronic medium as specified in § 1.19(b)(1)(ii)	55.00
8012	1.19(b)(1)(ii)(C)	Each continuing physical electronic medium in single order of § 1.19(b)(1)(ii)(B)	15.00
8041	1.19(b)(2)(i)(A)	Copy of patent-related file wrapper contents, other than as available in § 1.19(b)(1); first physical electronic medium in a single order	55.00
8042	1.19(b)(2)(i)(B)	Each continuing copy of patent-related file wrapper and contents as specified in § 1.19(b)(2)(i)(A)	15.00
8043	1.19(b)(2)(ii)	Copy of patent-related file wrapper contents other than as available in § 1.19(b)(1); provided electronically other than on a physical electronic medium	55.00
8013	1.19(b)(3)	Copy of office records, except copies of applications as filed	25.00
8014	1.19(b)(4)	For assignment records, abstract of title and certification, per patent	25.00
8904	1.19(c)	Library service	50.00
8015	1.19(d)	List of U.S. patents and SIRs in subclass	3.00
8016	1.19(e)	Uncertified statement re status of maintenance fee payments	10.00
8017	1.19(f)	Copy of non-U.S. document	25.00
8050	1.19(g)	Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits	AT COST
8019	1.21(d)	Local delivery box rental, annually	50.00
8020	1.21(e)	International type search report	40.00
8902	1.21(g)	Self-service copy charge, per page	0.25
8021	1.21(h)	Recording each patent assignment, agreement or other paper, per property	40.00
8022	1.21(i)	Publication in *Official Gazette*	25.00
8023	1.21(j)	Labor charges for services, per hour or fraction thereof	40.00
8024	1.21(k)	Unspecified other services, excluding labor	AT COST
8025	1.21(l)	Retaining abandoned application	130.00
8026	1.21(n)	Handling fee for incomplete or improper application	130.00
8027	1.296	Handling fee for withdrawal of SIR	130.00

GENERAL FEES

Finance Service Fees			
9201	1.21(b)(1) or 2.6(b)(13)(i)	Establish deposit account	10.00
9202	1.21(b)(2) or 2.6(b)(13)(ii)	Service charge for below minimum balance	25.00
9202	1.21(b)(3)	Service charge for below minimum balance restricted subscription deposit account	25.00
9101	1.21(m) or 2.6(b)(12)	Processing each payment refused or charged back	50.00
Computer Service Fees			
8031/8531		Computer records	AT COST

PAYMENTS FROM FOREIGN COUNTRIES MUST BE PAYABLE AND IMMEDIATELY NEGOTIABLE IN THE UNITED STATES FOR THE FULL AMOUNT OF THE FEE REQUIRED

Fee Code	37 CFR	Description	Fee
Trademark Processing Fees *			
6001	2.6(a)(1)(i)	Application for registration, per international class (paper filing)	375.00
7001	2.6(a)(1)(ii)	Application for registration, per international class (electronic filing)	325.00
7007	2.6(a)(1)(iii)	Application for registration, per international class (electronic filing, TEAS Plus)	275.00
6002/7002	2.6(a)(2)	Filing an Amendment to Allege Use under § 1(c), per class	100.00
6003/7003	2.6(a)(3)	Filing a Statement of Use under § 1(d)(1), per class	100.00
6004/7004	2.6(a)(4)	Filing a Request for a Six-month Extension of Time for Filing a Statement of Use under § 1(d)(1), per class	150.00
6005/7005	2.6(a)(15)	Petitions to the Director	100.00
6006	2.6(a)(19)	Dividing an application, per new application (file wrapper) created	100.00
6008/7008	2.6(a)(1)(iv)	Additional fee for application that doesn't meet TEAS Plus filing requirements, per class	50.00
6201/7201	2.6(a)(5)	Application for renewal, per class	400.00
6203/7203	2.6(a)(6)	Additional fee for filing renewal application during grace period, per class	100.00
6204	2.6(a)(21)	Correcting a deficiency in a renewal application	100.00
6205/7205	2.6(a)(12)	Filing § 8 affidavit, per class	100.00
6206/7206	2.6(a)(14)	Additional fee for filing § 8 affidavit during grace period, per class	100.00
6207	2.6(a)(20)	Correcting a deficiency in a § 8 affidavit	100.00
6208/7208	2.6(a)(13)	Filing § 15 affidavit, per class	200.00
6210	2.6(a)(7)	Publication of mark under § 12(c), per class	100.00
6211	2.6(a)(8)	Issuing new certificate of registration	100.00
6212/7212	2.6(a)(9)	Certificate of correction, registrant's error	100.00
6213	2.6(a)(10)	Filing disclaimer to registration	100.00
6214	2.6(a)(11)	Filing amendment to registration	100.00
6401/7401	2.6(a)(16)	Petition for cancellation, per class	300.00
6402/7402	2.6(a)(17)	Notice of opposition, per class	300.00
6403/7403	2.6(a)(18)	Ex parte appeal, per class	100.00
Trademark Madrid Protocol Fees *			
6901/7901	7.6(a)(1)	International application based on single application or registration, per class	100.00
6902/7902	7.6(a)(2)	Certifying an International application based on more than one basic application	150.00
6903/7903	7.6(a)(3)	Transmitting a Request to Record an Assignment or restriction under § 7.23 or 7.24	100.00
6904/7904	7.6(a)(4)	Filing a Notice of Replacement, per class	100.00
6905/7905	7.6(a)(5)	Filing an affidavit under § 71 of the Act	100.00
6906/7906	7.6(a)(6)	Surcharge for filing affidavit under § 71 of the Act during grace period, per class	100.00
6907/7907	7.6(a)(7)	Transmitting a subsequent designation	100.00
Trademark Service Fees			
8501	2.6(b)(1)	Printed copy of registered mark, delivery by USPS, USPTO Box, or electronic means	3.00
8503	2.6(b)(4)(i)	Certified copy of registered mark, with title and/or status, regular service	15.00
8504	2.6(b)(4)(ii)	Certified copy of registered mark, with title and/or status, expedited local service	30.00
8507	2.6(b)(2)	Certified copy of trademark application as filed	15.00
8508	2.6(b)(3)	Certified or uncertified copy of trademark-related file wrapper and contents	50.00
8513	2.6(b)(5)	Certified or uncertified copy of trademark document, unless otherwise provided	25.00
8514	2.6(b)(7)	For assignment records, abstracts of title and certification per registration	25.00
8902	2.6(b)(9)	Self-service copy charge, per page	0.25
8521	2.6(b)(6)	Recording trademark assignment, agreement or other paper, first mark per document	40.00
8522	2.6(b)(6)	For second and subsequent marks in the same document	25.00
8523	2.6(b)(10)	Labor charges for services, per hour or fraction thereof	40.00
8524	2.6(b)(11)	Unspecified other services, excluding labor	AT COST
Fastener Quality Act Fees			
6991	2.7(a)	Recordal application fee	20.00
6992	2.7(b)	Renewal application fee	20.00
6993	2.7(c)	Late fee for renewal application	20.00
6994	2.7(a)	Application fee for reactivation of insignia, per request	20.00

* The 7000 series fee code (e.g., 7001, 7002, etc.) is used for electronic filings via TEAS, which is available at *www.uspto.gov/teas/*.

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INTELLECTUAL PROPERTY LAW
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Source: USPQ, 1st Series (1929 - 1986) > U.S. Court of Appeals, District of Columbia Circuit > Boyden v. Commissioner of Patents, 168 USPQ 680 (D.C. Cir. 1971)

168 USPQ 680

Boyden v. Commissioner of Patents

U.S. Court of Appeals District of Columbia Circuit

No. 22238

Decided February 18, 1971

441 F2d 1041

Headnotes

PATENTS

[1] Jurisdiction of courts - In general (▶ 43.01)

District court has jurisdiction, pursuant to 28 U.S.C. 1338(a) of action seeking to compel Commissioner of Patents to accept and examine patent application.

[2] Fees - Patent Office (▶ 37.7)

Commissioner must charge fees specified in 35 U.S.C. 41.

[3] Fees - Patent Office (▶ 37.7)

Patent grant - In general (▶ 50.01)

No person has a vested right to a patent, but is privileged to seek the protected monopoly only upon compliance with conditions imposed by Congress; rule applies to payment of fees required for administration of patent laws just as it demands compliance with other conditions, statutorily imposed; powers of Congress in patent field are plenary for they stem directly from Constitution.

[4] Fees - Patent Office (▶ 37.7)

Indigent applicant may not proceed in forma pauperis before Patent Office without payment of statutory filing fee; Commissioner's duty to require fee stems from statutory requirement; there is no grant of discretionary power to him.

Case History and Disposition

Appeal from District Court for the District of Columbia.

Action by Gerald Glen Boyden to compel the Commissioner of Patents to accept and examine a patent application. From judgment dismissing complaint, plaintiff appeals.

Page 681

Affirmed; Leventhal, Circuit Judge, concurring with opinion.

Attorneys

John F. Witherspoon and Charles A. Wendel (EdwinR. Hutchinson on the brief) all of Washington, D.C., for appellant.

Jere W. Sears, Joseph Schimmel, and Lutrelle F. Parker (S. Wm. Cochran on the brief) for appellee.

Judge

Before Danaher, Senior Circuit Judge, and Leventhal and Robb, Circuit Judges.

Opinion Text

Opinion By:

Danaher, Senior Circuit Judge.

[1] This appellant on April 20, 1967 tendered to the Commissioner an application for a patent which the Patent Office declined to file since the application was not accompanied by the $95 filing fee required by law. Appellant thereupon sought an order in the nature of mandamus to compel the Commissioner to accept and examine his patent application without payment of the statutory filing fee or, alternatively, that he be awarded damages in the sum of $100,000 with interest and costs. The District Court quite properly allowed [1] the appellant to proceed in forma pauperis upon his showing of indigency. The Commissioner moved to dismiss, alleging lack of jurisdiction over the subject matter and failure to state a claim upon which relief could be granted. Thereafter that motion was granted. We allowed an appeal in forma pauperis and appointed counsel who have here diligently represented this appellant's interests.

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[1] Despite the inartful pleading, we are satisfied that the appellant showed he was authorized to proceed in the District Court pursuant to 28 U.S.C. § 1915(a), Sikora v. Brenner, 126 U.S.App.D.C. 357, 379 F.2d 134, 136, 153 USPQ 585, 586-587 (1967), and that the court had jurisdiction of the action pursuant to 28 U.S.C. § 1338(a). The Commissioner's action here we take to be final. Cf. Commissioner v. Whiteley, 71 U.S. (4 Wall.) 522, 533 (1866). See generally, Adkins v. Du Pont Co., 335 U.S. 331 (1948), and the interesting outline in Smith v. Johnston, 109 F.2d 152 (9 Cir. 1940).

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35 U.S.C. § 111 provides that an application for patent shall include a specification as prescribed by § 112, a drawing as prescribed by § 113, an oath as prescribed by § 115 and concludes, the "application *must be signed* by the applicant and *accompanied* by the fee required by law." (Emphasis added).

I

[2] None of various grounds for reversal urged upon us requires extended discussion, for we deem to be controlling as a necessary conclusion that appellant had failed to state a claim upon which relief could be granted. The district judge correctly so perceived, and we are bound to affirm his order of dismissal. It seems clear enough that the "Commissioner *shall* charge" (emphasis ours) the fees as specified in 35 U.S.C. § 41. [2] Note also that 35 U.S.C. § 42 provides that all "patent fees *shall* be paid to the Commissioner who *shall* deposit the same in the Treasury of the United States * * *" [3] (Emphasis added).

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[2] The appellant has made no contention that he is entitled somehow to financial assistance in complying with the intricate requirements of 35 U.S.C. §§ 112, 113 and 114 to the extent applicable. Compare Leighton v. Coe, 76 U.S.App.D.C. 212, 130 F.2d 841, 54 USPQ 471 (1942), where an in forma pauperis applicant sought an allowance for expenses to appear in the district court then reviewing Patent Office proceedings. We there observed that the court made no such allowance for it had no power under the statutes to do so.

[3] "Shall" is the language of command, Escoe v. Zerbst, 295 U.S. 490, 493 (1935) as Mr. Justice Cardozo observed for a unanimous court. And see the discussion by Mr. Justice Stone in Richbourg Motor Co. v. United States, 281 U.S. 528, 534 (1930).

We may note in passing that 35 U.S.C. § 145 in authorizing a civil action against the commissioner provides that "[a]ll the expenses of the proceedings *shall* be paid by the applicant." (Emphasis added). See Robertson v. Cooper, 46 F.2d 766, 769, 8 USPQ 31, 33-34 (4 Cir. 1931), and Watson v. Allen, 107 U.S.App.D.C. 25, 274 F.2d 87, 123 USPQ 330 (1959).

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[3] No person has a vested right to a patent, see McClurg v. Kingsland, 42 U.S. (1 Howard) 202, 206 (1843), but is privileged to seek the protected monopoly only upon compliance with the conditions which Congress has imposed. That rule applies to the payment of fees required for the

administration of the patent laws just as it demands compliance with other conditions, statutorily imposed. Certainly the powers of Congress in the patent law field are plenary for they stem directly from the Constitution. [4]

[4] As to other comparable instances see Currin v. Wallace, 306 U.S. 1, 13-14 (1939), and Detroit Bank v. United States, 317 U.S. 329, 337-338 (1943).

II

But, the appellant argues, granting that Sections 41(a) and 111 are not unconstitutional on their face, the Commissioner's treatment of the appellant's patent application brings it about "that poor people may

be cavalierly discriminated against." He accordingly argues that he has been denied the Fourteenth Amendment's assurance of equal protection and the Fifth Amendment's guaranty of due process. [5] He relies upon such cases as Harris v. Harris, 137 U.S.App.D.C. 318, 424 F.2d 806 (1970), and Griffin v. Illinois, 351 U.S. 12 (1956), as typical and as illustrative of principles [6] which, if here applied, would remedy his situation and would serve "a social need."

[5] He realizes that the Fifth Amendment does not contain the equal protection clause to be found in the Fourteenth Amendment, applicable to the states, but treats the two concepts as elided, claiming that, basically, discrimination underlies either approach. Bolling v. Sharpe, 347 U.S. 497, 499 (1954); cf. Lee v. Habib, 137 U.S.App.D.C. 403, 413-414, 424 F.2d 891, 901-902 (1970).

[6] But in Harris we noted the existence of a statutory right to file an action for divorce, and in Griffin the court had recognized a constitutional requirement which must be met.

[4] Thus, he asks us to order the Commissioner to proceed with the examination of his application, even though he has not paid the fee prescribed by Congress and although Congress has accorded no authority to the Commissioner to waive the prescribed payment. [7] He asks us, in effect, to *order* the Commissioner to permit him to proceed in the Patent Office just as pursuant to 28 U.S.C. § 1915(a), he has been permitted to proceed in our courts. But that section clearly does not apply to the Patent Office. Its explicit language applies only to the Federal Courts: any court of the United States may authorize in forma pauperis proceedings as to any action "therein."

[7] Cf. Miller v. United States, 317 U.S. 192, 198 (1942); Douglas v. Green, 327 F.2d 661 (6 Cir. 1964); In re Fullam, 80 U.S.App.D.C. 273, 152 F.2d 141 (1945). And further compare Lee v. Habib, supra, n. 5, 137 U.S.App.D.C. at 416-417, 424 F.2d at 904-905.

We perceive here no constitutional deprivation, no arbitrariness on the part of the Commissioner, and no predicate for the appellant's claims. Accordingly, we decline to enter the order the appellant seeks. Rather, we do say that Congress has granted a privilege, open to all, and has created no requirements which can be said to be unnecessary to what Congress in the exercise of its plenary power deems essential to the effective working of the patent system. Obviously, there are differences in the economic circumstances of our citizenry which exist quite apart from any exercise of the privilege which Congress has conferred. Congress simply has here done nothing to alleviate the consequences of those differences.

This applicant in effect has asked this court to order discrimination in his favor. He asks to be permitted without charge to do what all others must pay for. [8] Thus, where the *law* has not discriminated against him, he would have us say that the Commissioner is bound to discriminate to his advantage.

[8] We doubt that it could effectively be contended that one in appellant's circumstances would be entitled, without fee, to register an automobile in the District of Columbia when all others must pay a registration fee. Again, the Supreme Court has found no such invidious discrimination against an indigent as to render invalid a state law requiring him to provide compulsory liability insurance. See Ex parte Poresky, 290 U.S. 30 (1933).

III

To recapitulate, it is apparent that the duty of the Commissioner stems from a clear statutory requirement. There is no grant of discretionary power to him. Of course, if he had such power and had declined to exercise it, a very different question would be presented. [9] Under the circumstances here presented, mandamus surely is not available [10] to us to the end that we substitute by our order a result for which Congress has made no provision. [11]

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[9] Coe v. United States ex rel. Remington Rand, Inc., 65 App.D.C. 387, 84 F.2d 240, 29 USPQ 227 (1936).

[10] Hammond v. Hull, 76 U.S.App.D.C. 301, 303, 131 F.2d 23, 25 (1942), *cert. denied*, 318 U.S. 777 (1943); cf. Procter & Gamble Co. v. Coe, 68 App.D.C. 246, 249, 96 F.2d 518, 521, 36 USPQ 461 (1938).

[11] Compare Brenner v. Ebbert, 130 U.S.App.D.C. 168, 170, 398 F.2d 762, 764, 157 USPQ 609 , 610-611 *cert. denied* 393 U.S. 926, 159 USPQ 799 (1968).

This appellant's petition in the respects under consideration must be addressed to the law-making authority. [12] We have given him carefully the only consideration open to us and find ourselves forced to the conclusion that he has failed to state a claim for which relief may be had. [13]

---

[12] Policy questions in this field are singularly the concern of Congress. United States v. Dubilier Condenser Corp., 289 U.S. 178, 198, 17 USPQ 154, 162 (1933).

[13] His claim for money damages is frivolous. Spalding v. Vilas, 161 U.S. 483 (1896); Barr v. Matteo, 360 U.S. 564 (1959); Gregoire v. Biddle, 177 F.2d 579, 581 (2 Cir. 1949), *cert. denied* 339 U.S. 949 (1950).

The order of the District Court is affirmed

Concurring Opinion Text

Concurrence By:

Leventhal, Circuit Judge, joining and concurring.

I join in Judge Danaher's opinion, adding some observations because they help give

me additional perspective for denying petitioner's claim of constitutional right, as an indigent, to process a patent application without payment of the statutory fee.

Equal protection concepts begin with the requirement of a standard that is non-discriminatory; here the statute obviously requires one and all to pay the fee. Constitutional requrements also dictate that in some matters the weak and helpless be relieved of burdens that may be and are applied generally without constitutional hindrance.

Thus the Supreme Court has held that an indigent who is a defendant in a criminal case has the constitutional right to have the state supply him, without payment of fees, counsel and a transcript [1] for which others must pay. In Harper, [2] invalidating the poll tax, the Court said there is close scrutiny and careful confinement of classifications that affect "fundamental rights and liberties," that wealth "is not germane" to voting and the right to vote is "too precious, too fundamental" to be conditioned on a fee. Harper indicates that the area of "fundamental rights" is not limited by the assumptions of the past. In Sniadach [3] the Court invalidated pre-judgment wage garnishments. The Boddie case involves the right of an indigent to access to civil courts for a divorce without payment of fee. [4]

---

[1] Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

[2] Harper v. Bd. of Elections, 383 U.S. 663 (1966).

[3] Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

[4] On appeal from Boddie v. Connecticut, 286 F.Supp. 968 (D. Conn., 3-judge court, 1968),

the Supreme Court noted probable jurisdiction, 395 U.S. 974 (1969).

By no means, however, does the Constitution embody as a present requirement an egalitarian philosophy that supposes that all men can be put in exactly equal condition as to all matters involving the Government. As the learning cited by Judge Danaher indicates, a man cannot insist that his indigency establishes a constitutional right to drive a car without, e.g., paying the cost of insurance required for the protection of others, [5] or of safety devices and government inspection services. [6]

[5] Ex parte Poresky, 290 U.S. 30 (1933).

[6] The validity of a driver's license fee was impliedly admitted in Harper, 383 U.S. at 668.

Drawing the line between what is constitutionally permitted and prohibited will be an ongoing process. I think it clear, however, that in the case of a fee required as an incident to the Government's processing a request for an award of a monopoly of commercial value, there is no "fundamental right" that carves a constitutional exception for the indigent. [7]

[7] It may be that even where some fees are permissible, an indigent could raise a separate constitutional question protesting an invidious and unnecessary hardship wrought by a fee requirement totally disproportionate to any justified state interest. It seems obvious that the statutory fees, less than $100 for petitioner, make only a modest payment toward the cost to the Government of processing patent applications. There is no contention before us to the contrary.

- End of Case -

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SEP 21 2011

OFFICE OF PETITIONS

In re Application of
Jian Xu et al.
Application No. 61/381,113
Filed: September 9, 2010
Attorney Docket No. **001-3239-U; 60137-667 PRV**

DECISION ON PETITION

This is a decision on the petition, filed September 8, 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 **DISMISSED AS MOOT**.

Our records indicate that the above-identified application was never held abandoned nor was there a Notice of Missing Parts (Notice) ever mailed in this application. Therefore, as the instant application is not held abandoned, the petition is deemed unnecessary. If the petitioner intended to file such a petition in Application No. 61/381,11**0**, petitioner must direct such a petition to that application.

Telephone inquires concerning this decision should be directed to JoAnne Burke at 571-272-4584.

This application is being referred to the Office of Patent Application Processing (OPAP) for processing in the normal course of business.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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BERGGREN LAW OFFICES, LLC
7090 43RD STREET NORTH
OAKDALE MN 55128

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JAN 3 1 2011
OFFICE OF PETITIONS

In re Application of	:	
Steven Earl Calvin	:	
Application No. 61/381431	:	
Filing or 371(c) Date: 09/09/2010	:	
Attorney Docket Number:	:	DECISION
10003	:	ON PETITION

This is a decision on the petition filed October 28, 2010, requesting the application be accorded a filing date of September 9, 2010. The petition is properly treated under 37 CFR 1.53.

The petition is granted.

The application was filed on September 9, 2010. On September 23, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition and avers that a drawing is not necessary to understand the invention and the application contains at least one method claim.

A review of the file confirms that the specification contains method claims. As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process, method or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the Notice mailed September 23, 2010, was mailed in error and is hereby withdrawn.

This application is being referred to the Office of Patent Application Processing, Customer Corrections, for further processing, with the filing date of September 9, 2010, and an indication that no drawings were present or required on filing.

The petition fee has been refunded to Petitioner's deposit account.

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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DEL MAR, CA 92014

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JAN 19 2011
OFFICE OF PETITIONS

In re Application of :
Frank Charles Cozza, et. al. :
Application No. 61/381,838 : DECISION GRANTNG PETITION
Filed: November 22, 2010 :
Attorney Docket No. 4655-PAT :

This is a decision on the petition filed November 22, 2010, requesting that the above-identified application be accorded a filing date of September 10, 2010.

The application was filed on September 10, 2010. However, on September 23, 2010, The Office of Patent Application Processing mailed a Notice of Omitted Item(s) in a Provisional Application (Notice), stating that Figures 2-8 as described in the specification appeared to be missing. In response, the present petition was filed. Petitioner states "Applicant hereby submits replacement drawings (Figures 1-8) for the above-identified application in compliance with 37 CFR 1.53(c). Please cancel the previously submitted Figure 1."

37 CFR 1.53(c) states "The filing date of a provisional application is the date on which a specification as prescribed by the first paragraph of 35 U.S.C. 112, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No amendment, other than to make the provisional application comply with the patent statute and all applicable regulations, may be made to the provisional application after the filing date of the provisional application."

MPEP 506 (II) - Incomplete Provisional Applications states in part, "Such incompleteness may consist of the omission of any one of the following parts of an application. The component parts of a provisional application necessary to obtain a filing date are:

> A specification as prescribed by 35 U.S.C. 112, first paragraph, and 37 CFR 1.71.
> A drawing, if necessary under 35 U.S.C. 113 (first sentence) and 37 CFR 1.81(a).

Even though an application purports to include the component parts necessary to obtain a filing date, the application will still be held to be incomplete and a filing date will be refused if the component parts fail to satisfy the requirements set forth above. For example, if the documents purporting to be a specification are so obviously informal and incoherent that they would clearly not constitute a specification as required by 35 U.S.C. 112, first paragraph, and 37 CFR 1.71, the application would not be acceptable and would not be accorded a filing date until corrections are made. The filing date of the application would be the date the corrections were made."

Since petitioner submitted the $400 petition fee and supplied the omitted items, in the form of four sheets of replacement drawings containing (Figures 1-8), the petition is hereby **granted** a new filing date as of the date of the omitted items.

This application file is being referred to the Office of Patent Application Processing for further **processing with a later filing date of November 22, 2010**.

Telephone inquiries concerning this matter may be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

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OFFICE OF PETITIONS

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1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

In re Application of	:	
Amy L. Ladd, et al.	:	
Application No. 61/382,331	:	DECISION ON PETITION
Filed: September 13, 2010	:	
Attorney Docket No. OSTE-002PRV2	:	

This is a decision on the petition under 37 CFR 1.182, filed, January 3, 2011, to change the name of inventor "Anthony Peter C. Weiss" to – Arnold-Peter C. Weiss --.

The petition is **GRANTED**.

Office records have been updated to reflect the inventor's change of name. A corrected Filing Receipt, which reflects the inventor's change of name, accompanies this decision on petition.

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642. Any questions concerning the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to back to the Office of Patent Application Processing.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
61/382,331	09/13/2010		110	OSTE-002PRV2		

CONFIRMATION NO. 9990

CORRECTED FILING RECEIPT

24353
BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

OC000000046820644

Date Mailed: 03/29/2011

Receipt is acknowledged of this provisional patent application. It will not be examined for patentability and will become abandoned not later than twelve months after its filing date. 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)

Amy L. Ladd, Stanford, CA;
Arnold Peter C. Weiss, Barrington, RI;
Gary B. Hulme, San Jose, CA;
Matthew Thompson, Corte Madera, CA;
Jeffrey J. Christian, Morgan Hill, CA;

Power of Attorney: None

If Required, Foreign Filing License Granted: 09/28/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 61/382,331**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Reduced Bone Fracture Fixation Device

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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FEB 22 2011

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Leef Manuel Torres et al. :
Application No. 61/383,180 :
Filed: September 15, 2010 :
Attorney Docket No. HEP002 :
PP302 :

This is a decision on the petition filed on October 13, 2010, which is treated as a petition requesting that the above-identified provisional application, without drawings, be accorded a filing date of September 15, 2010.

The petition is **GRANTED**.

The application was filed on September 15, 2010, without drawings. Accordingly, on September 30, 2010, the Office of Patent Application Processing mailed a "Notice of Incomplete Provisional Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings.

In response, on October 13, 2010, the subject petition was filed. Petitioners assert that the application, as filed, is entitled to a filing date because drawings are not necessary for an understanding of the subject matter sought to be patented.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a

drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

A review of the record reveals that the application papers deposited on September 15, 2010, contain at least one method claim. Accordingly, the application is treated as a provisional application containing at least some disclosure of a method.

Drawings will not be further considered as a part of this case.

In view of the above, the Notice of Incomplete Provisional Application mailed on September 30, 2010, was mailed in error and is hereby withdrawn.

Petitioner may request a refund of the petition fee ($400.00) by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

The application is accorded a filing date of September 15, 2010, without drawings as a part of the original disclosure.

The application is being referred to the Office of Patent Application Processing for correction of the filing date to **September 15, 2010**, and for an indication in Office records that no (0) drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Karen Creasy at 571 272-3208.

Anthony Knight
Director
Office of Petitions

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ONE NORTH CHARLES STREET
SUITE 2450
BALTIMORE MD 21201

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APR 18 2011
OFFICE OF PETITIONS

In re Application of	:	
Walter A. ROBERTS et al.	:	
Application No. 61/384,682	:	DECISION ON PETITION
Effective Date: September 20, 2010	:	
Attorney Docket No. ROB-10-007P	:	

This is a decision on the petition filed December 01, 2010, to accord a filing date.

Petitioner asserts that no drawings are necessary for the filing of the subject provisional application. A review of the specification indicates that drawings are required. Drawings are required under 35 U.S.C. 113 for the understanding of the subject matter sought to be patented, therefore a refund will not be given.

The petitioner has provided the Office with the required drawings; accordingly this application is entitled to a filing date of September 20, 2010, and has been so accorded.

In view of the above, the petition is **GRANTED**.

This application file is being referred to the Office of Patent Application Processing.

Telephone inquiries relating to this decision should be directed to Michelle R. Eason at (571) 272-4231. Telephone inquiries related to OIPE processing should be directed to their hotline at (571) 272-4100.

Thurman K. Page
Petitions Examiner
Office of Petitions

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TIA SYSTEMS, INC.
ANASTASIA CANAVAN
348 GREY OWL RUN
CHULUOTA FL 32766

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OCT 03 2011

OFFICE OF PETITIONS

In re Application of :
Bernath, et al. :
Application No. 61/385,294 : DECISION
Filed/Deposited: 22 September, 2010 :
Attorney Docket No. TIA-1 :

This is a decision on the petition filed on 19 August, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

NOTE:

The record appears to reveal neither an assignment nor a power of attorney in this matter.

In that context materials submitted must be submitted over the signatures of all named inventors.

While, the instant petition was signed by one registered to practice before the Office, 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 submitted.

A courtesy copy of this decision will be mailed to Petitioner.

However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Moreover, 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 C.F.R. §1.137(b) was unintentional, Petitioner **must** notify the Office.

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 of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice to File Missing Parts mailed 13 October, 2010, with reply due absent extension of time on or before 13 December, 2010.

The application went abandoned by operation of law after midnight 13 December, 2010.

The Office mailed a Notice of Abandonment 20 June, 2011.

On 19 August, 2011, Petitioner filed a petition (with fee) pursuant to 37 C.F.R. §1.137(b), with a reply in the form of fees due and/or authorization for payment thereof and a statement of unintentional delay.

As noted above, 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.

---

[1] See 37 C.F.R. §11.18(b), formerly §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).

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.[2] *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 C.F.R. §1.137(b) was unintentional, Petitioner ***must*** *notify the 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.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[4],[5]

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.

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[2] See 37 C.F.R. §11.18(b), formerly §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).

[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[4] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[5] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[6]

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 Office of Patent Application Processing (OPAP) 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 OPAP in response to this decision. It is noted that all inquiries with regard to status need be directed to the OPAP where that change of status must be effected—that does not occur in the Office of Petitions.

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[6] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[7]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

CC
CHAINEY P. SINGLETON
14951 NORTH DALLAS PARKWAY/STE. 400
DALLAS, TX 75254

[7] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED
AUG 23 2011
OFFICE OF PETITIONS

VINSON & ELKINS, L.L.P.
FIRST CITY TOWER
1001 FANNIN STREET, SUITE 2500
HOUSTON TX 77002-6760

In re Application of :
Maire H. CAPARON et al. : DECISION GRANTING PETITION
Application No. 61/385,470 : UNDER 37 CFR 1.137(b)
Filed: September 22, 2010 :
Atty. Docket No.: MED501/4-001PROUS/58000

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2011.

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed October 13, 2010 (Notice), which set a period of reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on December 14, 2010. A Notice of Abandonment was mailed June 30, 2011.

A grantable petition under 37 CFR 1.137(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 in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The present petition lacks item (1).

Regarding item (1), the reply submitted with the instant petition failed to include Figures 3A and 3B as required by the Notice mailed October 13, 2010. Thus, the reply is inappropriate.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

Rimesh Krishnamurthy

for Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

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OFFICE OF PETITIONS

VINSON & ELKINS, L.L.P.
FIRST CITY TOWER
1001 FANNIN STREET, SUITE 2500
HOUSTON TX 77002-6760

In re Application of :
Maire H. CAPARON et al. :
Application No. 61/385,470 :
Filed: September 22, 2010 :
Atty. Docket No.: MED501/4-001PROUS/58000

This is a decision on the renewed petition under 37 CFR 1.137(b), filed September 28, 2011.

The petition is **GRANTED.**

The application became abandoned for failure to properly reply in a timely manner to the Notice to File Missing Parts of Provisional Application mailed October 13, 2010 (Notice), which set a period of reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on December 14, 2010. A Notice of Abandonment was mailed June 30, 2011.

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 Notice mailed October 13, 2010, (2) a petition fee of $1620, and (3) a statement of unintentional delay. The reply to the outstanding Office action is accepted as being unintentionally delayed.

A provisional application may be revived so as to be pending for a period of no longer than 12 months from its filing date. This application was hereby deemed revived until September 22, 2011 when it became abandoned as a matter of law.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

Robert DeWitty
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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THOMSON REUTERS
C/O INTELLECTUAL PROPERTY DEPT.
ATTN: ALEXANDER MIGIROV
3 TIMES SQUARE
NEW YORK NY 10036

MAILED
JUL 05 2011
OFFICE OF PETITIONS

In re Application of	:	
Clark, et al.	:	
Application No. 61/385,736	:	DECISION
Filed: 23 September, 2010	:	
Attorney Docket No. TRGR(I&A)_010_PRV1	:	

This is a decision on the petition, filed on 23 May, 2011, to revive pursuant to 37 C.F.R. §1.137(b) and alleging abandonment due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

BACKGROUND

The record reflects that:

Applicant, failed to reply timely and properly to a Notice to File Missing Parts (provisional transmittal, surcharge) mailed on 15 October, 2010, with reply due absent an extension of time on or before 15 December, 2010.

The application went abandoned after midnight 15 December, 2010.

It does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 23 May, 2011, Petitioner filed a petition with fee pursuant to 37 C.F.R. §1.137(b), a reply in the form of a reply in the form of the provisional transmittal and surcharge, 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.

Application No. 61/385,736

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 Office of Patent Application Processing (OPAP) 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 OPAP in response to this decision. It is noted that all inquiries with regard to status need be directed to the OPAP 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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WOLF GREENFIELD (Microsoft Corporation)
C/O WOLF, GREENFIELD
& SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

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APR 12 2012
OFFICE OF PETITIONS

In re Application of	:	
Novak, et al.	:	
Application No. 61/388,455	:	DECISION ON PETITION
Filed: 30 September, 2010	:	
Attorney Docket No. M1103.70900US00	:	

This is a decision on the petition filed on 13 February, 2012, and supplemented on 8 and 11 April, 2012, requesting correction of the name of the inventor/applicant, and considered for relief under 37 C.F.R §1.182.

The petition under 37 C.F.R §1.182 is **GRANTED**.

The guidance in the Commentary set forth at MPEP§605.04(c) directs Petitioner to the proper procedure herein:

> **605.04(c)Inventor Changes Name [R-7]**
>
> In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and a statement signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a copy of the court order.
>
> Since amendments are not permitted after the payment of the issue fee (37 CFR 1.312), a petition under 37 CFR 1.182 to change the name of the inventor cannot be granted if filed after the payment of the issue fee.
>
> If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor's name.
>
> If the petition is granted, if the application is maintained in paper with a file jacket label (i.e., the application is an 08/ or earlier series application), the original declaration must be marked in red

> ink, in the left margin "See paper No. _ for correction of inventor name" and the application should be sent to the Office of **>Patent Application Processing (OPAP)<for change of name on the file wrapper and in the PALM database. If the petition is granted in an Image File Wrapper (IFW) application or if the application is an 09/ or later series application, the spelling of the inventor's name should be changed in the Office computer records and a new PALM bib-data sheet should be printed. If the application is assigned, applicant should submit a corrected assignment document along with a cover sheet and the recording fee as set forth in 37 CFR 1.21(h) to the Assignment Division for a change in the assignment record. (Emphasis supplied)

BACKGROUND

A search of the file indicates that:

The instant application was filed, Petitioner indicates, with another form as to an inventor's names—the name having been typed in that form.

Petitioner has since indicated to the Office that the name of inventor/applicant must be corrected to **ALEXEY EFRON** in order to overcome the previously erroneous form of the name of the inventor (Alex Efron).

(Petitioner did not submit an updated application data sheet (ADS), the latter of which may not be required but always should be included.)

Petitioner submitted the petition (with fee) on 8 February, 2012, and provided the signed statement by the inventor, supplemented on 9 April, 2012.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office). See specifically, the regulations at 37 C.F.R. §10.18.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.182 is **granted**.

The application is released to the Office of Patent Application Processing (OPAP) for processing as necessary to update Office records and mail a corrected/updated filing receipt.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[2] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of Petitioners or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SHEETS LAW OFFICE
Kendal M. Sheets
1855 Macarthur Drive
McLean VA 22101

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SEP 06 2011

OFFICE OF PETITIONS

In re Application of	:	
Hendrickson et al.	:	
Application No.: 61/389191	:	DECISION ON
Filing or 371(c) Date: 10/01/2010	:	PETITION
Attorney Docket Number: 2009.0003USP	:	

This is a decision on the Petition Under 37 C.F.R. 1.137(b), filed August 3, 2011.

This Petition is hereby **dismissed**.

Any reconsideration request 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 to File Missing Parts of Nonprovisional Application ("Notice"), mailed October 25, 2010. The Notice required 1) a provisional application cover sheet; and 2) the surcharge for late filing of the provisional application coversheet, and set a two (2) month period for reply from the mail date of the Notice. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the applicaitonbecame abandoned December 26, 2010.

Applicant files the present petition and a provisional application cover sheet in reply to the Notice; however, the reply does not include the surcharge for the late filing of a provisional application cover sheet as required by the Notice. Petitioner notes that the application is a small entity and avers that the surcharge for a non-small entity is thus not required.

A Grantable Petition Under 37 CFR 1.137(b)

A grantable petition pursuant to this paragraph must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The required reply

As to item (**1**), the reply does not include the surcharge for the late filing of the provisional application cover sheet as required by the Notice. Petitioner is advised that the non-small entity fees are reduced by half where available, for small entities. In this instance, the surcharge for late filing of the provisional application cover sheet is $25.00.

The petition is dismissed without prejudice. Applicant should file a request for reconsideration of petition[1] and include a reply to the Notice's requirement for the surcharge ($25.00) for the late filing of the provisional application cover sheet.

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 decision should be directed to the undersigned at (571) 272-3232. All other inquiries should be directed to the applicable Office.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

[1] Petitioner is advised that there is no new petition fee for filing a request for reconsideration of the 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

SHEETS LAW OFFICE
Kendal M. Sheets
1855 Macarthur Drive
McLean VA 22101

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NOV 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Hendrickson et al.	:	
Application No.: 61/389191	:	DECISION ON
Filing or 371(c) Date: 10/01/2010	:	PETITION
Attorney Docket Number: 2009.0003USP	:	

This is a decision on the renewed Petition Under 37 C.F.R. 1.137(b), filed November 1, 2011.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application ("Notice"), mailed October 25, 2010. The Notice required 1) a provisional application cover sheet; and 2) the surcharge for late filing of the provisional application coversheet, and set a two (2) month period for reply from the mail date of the Notice. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned December 26, 2010.

Applicant files the present renewed petition, and surcharge in response to the Notice. A provisional application coversheet was previously filed on August 3, 2011. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that the petition includes (1) the reply ; (2) the petition fee, and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to the Office of Patent Application Processing ("OPAP") for processing of the reply to the Notice in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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GEORGIA TECH RESEARCH CORPORATION
Office of Technology Licensing
505 Tenth Street, NW
Atlanta GA 30332-0415

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MAR 25 2011
OFFICE OF PETITIONS

In re Application of :
Bowen, et al. :
Application No. 61/389,848 :
Filed: October 5, 2010 :
Attorney Docket No. **5017-PR-10** :

ON PETITION

This is a decision on the petition under 37 CFR 1.53(e) filed on November 24, 2010, requesting that the Office accord the above-identified provisional application a filing date of October 5, 2010.

On October 5, 2010, applicants deposited the above-identified provisional application without drawings. On October 26, 2010, the Office mailed a Notice of Incomplete Provisional Application, indicating that the application had not been accorded a filing date because the application had been deposited without drawings, and stating that the filing date would be the date of receipt of the omitted drawings.

On petition, applicants explain:

> ...that the application papers deposited contain an adequate description under 35 U.S.C. 112, first paragraph, and that the omitted figures are not necessary for the understanding of the subject matter sought to be patented under 35 U.S.C. 113, first sentence.

Petition, 11/24/2010, p. 1

A review of the provisional application papers deposited on October 5, 2010, reveals that the application contains method claims. As stated in MPEP § 601.01(f), it is the practice of the USPTO to treat a provisional application that contains at least some disclosure of a process or method as an application for which a drawing is <u>not</u> necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which

a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

As this application contains method claims, it should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g). MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed, indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the Notice of Incomplete Provisional Application was sent in error. The above-identified application may be accorded a filing date of October 5, 2010, without any drawings.

Accordingly, the petition is **granted** to the extent indicated above.

The $400.00 petition fee is unnecessary and will be refunded to the Deposit Account.

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the application. If the person signing the 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 petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

This application is being forwarded to the Office of Patent Application Processing to accord the application a filing date of October 5, 2010, with "0" sheets of drawings, and to mail a corrected filing receipt.

Any inquiries regarding to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Ryan A. Schneider
Troutman Sanders LLP
600 Peachtree Street, NE, Suite 5200
Atlanta, GA 30308-2216

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

AXINN, VELTROP & HARKRIDER LLP
Attn. Michael A. Davitz
114 West 47th Street
New York NY 10036

MAILED
OCT 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Michael Wade	:	
Application No. 61/390,221	:	DECISION ON PETITION
Filed: October 6, 2010	:	
Attorney Docket No. 3044-002	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 16, 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 October 20, 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 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 a surcharge fee of $25 and provisional cover sheet (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the fee and provisional cover sheet 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 September 16, 2011. Inquires regarding the status of the application should be directed to the Office of Patent Application Processing at 571-272-4000.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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Commissioner for Patents
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Alexandria, VA 22313-1450
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MAILED

MAR 02 2011

OFFICE OF PETITIONS

HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET NW
SUITE 1200
WASHINGTON DC 20006-1109

In re Application of	:	
Randolph J. Noelle	:	
Application No. 61/390,434	:	DECISION ON PETITION
Filed: October 6, 2010	:	
Attorney Docket No. 76799.000300	:	

This is in response to the "PETITION UNDER 37 C.F.R. 1.181(F) AND RESPONSE TO NOTICE OF OMITTED ITEM(S) IN A PROVISIONAL APPLICATION", filed January 5, 2011, to accord the above-identified application a filing date of October 6, 2010, with Figures 8 - 18 of the drawings as part of the original disclosure.

The petition is **DISMISSED**.

The application was deposited on October 6, 2010. However, on November 5, 2010, the Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Provisional Application". The Notice informed Applicants that the application had been accorded a filing date; however, Figures 8 - 18 of the drawings appeared to have been omitted.

The Notice presented Applicant with two options. The first option was based upon a contention that the drawing Figures were present on filing, and in that instance Applicant was allowed to promptly file proof that the drawings were present on filing. The second option was for Applicants to do nothing, which, Applicant was informed, would be treated as constructive acceptance by Applicant of the application as-filed (without drawing Figures 8 - 18).

Applicant instead chose to file Figures 8 - 18, and argued that the Figures were "constructively submitted" as the application claims benefit to non-provisional application No. 11/912,397.

The inclusion of an incorporation by reference statement in a non-provisional application that has been accorded a filing date will permit an applicant to submit the omitted specification pages or drawings by way of an amendment.[1] However, there is no option of amending a provisional application. Amendments to provisional applications may not be entered.[2]

Figures 8 - 18 will remain in the application file, but will not be entered.

The matter is being forwarded to the Office of Patent Application Processing, using the application papers filed on October 6, 2010, and for indication in Office records that seven (7) sheets of drawings were present on filing.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Cliff Congo at (571)272-3207.

Chris Bottorff
Supervisory Petitions Examiner
Office of Petitions

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[1] See MPEP 201.06(c).

[2] See 37 CFR 1.121(k).

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P.O. Box 1450
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JUL 14 2011
OFFICE OF PETITIONS

David E. Pritchard
Attorney at Law
3843 Drakewood Drive
Cincinnati OH 45209

In re Application of	:	
David W. Lloyd et al.	:	
Application No. 61/390,608	:	DECISION ON PETITION
Filed: October 6, 2010	:	
Attorney Docket No. KAI.97P	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 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 to File Missing Parts of Non-Provisional Application (Notice), mailed October 20, 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 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 a surcharge fee of $25 and provisional cover sheet (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the fee and provisional cover sheet 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 28, 2011. Inquires regarding the status of the application should be directed to the Office of Patent Application Processing at 571-272-4000.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Jonathan D. Thompson
15911 Furuby Rd
Center City MN 55012

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application of :
Thompson, et al. :
Application No. 61/390,821 :
Filed: October 7, 2010 :
Attorney Docket No. CARBON COMPOSITE :
MATERIALS FOR SEPARATIONS :

ON PETITION

The above-identified application has been referred to the Office of Petitions for consideration of the communication filed December 27, 2010. In view of the petition fee included with the communication, this matter is being treated under 37 CFR 1.182.

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 1.182." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

In accordance with 37 CFR 1.33(b), "[a]mendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by: (1) A patent practitioner of record appointed in compliance with § 1.32(b); (2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34; (3) An assignee as provided for under § 3.71(b) of this chapter; or (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter."

The instant petition is not signed, and, thus, fails to comply with 37 CFR 1.33(b)(4). Accordingly, treatment on the merits of the petition under 37 CFR 1.182 is not forthcoming.

Any request for reconsideration must be accompanied by a petition properly executed in accordance with 37 CFR 1.33(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450

Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the 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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HAUGEN LAW FIRM
SUITE 1130 - TCF TOWER
121 SOUTH EIGHTH STREET
MINNEAPOLIS MN 55402

MAILED
MAY 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Thompson, et al.	:	
Application No. 61/390,821	:	ON PETITION
Received: October 7, 2010	:	
Dkt. No. 2011-4725.PRO	:	

This decision is in response to the petition under 37 CFR 1.53(e), filed March 22, 2011 to accord the above-identified application a filing date of October 7, 2010.

The application was received October 7, 2010. The Notice of Omitted Items in a Provisional Application (Notice) mailed October 28, 2010 by the Office of Patent Application Processing (OPAP) indicated that the application had been accorded a filing date but that figures 1 and 3-17 appeared to have been omitted from the application as filed.

The Notice advised that should applicant contend that the drawing figures were in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the provisional application papers, a copy of the Notice and a petition (and $400.00 petition fee (37 CFR 1.17(f)), must be filed within TWO MONTHS of the date of the Notice.

Petitioners assert that the provisional patent application includes sixteen drawing sheets and that the drawing sheets were contained in a .pdf file titled "FiguresCarbon.pdf." Petitioners further assert that the FiguresCarbon.pdf file was uploaded to the USPTO EFS system along with separate electronic .pdf files for the Application Data Sheet, the provisional application cover sheet, the specification and claims, and the fee worksheet (PTO- 875), and submitted to the USPTO on October 7, 2010.

Petitioners' arguments have been considered, but are not persuasive. While petitioners reference 16 drawing sheets submitted via EFS, the application as filed included one drawing sheet bearing Figure 2. Moreover, a review of the Electronic Filing Receipt reflects that the file titled "FiguresCarbon.pdf" contained one page.

Accordingly, petitioners have failed to establish that the application papers as filed included the omitted drawings referenced in the Notice.

In view thereof, the petition is hereby DISMISSED.

Any request for reconsideration must be submitted within TWO MONTHS of the mail date indicated herein and must be accompanied by evidence to sufficiently establish the presence of the omitted items in the Office on the requested filing date.

In view thereof, this application is being directed to the Office of Patent Application Processing with a filing date of October 7, 2010 using only the original application papers (i.e., the original disclosure of the invention) papers present in the USPTO on the date of deposit

Telephone inquiries regarding 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

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P.O. Box 1450
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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON VA 20195

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application:	:	
Christiansson et al.	:	
Application No. 61/391,764	:	ON PETITION
Filed: October 11, 2010	:	
Attorney Docket No. 12090-000061/US/PS1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 17, 2010.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

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MAR 15 2011

OFFICE OF PETITIONS

Convergent Law Group LLP
P.O. BOX 1329
MOUNTAIN VIEW CA 94042

In re Application of	:	
Nazarenk et al.	:	
Application No: 61/391805	:	
Filing or 371(c) Date: 10/11/2010	:	
Attorney Docket Number:	:	DECISION
CGI006PRV2	:	ON PETITION

This is a decision on the "Petition Under 37 C.F.R. 1.53(e) in response to Notice of Incomplete Provisional Application," filed December 15, 2010.

The petition is granted.

The application was filed on October 11, 2010. On October 29, 2010, the Office of Patent Application Processing mailed a Notice of Incomplete Provisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition and provides that drawings are not necessary for an understanding of the invention as disclosed.

A review of the file reveals that the specification contains method claims. As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process, method or composition claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the Notice mailed October 29, 2010, was mailed in error and is hereby withdrawn.

This application is being referred to the Office of Patent Application Processing, Customer Corrections, for further processing, with the filing date of October 11, 2010, and an indication that no drawings were present or required on filing.

The petition fee has been refunded to Petitioner's deposit account.

Telephone inquiries concerning this matter should be directed to the undersigned at (571-272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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J.A. WIELAND
P.O. BOX 367
PRINCETON TX 75407

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of
Jeff A. Wieland
Application No. 61/391,999
Filed: October 11, 2010
Attorney Docket No. 22835-3001

DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed November 5, 2010.

The request is **DISMISSED**.

Applicant requests a refund of the filing fee ($110.00) for the above application and asserts that the transaction for Application No. 61/391,999 on October 12, 2010, was replaced by Application No. 61/366,898.

MPEP 607.02 states:

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).

37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee.

Additionally, Application No. 61/366,898 was filed on July 22, 2010, which is prior to the filing date of the above Application No. 61/391,999 on October 11, 2010.

Further, the request is not signed. Applicant is encouraged to note that USPTO regulations require that papers filed in the application be signed by a registered attorney or agent, by the applicants (inventors) or by the assignee of the entire interest who has taken action in the application in accordance with 37 CFR 3.71. 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.

In view of the above matters the request for refund is dismissed.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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YARON LISSACK
6A HUTCHINSON COURT
GREAT NECK NY 11023

MAILED

AUG 29 2011

OFFICE OF PETITIONS

In re Application of
Kamal Mahajan et al. :
Application No. 61/392,625 : ON PETITION
Filed: October 13, 2010 :
Title of Invention: INSET DUCT CARBON :
MONOXIDE MONITOR-DETECTION SYSTEM :

This is a decision on the petition under 37 CFR 1.378(c), filed August 5, 2011, which is being treated under 37 CFR 1.137(b)[1] , 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 December 6, 2007, for failure to file a timely response to the Notice to File Missing Parts "Notice" mailed October 5, 2007, which set a two (2) month shortened statutory period for reply. Accordingly, a Notice of Abandonment was mailed June 10, 2008.

Pursuant to 37 CFR 1.137(b) however, the instant petition lacks item (2) of the regulation.

---

[1] A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The 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)).

While the required provisional cover sheet has been provided, petitioner is advised that the required petition fee for revival has not been filed.

At this writing, the petition fee for a small entity is set at $810. Since no authorizations for debiting a deposit account for any deficiencies have been granted, the petition fee has not been paid. The fees due are the fees set at the time the application file is revived.

In view thereof, a petition fee is due before a petition on the merits can be addressed and granted. The application will therefore remain in an abandoned status until such time as the petition fee has been paid.

Additionally, petitioner is advised that the incorrect petition form was filed. The form used was for reinstating an expired patent for failure to pay a maintenance fee. As the instant matter is in regards to a provisional patent application, a **PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)** should have been used. As a courtesy, the correct form has been included with this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300

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

ATTACHMENT: FORM PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

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CARLTON FIELDS, PA
ATTN: IP DEPT.
PO BOX 3239
TAMPA, FL 33601-3239

MAILED
AUG 17 2011
OFFICE OF PETITIONS

In re Application of
Jose Lourenco
Application No. 61/394,539
Filed: October 19, 2010
Attorney Docket No. 99998/99991

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 26, 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 November 1, 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 January 2, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a reply, (2) the petition fee of 810, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Patent Application Processing at their hotline 571-272-4000.

This application is being referred to the Office of Patent Application Processing for pre-examination processing of the reply received July 26, 2011.

April M. Wise
Petitions Examiner
Office of Petitions

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Commissioner for Patents
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MAILED
APR 11 2011
OFFICE OF PETITIONS

DANIEL CADEZ
19609 Harman
Melvindale MI 48122

In re Application of :
Cadez :
Application No. 61/395,401 :
Filed: May 12, 2010 : ON PETITION
Attorney Docket No. N/A :
For: MISTY VEHICLE HUMIDIFIER

This is a decision on the petition under 37 CFR 1.137(b), filed March 3, 2011, which is being treated as a feeless petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application because the Rule 137(b) petition was submitted without the required $810.00 petition fee.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any renewed petition under 37 CFR 1.181 for 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. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A Notice to File Missing Parts of Provisional Application (Notice), mailed May 28, 2010, required applicant to submit a $110.00 basic filing fee and a $25.00 surcharge for its late filing within two months of the mailing of the Notice. The Office has no record of receiving a reply. The Office contends the application became abandoned on July 29, 2010 for failure to reply. The Office mailed a Notice of Abandonment on February 15, 2011.

Petitioner requests withdrawal of the holding of abandonment because applicant purportedly mailed proper responses to the Notice. Petitioner states, "I received communications on two different occasions stating that I have left out certain forms and a detailed parts list. However, I have satisfied all of your requests for information twice. Since responding to your requests, I have not received any correspondence from you until now."

As a preliminary matter, it is unclear whether or not applicant received the May 28, 2010 Notice to File Missing Parts of Provisional Application. Petitioner asserts he has satisfied all the Office's request for information twice. However, the May 28, 2010 Notice required **money**, <u>not information</u>. **If petitioner is asserting that he paid the $110.00 basic filing fee and the $25.00**

surcharge in a timely manner, then petitioner must provide acceptable evidence supporting this assertion.

If the Office has no record of receiving correspondence, there are only two ways to get the Office to recognize a date of deposit in first class mail or facsimile transmission as the filing date for the correspondence that was not received in the Office. In general:

(1) Petitioner must provide a copy of the original document with an affixed certificate of mailing or transmission listing the desired date as the date of deposit or transmission (See 37 CFR 1.8)
OR
(2) Petitioner must provide a copy of an Express Mail label showing a "date-in" of the desired date and a copy of the document that contains a reference to the Express Mail receipt number (37 CFR 1.10).

Petitioner has not provided a copy of the replies allegedly filed prior to the date of abandonment. Petitioner has not shown that the replies contained a proper certificate of mailing or transmission. Petitioner has not stated that he utilized USPS Express Mail Service to file correspondence.

A "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the PTO, 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 CFR 1.8 and 1.10 does not constitute "unavoidable" delay. See Krahn v. Commissioner, 15 USPQ2d 1823, 1825, (E.D. Va 1990); see also MPEP 711.03(c)(III)(C)(2)

Petitioner has not provided acceptable, persuasive evidence that a proper reply was timely filed.

However, if petitioner is alleging he never received the May 28, 2010 Notice to File Missing Parts of Provisional Application, another course of action is required.

A review of the record indicates no irregularity in the mailing of the May 28, 2010 Notice to File Missing Parts of Provisional Application, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the May 28, 2010 Notice to File Missing Parts of Provisional Application was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after May 28, 2010, to demonstrate nonreceipt of the May 28, 2010 Notice to File Missing Parts of Provisional Application. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt

date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from himself, or any other person at the address who may have handled the Office action, indicating that a search was conducted of the location where the correspondence from the USPTO would have been kept; however, the May 28, 2010 Notice to File Missing Parts of Provisional Application was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after May 28, 2010; the period when he would have received the May 28, 2010 Notice to File Missing Parts of Provisional Application.

In the present petition, petitioner did not submit any statements, documentary evidence, or an explanation of his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the May 28, 2010 Notice to File Missing Parts of Provisional Application. Therefore, the petition to withdraw the holding of abandonment is **dismissed**. A copy of the May 28, 2010 Notice to File Missing Parts of Provisional Application accompanies this decision for petitioner's convenience.

The petition under 37 CFR 1.181 is dismissed.

Petitioner is strongly encouraged to file a renewed petition to revive under the unintentional standard of 137(b). The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b). The current Rule 137(b) petition fee is $810.00. Petitioner must submit the $110.00 basic filing fee and the $25.00 as the reply component of the Rule 137(b) petition, as well.

Please keep in mind that a nonprovisional application must be filed within one year of the filing date of the provisional application in order for the nonprovisional application to claim benefit of the provisional application's earlier filing date. Under no circumstances may a provisional application have a term of longer than 1 year. Petitioner should not delay in reviving the present provisional application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Telephone inquiries may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: copy of May 28, 2010 Notice to File Missing Parts of Provisional Application.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
61/395,401	05/12/2010	Daniel Cadez	

CONFIRMATION NO. 1065

FORMALITIES LETTER

DANIEL CADEZ
19609 Harman
Melvindale, MI 48122

OC000000041786562

Date Mailed: 05/28/2010

NOTICE TO FILE MISSING PARTS OF PROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(c)

Filing Date Granted

An application number and filing date have been accorded to this provisional application. The items indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
  *Applicant must submit $**110** to complete the basic filing fee for a small entity.*

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- To avoid abandonment, a surcharge (for late submission of filing fee or cover sheet) as set forth in 37 CFR 1.16(g) of **$25** for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this notice.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **$135** for a small entity
- **$110** Statutory basic filing fee.
- **$25** Surcharge.

Replies should be mailed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.
https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at http://www.uspto.gov/ebc.

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

/tkctscla/

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

SALLY ANN YACOVELLY
1021 WOODS AVE
LANCASTER PA 17603

MAILED
MAR 3 1 2011
OFFICE OF PETITIONS

In re Application of
Sally Ann Yacovelly
Application No. 61/395,791
Filed: May 19, 2010
Title of Invention: MO**BILE LAUNDRY BASKET**

ON PETITION

This is a decision on the petition filed February 28, 2011, to withdraw the holding of abandonment, which is treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.181(b) is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

This application became abandoned August 5, 2010 for failure to timely reply to the Notice to File Missing Parts mailed June 4, 2010 which set a two month period for reply. Accordingly, a Notice of Abandonment was mailed February 18, 2011.

The file record discloses that the Notice was mailed to what was believed to be the address of record, the same address to which the Notice of Abandonment was mailed and received. However, petitioner contends that the Notice to File Missing Parts was not received.

The requirement under 37 CFR 1.181, is that petitioner review the docket records and submit copies of the actual docket records or file jacket to show non-receipt. That requirement has not been met. In a petition under 37 CFR 1.181 the petitioner must show, as in this instance where non-receipt is claimed that petitioner is without fault in not receiving the communication and therefore could not respond timely. In the absence of any irregularity in the mailing, there is a strong presumption that the Office action was

properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received at the address of record.

Petitioner has not submitted docket records in accordance with M.P.E.P. 711.03(c) and pursuant to Delgar Inc. v. Schuyler, 172 USPQ 513[1], perhaps a copy of the "binder" petitioner references, that holds the documents pertaining to this patent application or any other documentary evidence that shows that petitioner has a system for maintaining files related to this matter.

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[1]In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

In view thereof, the holding of abandonment cannot be withdrawn.

It is understood that petitioner is prosecuting this application as a *pro se* inventor and that *pro se* applicants may not have as elaborate a docketing system as a law firm. This does not warrant a total waiver of the requirement of a showing that includes copies of docket records or an adequate proxy for such copies. A *pro se* applicant should have some written records evidencing receipt of communications from and mailing of communications to the Office available to provide proof of non-receipt. It is suggested that pro se applicants maintain a log of communications from and to the Office, **with dates of receipt, due dates and mailing dates of responses and other papers filed noted**. Furthermore, applicants may maintain entries on the file jackets noting these important dates. Absent such evidence, applicants may not be able to overcome the presumption that the correspondence was properly mailed and received at the correspondence address of record and thereafter, misplaced by applicants.

ALTERNATIVE VENUES

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[2] which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

---

[2]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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DILWORTH IP, LLC
2 CORPORATE DRIVE, SUITE 206
TRUMBULL CT 06611

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Hutchison et al.	:	
Application No. 61/396,054	:	DECISION DISMISSING
Filed: May 22, 2010	:	PETITION UNDER 37 CFR 1.10 (d)
Attorney Docket No. 102-44PRO	:	

This is a decision on the petition filed July 12, 2010, which is properly treated as a petition under 37 CFR 1.10(d) requesting that the above-identified application be considered as filed on May 21, 2010, rather than the presently accorded filing date of May 22, 2010.

The petition is **DISMISSED.**

Any request for reconsideration of this decision should be filed within TWO MONTHS of the date of this decision in order to be considered timely (see 37 CFR 1.181(0). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, the above-identified provisional application will be accorded the filing date of May 22, 2010.

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS.

The showing under 37 CFR 1.10(d) must be corroborated by: (1) evidence from the USPS, or (2) evidence that came into being after deposit and within one business day of the deposit of the correspondence as "Express Mail." Evidence from the USPS may be the "Express Mail" Corporate Account Mailing Statement. Due to the questionable reliability of evidence from a party other than the USPS that did not come into being contemporaneously with the deposit of the correspondence with the USPS, 37 CFR 1.10(d) specifically requires that any petition under 37 CFR 1.10(d) be corroborated either by evidence from the USPS, or by evidence that came into being after deposit and within one business day after the deposit of the correspondence as "Express Mail." Evidence that came into being within one day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. Conversely, evidence created prior to the

deposit of the correspondence as "Express Mail" with the USPS (e.g., an application transmittal cover letter, or a client letter prepared prior to the deposit of the correspondence); or created more than one business day after the deposit of the correspondence as "Express Mail" (e.g., an affidavit or declaration prepared more than one business day after the correspondence was deposited with the USPS as "Express Mail") cannot be accepted under the terms of the rule.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on May 21, 2010, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by: a copy of a sales receipt and Declaration of Paula V. Testani.

A grantable petition under 37 CFR 1.10(d) must include:

> (1) The filing of a petition promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> 2) The placement of the "Express Mail" number on the mailing label of the paper(s) or fee(s) that constitutes the correspondence prior to the original mailing by "Express Mail" ; and
>
> (3) A showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition lacks item (3).

With regards to item (3), petitioner has failed to submit a copy of the Express Mail label and has instead submitted a copy of a postal service sales receipt dated May 21, 2010. However, the receipt fails to list any Express Mail mailing label numbers and therefore cannot be used as evidence.

Further, petitioner has submitted a Declaration of Paula V. Testani as evidence. However, as the Statement was not created until July 7, 2010, which is more than one business day after the requested date of deposit, it cannot be considered as evidence, as discussed above.

However, in an attempt to substantiate applicant's allegation that the application papers for this file were deposited on the requested filing date, an independent search was made of the USPS Express Mail Track and Confirm records, which resulted in a finding that the package in question was accepted on May 22, 2010 at 3:13 p.m. at the Stamford, CT USPS.

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 inquires concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/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

THERESA G. SILVA
10436 W FIRST CT
STAR, ID 83669

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Theresa G. SILVA	:	
Application No. 61/396,241	:	DECISION ON PETITION
Filed: May 24, 2010	:	
Attorney Docket No.	:	

This is a decision on the petition, filed March 7, 2011, supplemented March 14, 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Notice to File Missing Parts (Notice) mailed June 11, 2010, which set a two (3) month shortened statutory period for reply. The application became abandoned on August 12, 2010. The Notice of Abandonment was mailed February 24, 2011.

Petitioner asserts that the Notice was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. 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 inquiries concerning this decision should be directed to the undersigned at (571) 272-0602.

This application is being referred to the Office of Data Management for further processing. The $25.00 Surcharge has been received.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DILWORTH IP, LLC
2 CORPORATE DRIVE, SUITE 206
TRUMBULL CT 06611

MAILED

NOV 02 2010

OFFICE OF PETITIONS

In re Application of
Gary Luebke et al
Application No. 61/396,252
Filed: May 25, 2010
Attorney Docket No. 102-36

DECISION DISMISSING
PETITION UNDER 37 CFR 1.10(c)

This is a decision on the petition filed July 12, 2010, under 37 CFR 1.10(c) requesting that the above-identified application be accorded a filing date of May 24, 2010, instead of the currently accorded filing date of May 24, 2010.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, this application will be referred to the Office of Patent Application Processing with the presently accorded filing date of May 25, 2010.

37 CFR 1.10(c) sets forth procedures for filing a petition to the Director for a filing date as of the date of deposit with the USPS, where there is a discrepancy between the filing date initially accorded by the Office and the "date in" entered by the USPS or other official USPS notation.

To be grantable, a petition must:

(1) be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) include a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing; and

(3) include a true copy of the "Express Mail" mailing label showing the "date in" or other official notation by the USPS.

This petition lacks items (2) and (3) above.

Petitioner requests the filing date of May 24, 2010, on the basis that there is a discrepancy between the filing date the USPTO has currently accorded this application and the "date-in" shown on the USPS filing receipt.

The Office is in receipt of the declaration by Paula V. Testani and supporting documents. However, the Office is not in receipt of a copy of the Express Mail Label showing the receipt no. of EG029729759US. Additionally, a copy of the USPS Track and Confirm for Express Mail Label No. EG029729759US indicates an Acceptance date of May 25, 2010 in Trumbull Ct. 06611.

The evidence submitted is not convincing to show that the above application was deposited on May 24, 2010.

Petitioner may provide a written statement from a USPS employee, preferably on official USPS letterhead, attesting that the Express Mail envelope was accepted by the USPS on May 24, 2010.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this 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

SYNAGEVA BIOPHARMA CORP.
111 RIVERBEND ROAD
ATHENS GA 30605

MAILED
DEC 07 2010
OFFICE OF PETITIONS

In re Application of	:	
Alex J. HARVEY	:	
Application No. 61/396,376	:	DECISION ON PETITION
Filed: May 26, 2010	:	
Attorney Docket No. SYN-079P-A	:	

This is a decision on the petition for correction under 37 CFR 1.53(c) filed June 29, 2010.

On June 18, 2010, the Office mailed a Notice of Missing Parts of a Provisional Application stating that a filing dated has been accorded to the above-identified provisional application, however, some fees and pages 83 and 84 of the specification is missing.

Petitioner states that pages 83 and 84 of the specification were filed with the application. As evidence petitioner has submitted a notarized photocopy of the postcard receipt showing that the application contained 85 pages.

The petitioner has provided the Office with copies of the missing pages and fees as required by the Notice of Missing Parts of June 18, 2010.

In view of above, the petition is **GRANTED**.

This application file is being referred to the Office of Patent Application Processing.

Telephone inquiries relating to this decision should be directed to Michelle R. Eason at (571) 272-4231. Telephone inquiries related to OIPE processing should be directed to their hotline at (571) 272-4100.

/Thurman K. Page/
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

Brian R. Galvin
P.O. BOX 2360
SILVERDALE WA 98383-2360

MAILED
NOV 18 2010
OFFICE OF PETITIONS

In re Application of	:	
Patrick K. Brady	:	
Application No. 61/396446	:	
Filing or 371(c) Date: 05/26/2010	:	
Attorney Docket Number:	:	DECISION
6600	:	ON PETITION

This is a decision on the "Petition Regarding Omitted Item(s) in a Provisional Application," filed August 9, 2010, in response to a Notice of Omitted Item(s) in a Provisional Application.

The petition is granted to the extent indicated.

The application was filed on May 26, 2010. On June 16, 2010, the Office of Patent Application Processing mailed a Notice of Omitted Item(s) in a Provisional Application (hereinafter "Notice"), informing Applicant that the application had been accorded a filing date; however, Figure 4 described in the specification appeared to have been omitted from the application.

Applicant responds with the present petition and avers that the application as-filed on May 26, 2010 included eight (8) sheets of drawings, including Figure 4. In support of this assertion, Applicant files a copy of, inter alia, a return-receipt postcard acknowledging receipt of eight (8) sheets of drawings by this Office on May 26, 2010. Applicant has also re-filed eight (8) sheets of drawings with the present petition which, Applicant avers, were submitted at the time of application.

Applicable Law, Rules and MPEP

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." MPEP § 503.

Office records

A review of the application file reveals that the Office file contains six (6) sheets of drawings, Figures 1, 2, 3, 5, 6, and 7, filed on May 26, 2010. The Office application file does not contain a Figure 4, but does contain a Figure 6 filed on May 26, 2010.

Analysis

A review of the return-receipt postcard filed with the present petition reveals that the postcard receipt acknowledges receipt of eight (8) sheets of drawings by this Office on May 26, 2010. A review of the eight sheets of drawings filed with the present petition and putatively a copy of the drawing Figures filed on May 26, 2010, reveals that the copy of Figure 6 filed with the present petition differs from the copy of Figure 6 received by this Office on May 26, 2010. Also, the Office application file does not contain a copy of a "Figure 6 (cont'd)."

Figure 4

As to Figure 4, the petition is granted. The copy of Figure 4 filed with the present petition will be entered into the file and accorded a filing date of May 26, 2010.

In view of the above, the Notice was mailed in error and is hereby withdrawn.

The petition fee has been refunded to Petitioner's deposit account.

Figures 6 and 6 (cont'd)

As to Figures 6 and 6 (cont'd) filed with the present petition, while the MPEP 503 provides that "[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 the items listed thereon on the date stamped thereon by the USPTO," prima facie evidence as defined in Black's Law Dictionary is evidence sufficient to establish a given fact, and which if not rebutted or contradicted, will remain sufficient.

Here, the copy of Figure 6 filed with the present petition differs from the copy of Figure 6 received by this Office on May 26, 2010. Also, the Office application file does not contain a copy of a "Figure 6 (cont'd)." As such, evidence that the copy of Figure 6 filed with the present petition was the Figure 6 filed in this Office on May 26, 2010 is contradicted by Office records, which calls into question whether Figure 6 (cont'd), filed with the present petition, was filed in this Office on May 26, 2010.

The remaining Figures filed with the present petition

Moreover, a review of the remaining drawing Figures, 1, 2, 3, 5, and 7 in the application as filed on May 26, 2010, reveal that the Figures filed with the present petition are not the same Figures that were filed at the time of application on May 26, 2010.

As to Figures 1, 2, 3, 5, 6, 6 (cont'd), and 7, filed with the present petition, if applicant is able to demonstrate that these Figures were filed in this Office on May 26, 2010, Applicant should file a petition and the appropriate documentary/corroborative evidence in support of the petition. Otherwise, Figures 1, 2, 3, 5, 6 and 7 present in the application file on May 26, 2007 are the Figures that will be used for any examination.

It is also noted that the application file now contains seven drawing Figures/sheets, 1, 2, 3, 4, 5, 6 and 7, as opposed to eight drawing sheets (putatively 1, 2, 3, 4, 5, 6, 6 (cont'd), and 7), as indicated on the return-receipt postcard.

Conclusion

Accordingly, the copy of Figures 1, 2, 3, 5, 6, 6 (cont'd), and 7, filed with the present petition will not be accorded a filing date of May 26, 2010.

This application is being forwarded to the Office of Patent Application Processing, Customer Corrections, for further processing, with the filing date of May 26, 2010, and an indication that Figure 4 was present on May 26, 2010, using the copy of Figure 4 filed with the present petition, along with the six (6) drawing pages present in the application file on May 26, 2010.

Telephone inquiries concerning this matter should be directed to the undersigned at (571-272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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STRATEGUS FINANCIAL GROUP
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PHILADELPHIA PA 19119

In re Application of
Harry Darnell Moody et al.
Application No. 61/396,622
Filed: June 1, 2010
Title of Invention: SECURED BUDGET MANAGEMENT

ON PETITION

This is a decision on the petition filed March 14, 2011, to withdraw the holding of abandonment of the above-identified application, which is being treated under 37 CFR 1.181.

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 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

This application was held abandoned and a Notice of Abandonment was mailed February 28, 2011, for the petitioner's failure to file a timely reply to the Notice to File Missing Parts mailed June 16, 2010.

Petitioners argue that the filing requirements were met with respect to Application No. 61/345,279 however, a Notice to File Missing Parts mailed June 16, 2010 indicated that the statutory basic filing fee is missing and that "Applicant must submit $110 to complete the basic filing fee for a small entity." Petitioner argues that while the Notice refers to Application No. 61/396,622 that differs from the Application No. for which they have a filing receipt and thus, seeks withdrawal of the holding of abandonment.

Petitioner is advised that as there is no evidence of non-receipt or timely reply filed in 61/396,622 (the evidence of fee payment all occurred prior to the filing date of 61/396,622 and relate to the other application), the petition is not grantable.

A review of the record reveals that there are two separate applications being

prosecuted by the same entity, 61/345,279 and 61/396,622, however there is no evidence as to how the second application came about. Nevertheless, in the '279 application, the fees have been paid and that application is pending. There are no apparent issues in that application. However, the '622 application, which was filed June 1, 2010, lacks the required fees and is abandoned. This must be corrected in the '622 application to return that application to pending status. If petitioners have no interest in reviving the '622 application, no further action is required.

In view thereof and since a proper response was not timely filed, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

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

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

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