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In re Application of: PIRIM, Patrick. :
U.S. Application No.: 11/676,926 :
U.S. Patent No.: 7,650,015 :
Filing Date: February 20, 2007 :
Attorney's Docket No.: 8042-2-1 :
For: IMAGE PROCESSING METHOD :

DECISION ON
PETITIONS UNDER
37 CFR 1.78(a)(3)
AND 1.55(c)

This decision is issued in response to the "SECOND REQUEST FOR RECONSIDERATION OF PETITION DECISION" filed on July 15, 2014, which requests reconsideration under 37 CFR §§ 1.78(a)(3) and 1.55(c). For the reasons set forth below, the petitions are **DISMISSED** without prejudice.

37 CFR 1.78(a)(3)

The above-captioned U.S. patent issued from an application filed after November 29, 2000, and the corrected benefit claim under 35 U.S.C. 120 is submitted after the expiration of the time period specified in 37 CFR 1.78(a)(2)(ii). Under the circumstances present here, the petition is properly considered under 37 CFR 1.78(a)(3). See MPEP section 1481.03.

A grantable petition under 37 CFR 1.78(a)(3) must be accompanied by the following:

- (1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 CFR 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

The present petition fails to comply with items (1) and (3) above.

Regarding requirement (1), the Application Data Sheet (ADS) filed on July 15, 2014 indicates that parent application no. 09/230,502 is "a 371 of international PCT/FR97/01354," but also indicates that 09/230,502 is a "Continuation in part of PCT/EP98/05383." However, the

filing date (35 U.S.C. 363) date of 09/230,502 is its international filing date, 22 July 1997. This is prior to the 25 August 1998 international filing date of purported "priority" application PCT/EP98/05383. Comparative review of parent application no. 09/792,294 reveals that petitioner may have intended instead to insert a claim that 09/792,294 is a CON of PCT/EP98/05383.

Regarding requirement (3), a decision dismissing the petition filed on 20 May 2011 was mailed on 05 January 2012, and the instant response was filed on 15 July 2014. Petitioner did not provide an updated statement of unintentional delay; it is not adequately clear at this time whether the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

For these reasons, it would not be appropriate to grant petition under 37 CFR 1.78(a)(3) on the basis of the present record.

37 CFR 1.55(c)

The above-captioned U.S. patent issued from an application filed after November 29, 2000, and the foreign priority claim under 35 U.S.C. 119(a)-(d) or 365(a) directed to French application number FR 9609420 was not submitted prior to the expiration of the time period specified in 37 CFR 1.55(a)(1). Accordingly, this is an appropriate petition under the provisions of 37 CFR 1.55(c).

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

- (1) the claim under 35 U.S.C. 119(a)-(d) or 365(a) and this section to the prior foreign application, unless previously submitted;
- (2) the surcharge as set forth in 37 CFR 1.17(t);
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional.

In the Decision mailed on 05 January 2012, the previous petition under 37 CFR 1.55(c) filed on 20 May 2011 was dismissed without prejudice because requirement (1) had not been satisfied. Petitioner now has submitted an ADS which sets forth the foreign priority claim. However, said ADS is defective for other reasons (as described above). Therefore, it would not be appropriate at this time to conclude that applicants have satisfied the requirements for a grantable petition under 37 CFR 1.55(c) for acceptance of an unintentionally delayed foreign benefit claim. It is noted that the instant renewed petition includes a statement of unintentional delay with respect to 37 CFR 1.55(a)(1).

DECISION

For the reasons set forth above, the petitions under 37 CFR 1.78(a)(3) and 1.55(c) are **DISMISSED** without prejudice.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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