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OFFICE OF PETITIONS

In re Application of :
Alfreds Rozentals :
Application No. 07/015,990 :
Patent No. 4,765,762 :
Filed: February 18, 1987 :
Issue Date: August 23, 1988 :
Attorney Docket No.: LUS-002 :
Title: HARDENED BALL BEARING :
ASSEMBLY :

DECISION ON PETITION
PERSUANT TO
37 C.F.R. §1.378(e)

This is a decision on the petition filed on April 25, 2003, under 37 C.F.R. §1.378(e), requesting reconsideration of a prior decision pursuant to 37 C.F.R. §1.378(b)¹, which refused to accept the delayed payment of two maintenance fees for the above-referenced patent.

The request to accept the delayed payment of the maintenance fee is **DENIED**².

¹ Any petition to accept an unavoidably delayed payment of a maintenance fee filed under 37 C.F.R. §1.378(b) must include:

- (1) The required maintenance fee set forth in 37 C.F.R. §1.20 (e) through (g);
- (2) The surcharge set forth in 37 C.F.R. §1.20(i)(1), and;
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

² This decision may be regarded as a final agency action withing the meaning of 5 U.S.C. §704 for the purposes of seeking judicial review. See MPEP 1002.02.

Background

The patent issued August 23, 1988. The grace period for paying the 7½ year maintenance fee provided in 37 CFR 1.362(e) expired at midnight on August 23, 1996, with no payment received. Accordingly, the patent expired on August 23, 1996.

Almost six years later, on July 29, 2002, petitioner filed a petition under 37 C.F.R. §1.378(b), and submitted authorization to charge the 11 ½ year maintenance fee³ and the associated surcharge to petitioner's deposit account^{4, 5}. A decision was mailed on February 25, 2003 which dismissed this petition.

In response, the present petition under 37 C.F.R. §1.378(e) was filed on April 25, 2003.

Petitioner has failed to meet the third requirement set forth above.

The standard

35 U.S.C. §41(c)(1) states that:

The Director may accept the payment of any maintenance fee... after the six-month grace period if the delay⁶ is shown to the satisfaction of the Director to have been unavoidable.

§1.378(b)(3) is at issue in this case. Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 37 C.F.R. §1.137(a). This is a very stringent standard. 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 business⁷.

³ It is noted that the 3 ½ year maintenance fee was received in a timely manner on August 7, 1992 along with the \$65 surcharge for filing within 6 months of the due date, but the 7 ½ maintenance fee was never received.

⁴ With the instant petition Petitioner asserts that the original petition authorized the charging of any shortage to Petitioner's Deposit Account. Petitioner is directed to the cover page which accompanied the petition, and will note that the ability of the Office to charge petitioner's Deposit Account was explicitly restricted to *only* the petition fee, the maintenance fee, and any required extension of time. The Office was not given a blanket authorization to charge and it has been noted that a blanket authorization as has been included with the instant petition. As such, the Petitioner failed to submit payment for the 7 ½ year maintenance fee.

⁵ It follows that the previous petition incorrectly stated that the Petitioner had failed to submit the surcharge associated with the filing of a petition to accept the late filing of a maintenance fee as unavoidable.

⁶ This delay includes the entire period between the due date for the fee and the filing of a grantable petition pursuant to 37 C.F.R. §1.378(b).

⁷ 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 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143

In addition, decisions are made on a "case-by-case basis, taking all the facts and circumstances into account."⁸ Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."⁹

An adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 C.F.R. §1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

Furthermore, under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Thus, in support of an argument that the delay in payment was unavoidable, evidence is required that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid.¹⁰

Even if the Office were required to provide notice to applicant of the existence of maintenance fee requirements, such notice is provided by the patent itself.¹¹

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay.

Such a showing should identify the specific error¹², the individual who made the error, and the business routine in place for performing the action which resulted in the error. The showing

U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

⁸ Smith v. Mossinghoff, 671 F.2d at 538, 213 U.S.P.Q. at 982.

⁹ Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

¹⁰ See MPEP 2590 (Manual of Patent Examining Procedure, Rev. Aug. 1, 2001).

¹¹ See Ray v. Lehman, 55 F.3d 606, 610; 34 USPQ2d 1786, 1789 (Fed. Cir. 1995). The Letters Patent contains a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980. While it is unclear as to who was and is in actual possession of the patent, Petitioner's failure to read the Notice does not vitiate the Notice, nor does the delay resulting from such failure to read the Notice establish unavoidable delay.

¹² Petitioner must identify the error which caused the delay. If the specific error cannot be identified, the petitioner must identify any and all possible causes and prove that any of them, if they were the true cause, constitute unavoidable delay. A full and complete discussion for each possible error must be presented. A full and complete discussion of each possible error must be presented. Petitioner is reminded that petitioner has the burden of proof.

must establish that the individual who erred was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. The showing should include information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (1) the error was the cause of the delay at issue,
- (2) a business routine was in place for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, and;
- (3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

See MPEP 711.03(c)(III)(C)(2).

An adequate showing should include (when relevant):

- (1) statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them;
- (2) a thorough explanation of the docketing and call-up system in use;
- (3) identification of the type of records kept;
- (4) identification of the persons responsible for the maintenance of the system;
- (5) copies of mail ledger, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing;
- (6) include an indication as to why the system failed in this instance, and;
- (7) information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

The portions of the MPEP relevant to the facts as presented

2504 Patents Subject to Maintenance Fees

37 CFR 1.362. Time for payment of maintenance fees.

- (a) Maintenance fees as set forth in §§ 1.20(e) through (g) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.
- (b) Maintenance fees are not required for any plant patents or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.
- (c) The application filing dates for purposes of payment of maintenance fees are as follows:
 - (1) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

- (2) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date of the application.
 - (3) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.
 - (4) For a reissue application, including a continuing reissue application claiming the benefit of a reissue application under 35 U.S.C. 120, the United States filing date of the original non-reissue application on which the patent reissued is based.
 - (5) For an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.
- (d) Maintenance fees may be paid in patents without surcharge during the periods extending respectively from:
- (1) 3 years through 3 years and 6 months after grant for the first maintenance fee,
 - (2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and
 - (3) 11 years through 11 years and 6 months after grant for the third maintenance fee.
- (e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:
- (1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee.
 - (2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and
 - (3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.
- (f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee and any necessary surcharge may be paid under paragraph (d) or paragraph (e) respectively on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.
- (g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.
- (h) The periods specified in §§ 1.362 (d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.

Maintenance fees are required to be paid on all patents based on applications filed on or after December 12, 1980, except for plant patents and design patents. Furthermore, maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees. Application filing dates for purposes of determining whether a patent is subject to payment of maintenance fees are as follows:

- (A) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.
- (B) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119(a)-(d), the actual United States filing date of the application.
- (C) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.
- (D) For a reissue application, including a continuing reissue application claiming the benefit of a reissue application under 35 U.S.C. 120, the United States filing date of the original nonreissue application on which the patent reissued is based.
- (E) For an international application that has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

2506 Times for Submitting Maintenance Fee Payments

37 CFR 1.362(d) sets forth the time periods when the maintenance fees for a utility patent can be paid without

surcharge. Those periods, referred to generally as the "window period," are the 6-month periods preceding each due date. The "due dates" are defined in 35 U.S.C. 41(b). The window periods are (1) 3 years to 3 1/2 years after the date of issue for the first maintenance fee payment, (2) 7 years to 7 1/2 years after the date of issue for the second maintenance fee payment, and (3) 11 years to 11 1/2 years after the date of issue for the third and final maintenance fee payment. A maintenance fee paid on the last day of a window period can be paid without surcharge. The last day of a window period is the same day of the month the patent was granted 3 years and 6 months, 7 years and 6 months, or 11 years and 6 months after grant of the patent. 37 CFR 1.362(e) sets forth the time periods when the maintenance fees for a utility patent can be paid with surcharge. Those periods, referred to generally as the "grace period," are the 6-month periods immediately following each due date. The grace periods are (1) 3 1/2 years and through the day of the 4th anniversary of the grant of the patent, (2) 7 1/2 years and through the day of the 8th anniversary of the grant of the patent and, (3) 11 1/2 years and through the day of the 12th anniversary of the grant of the patent. A maintenance fee may be paid with the surcharge on the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant to prevent the patent from expiring. Maintenance fees for a reissue patent are due based upon the schedule established for the original utility patent. The filing of a request for ex parte or inter partes reexamination and/or the publication of a reexamination certificate does not alter the schedule of maintenance fee payments of the original patent. If the day for paying a maintenance fee falls on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the maintenance fee may be paid on the next succeeding day that is not a Saturday, Sunday, or Federal holiday. For example, if the window period for paying a maintenance fee without a surcharge ended on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the maintenance fee can be paid without surcharge on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia. Likewise, if the grace period for paying a maintenance fee with a surcharge ended on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the maintenance fee can be paid with surcharge on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia. In the latter situation, the failure to pay the maintenance fee and surcharge on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia will result in the patent expiring on a date (4, 8, or 12 years after the date of grant) earlier than the last date on which the maintenance fee and surcharge could be paid. This situation results from the provisions of 35 U.S.C. 21, but those provisions do not extend the expiration date of the patent if the maintenance fee and any required surcharge are not paid when required. For example, if the grace period for paying a maintenance fee with a surcharge ended on a Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g., Monday, but the patent will have expired at midnight on Saturday if the maintenance fee and surcharge were not paid on the following Monday. Therefore, if the maintenance fee and any applicable surcharge are not paid, the patent will expire as of the end of the grace period as listed above. A patent that expires for failure of payment will expire on the anniversary date the patent was granted in the 4th, 8th, or 12th year after the grant.

2575 Notices

Under the statutes and the regulations, the Office has no duty to notify patentees when their maintenance fees are due. It is the responsibility of the patentee to ensure that the maintenance fees are paid to prevent expiration of the patent. The Office will, however, provide some notices as reminders that maintenance fees are due, but the notices, errors in the notices or in their delivery, or the lack or tardiness of notices will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. The notices provided by the Office are courtesies in nature and intended to aid patentees. The Office's provision of notices in no way shifts the burden of monitoring the time for paying maintenance fees on patents from the patentee to the Office.

Application of the standard to the current facts and circumstances

In the decision on the previous petition, the reasons for dismissal were set forth as:

...Petitioner has stated that because the company paid the fee directly, it was unable to rely on the attorney's docketing system for future reminders. Petitioner had no business routine/docketing system for keeping track of when fees were due, and as such, relied on the attorney's docketing

system. When the petitioner abandoned the attorney's docketing system, no replacement was instituted. As such, petitioner had no way of keeping track of when payments were due. It does not appear that one may deliberately decide against the implementation of a manner of keeping track of when the payments are due, forget to make a necessary payment, and later characterize this failure as unavoidable.

Furthermore, petitioner has not addressed why it took 6 ½ years to discover that the maintenance fee had not been paid.

Finally, petitioner has not explained why after learning that the patent had gone abandoned, it took him six months to file this petition.

For these reasons, it does not appear that petitioner treated this patent as his most important business. This statement of facts establishes that the petitioner failed to have in place reasonable steps to ensure timely payment of the 7 ½ year maintenance fee and/or the 11 ½ year maintenance fee. Accordingly, acceptance of the delayed payment of the maintenance fee is precluded.

With the instant petition, unavoidable delay is asserted in that it is set forth that the corporate assignee treated this patent no differently than it treated any other normal operating expense¹³. As such, it relied upon the accounting process already in place for tracking and paying the maintenance fees associated with this patent¹⁴. The company would prepare a monthly voucher, showing all payments which had been made during that month. All payments that were made to vendors, as well as the maintenance fees associated with this patent, were made by the company's Controller, Mr. Hickey.

Unfortunately, Mr. Hickey, has passed on and as such, the one person with firsthand knowledge of the underlying events which led to the expiration of this patent cannot comment on the matter.

With this revelation, petitioner has established that the company had taken no steps to ensure the timely payment of the maintenance fees for this patent, and there was no business routine in place for performing the clerical function of ensuring that maintenance fees would be paid in a timely manner. There was no docketing system in place, and no tickler established to notify the company when a new payment was coming due. The company merely relied on a method it employed for its regular day-to-day expenses: once a month, a list of payments was printed up. It is not clear to the Office how a list of payments made during any given month could serve as notice that at the upcoming 7 ½ and the 11 ½ year mark, additional payments would be required.

Petitioner explains that Mr. Hickey was experienced in his job, and hence his work was not reviewed (as his training is not mentioned, the Office must assume that he had none once under the employ of the Petitioner). As such, Mr. Hickey was experienced in the role of making payments and keeping track of all payments made during a particular month, but as this is the only patent this company has ever received,¹⁵ it appears that the Controller had as much experience in ensuring that maintenance fees were paid for in a timely manner as he did training. As such, it does not appear that a reasonable man, treating this patent as his most important business, would entrust a man with no training and no experience in this particular regard, with ensuring that the maintenance fees were submitted in a timely manner.

¹³ Petition, paragraph 5.

¹⁴ *Id.*

¹⁵ Petition, paragraph 5.

Petitioner states that the records show no evidence of any voucher ever being prepared for the payment of any maintenance fee on this patent¹⁶, and sets forth that after Mr. Hickey left the employ of the company in 1989, the organization was left with no instructions to track the future maintenance fees so as to ensure that they were paid in a timely manner¹⁷.

Petitioner continues by stating that he exercised the "same degree of care as he did in other payments critical to the Company's business¹⁸." This statement, coupled with the statement above pertaining to the fact that the maintenance fees were treated as any other normal business operating expense, evinces that this patent was not treated as the company's most important business.

Petitioner has failed to make a showing that the voucher-system which was used to track the maintenance fees was a reliable system of doing the same. A petitioner seeking a determination that the failure to submit a required maintenance fee in a timely manner was unavoidable must show that the system in place for tracking said maintenance fees was usually reliable.

Petitioner adds that costs associated with this patent were not capitalized, and that the "out of pocket" expenses were amortized over the life of the patent. Petitioner has included certified financial statements from 1988 and 1989, in order to show that the patent does not show unamortized patent costs¹⁹. As these financial statements, made concurrently with the employ of Mr. Hickley, failed to show the maintenance fees which were due on the patent, it would appear that the other officers of the company should have become aware that something was amiss after reviewing the statements, and the omission should have indicated to them that the method they relied upon to remind them to submit maintenance fees at further times was not reliable.

Petitioner states that the payment of the 3 ½ year maintenance fee was incorrectly recorded into the accounting system as a legal fee payment, and was not entered as a recurring maintenance fee payment²⁰. Why this mistake was not caught, cannot be ascertained, due to the passing of Mr. Hickley.

After paying the maintenance fee, petitioner instructed the attorney not to monitor the maintenance fees any longer. While it is always the duty of the patentee to ensure that all maintenance fees are paid in a timely manner, this affirmative action ensured that Lutco, and Lutco alone, would be monitoring the time schedule for when payments would be due.

Petitioner states that "apparently, Mr. Hickey never made a record of the requirement for a maintenance fee payment, nor any record of any future (at the time) maintenance fee payments²¹." Since the petitioner does not have firsthand knowledge of this event, this conclusion is at best an educated guess. Petitioner cannot confirm with certainty whether the

¹⁶ Petitioner explains in paragraph 16 that the 3 ½ year maintenance fee due to the prompting of the petitioner's attorney.

¹⁷ Petition, paragraph 14.

¹⁸ Petition, paragraph 10.

¹⁹ Petition, paragraph 13.

²⁰ Petition, paragraph 16.

²¹ Petition, paragraph 18.

Controller made record elsewhere of this payment, or of any subsequent payments which would be due at the 7 ½ and the 11 ½ year marks.

The patent issued on August 23, 1988. Petitioner, in paragraph 8, states that Mr. Hickey was the controller at the time the patent was granted. In paragraph 14, petitioner sets forth that Mr. Hickey left the company in February of 1989. In paragraph 19, petitioner sets forth that the 3 ½ year maintenance fee was paid by Mr. James Coughlin, the Controller at the time which the first maintenance fee was due. Mr. Coughlin left the company in 1996, "just prior to the 7 ½ year maintenance fee due date"²². Petitioner states that Mr. Coughlin was "apparently unaware of the existence of additional future maintenance fees because Mr. Hickey had not properly recorded the need for such payments at the issuance of the Patent"²³. It is noted that no statement from Mr. Coughlin has been included. As such, he has commented on whether Mr. Coughlin was aware of the requirement to submit maintenance fees, in the absence of any firsthand knowledge of the matter.

One Mr. Verge, who petitioner asserts was also unaware of the existence of recurring maintenance fees, replaced Mr. Coughlin²⁴. Similar to the above paragraph, it is noted that no statement from Verge has been included. As such, he has commented on whether Mr. Verge was aware of the requirement to submit maintenance fees, in the absence of any firsthand knowledge of the matter.

Therefore, petitioner has set forth that the failure of Mr. Hickey to properly enter this information directly resulted in a long chain of events which eventually culminated in the expiration of this patent, effectively placing the blame for the failure to submit the maintenance fees squarely on the shoulders of the one individual in this chain of events who is unable to submit a statement or proffer an explanation: the deceased Mr. Hickey.

Petitioner concludes his petition with the explanation that after learning that its patent had expired for failure to submit the maintenance fee, the company waited six months before filing the previous petition because it was not aware that it was possible to revive an expired patent, and the company did not seek legal advice until some time had passed. A company, acting in relation to its most important business, would have acted immediately in seeking legal advice upon learning of the expiration of its most important asset.

In summary, the showing of record fails to demonstrate the due care of a reasonably prudent patentee, and as such, the finding of unavoidable delay is precluded.

CONCLUSION

The prior decision which refused to accept, under 37 C.F.R §1.378(b), the delayed payment of a maintenance fee for the above-identified patent, has been reconsidered. For the above stated

22 Petition, paragraph 20.

23 Petition, paragraph 19.

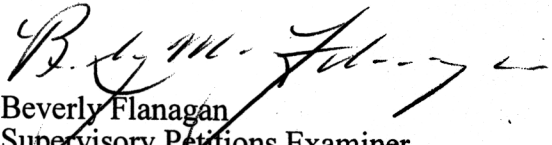
24 Petition, paragraph 21.

reasons, the delay in this case cannot be regarded as unavoidable within the meaning of 35 U.S.C. §41(c)(1) and 37 C.F.R. §1.378(b).

Since this patent will not be reinstated, the surcharge and the 11 ½ year maintenance fee have been refunded to petitioner's Deposit Account, as authorized in the petition.

As stated in 37 C.F.R. §1.378(e), no further reconsideration or review of this matter will be undertaken.

Telephone inquiries should be directed to Attorney Paul Shanoski at (703) 305-0011.


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