



SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

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OFFICE OF PETITIONS

In re Application of :
Manabu Furuya :
Application No. 10/178,515 :
Filed: June 25, 2002 :
Attorney Docket No.: Q70426 :

ON PETITION

This is a decision on the "Renewed Request For Reconsideration of Petition Under 37 CFR 1.181 to Withdraw A Holding of Abandonment" filed April 1, 2011.

The request to overturn the decision refusing to withdraw the holding of abandonment dated February 1, 2011, is **DENIED**.

It was correctly determined that abandonment of the above cited application was proper. Contrary to petitioner's assertion, arguments were improperly presented in the section of the Appeal Brief titled "Grounds of Rejection to be Reviewed on Appeal." In providing further clarification to 37 C.F.R. 41.37, MPEP § 1205 stated that such arguments were improper. Therefore, petitioner's Brief was inconsistent with Office requirements.

Petitioner's assertion that MPEP section 1205 be referenced by the examiner in the Office action as opposed to section 1205.03 as referenced in the Office action of December 2, 2005 is noted. However, such represents a difference of opinion as to which part of the manual to refer to, the general section on Appeal (1205) or the specific section on noncompliant Appeal Brief and Amended Brief (1205.03). Reference to the specific section was an attempt on the examiner's part to be as helpful as possible and, hence, no issue is presented here. Moreover, petitioner admits that this section of the MPEP was published in August 2005, four months before the mailing of the Notification of Non-Compliant Appeal Brief, and the Office respectfully disagrees with petitioner's interpretation of MPEP § 1205. If additional guidance beyond the MPEP was required in order to file a complaint Appeal Brief, petitioner could have contacted the examiner or, in the event the examiner was unavailable, the examiner's supervisor.

The MPEP, at section 1205.02(vi), provides examples as to what would and would not be considered acceptable as the statement of the grounds of rejection. Petitioner, on

his own, chose to go beyond what was considered acceptable and as such bears the risk of the statement being considered an argument. Furthermore, the examiner clearly stated in the Notice of Non-Compliant Appeal Brief mailed December 2, 2005, "Applicant need not explain Examiner's rejection in this section. If explanation is needed, it should be confined to the argument section." Petitioner failed to follow the advice of the examiner. Withdraw of the holding of abandonment would be inappropriate under these circumstances.

In regard to the requested personal interview with Director Kappos or Commissioner Stoll, an interview with either the Director or Commissioner is not practical or necessary. This matter has been reviewed and fully considered by the undersigned, who has been properly delegated authority over this matter (MPEP 1002.02(b)(16)).

A review of the record does not indicate that withdraw of the holding of abandonment is warranted. This application is no longer in an abandoned status since the application was revived under 37 C.F.R. 1.137(b). The Supplemental Appeal Brief filed April 29, 2008 has been forwarded to the examiner for consideration.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571) 272-6692.



Anthony Knight
Director
Office of Petitions