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In re Patent of Harding et al.	:	
Patent No. 8,591,815	:	REDETERMINATION OF PATENT
Issue Date: November 26, 2013	:	TERM ADJUSTMENT
Application No. 13/108,621	:	
Filed: May 16, 2011	:	
Attorney Docket No. AGAM.P-012-2	:	

This is a decision on the “PETITION FOR CORRECTION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705”, filed January 24, 2014, which requests the United States Patent and Trademark Office (“Office”) correct the patent term adjustment determination (“PTA”) set forth on the patent to indicate the term of the patent is extended or adjusted by twenty-four (24) days.

The request for reconsideration for the Office to correct the PTA set forth on the patent to indicate the term of the patent is extended or adjusted by 24 days is **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704.

Relevant Procedural History

The patent issued with a PTA determination of 23 days on November 26, 2013. The instant request seeking an adjustment of 24 days was timely filed on January 24, 2014.

Decision

The PTA set forth on the patent is based on the following determination previously made by the Office:

- (1) The period of delay under 35 U.S.C. § 154(b)(1)(A) (“A Delay”) is 24 days;
- (2) The period of delay under 35 U.S.C. § 154(b)(1)(B) (“B Delay”) is 0 days;
- (3) The period of delay under 35 U.S.C. § 154(b)(1)(C) (“C Delay”) is 0 days;
- (4) The number of days of overlapping delay (“Overlap”) between the periods of A Delay, B Delay, and C Delay is 0 days; and

- (5) The period of delay under 35 U.S.C. § 154(b)(2)(C) (“Applicant Delay”) is 1 day.

The PTA to be set forth on a patent is the sum of the days of A Delay, B Delay, and C Delay reduced by the number of days of Overlap and Applicant Delay. In other words, the following formula may be used to calculate the PTA:

$$\text{PTA} = \text{A Delay} + \text{B Delay} + \text{C Delay} - \text{Overlap} - \text{Applicant Delay}$$

The patent sets forth a PTA of 23 days (24 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 1 day of Applicant Delay).

The Request argues the period of Applicant Delay is 0 days, not 1 days, because no reduction, rather than a 1 day period of reduction, is warranted under 37 CFR 1.704(b) in connection with the filing of a reply on June 7, 2012 to a restriction requirement, mailed May 11, 2012.

The Request argues the correct PTA is 24 days (24 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 days of Applicant Delay).

As will be discussed, the period of Applicant Delay remains 1 day because the reduction in connection with the filing of a reply on June 7, 2012 to restriction requirement, mailed May 11, 2012, is assessed pursuant to 37 CFR 1.704(c)(7), not 37 CFR 1.704(b).

The correct PTA is 23 days (24 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 1 day of Applicant Delay).

A Delay

The Request does not dispute the Office’s prior determination the period of A Delay is 24 days. The Office has recalculated the period of A Delay as part of the Office’s redetermination of the PTA and confirmed the period of A Delay is 24 days.

B Delay

The Request does not dispute the Office’s prior determination the period of B Delay is 0 days. The Office has recalculated the period of B Delay as part of the Office’s redetermination of the PTA and confirmed the period of B Delay is 0 days.

C Delay

The Request does not dispute the Office’s prior determination the period of C Delay is 0 days. The Office has recalculated the period of C Delay as part of the Office’s redetermination of the PTA and confirmed the period of C Delay is 0 days.

Overlap

The Request does not dispute the Office's prior determination the number of days of Overlap is 0 days. The Office has recalculated the number of days of Overlap as part of the Office's redetermination of the PTA and confirmed the number of days of Overlap is 0 days.

Applicant Delay

The Request disputes the Office's prior determination the period of Applicant Delay is 1 day. The Office has recalculated the period of Applicant Delay as part of the Office's redetermination of the PTA and confirmed the period of Applicant Delay is 1 day.

The Request argues the period of Applicant Delay is 0 days, not 1 days, because no reduction, rather than a 1 day period of reduction, is warranted under 37 CFR 1.704(b) in connection with the filing of a reply on June 7, 2012 to a restriction requirement, mailed May 11, 2012. However, the reduction is properly calculated under 37 CFR 1.704(c)(7).

37 CFR 1.704(c)(7) establishes submission of a reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under 37 CFR 1.135(c) and await and process the applicant's reply to the action under 37 CFR 1.135(c) before the initial reply (as corrected) can be treated on its merits. In addition, 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

On June 6, 2012, applicants filed a reply to the restriction requirement, mailed May 11, 2012. The reply was non-compliant. 37 CFR 1.75(f) provides that if there are several claims, they shall be numbered consecutively in Arabic numerals. The amendment filed on June 6, 2012 contains a claim listing that lacks a claim 175 between claims 174 and 176. The amendment filed on June 6, 2012 does not include claim 175 or its status. A compliant amendment that included claim 175 and its status was not filed until June 7, 2012.

Whether the examiner contacted applicants or not is immaterial, as 37 CFR 1.704(c)(7) does not contain a "specifically requested by the examiner" exemption as 37 CFR 1.704(c)(8) does.

Thus, the 1 day period of reduction pursuant to 37 CFR 1.704(c)(7) is proper. The 1 day period of reduction is calculated beginning on the day after the date the initial non-compliant reply was filed, June 6, 2012, and ending on the date that a compliant reply was filed, June 7, 2012.

The period of Applicant Delay is 1 day.

Conclusion

The Request asserts the correct PTA is 24 days (24 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 days of Applicant Delay).

As previously discussed, the period of Applicant Delay is 1 day.

Therefore, the correct PTA is 23 days (24 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 1 day of Applicant Delay).

Telephone inquiries specific to this decision should be directed to Attorney Advisor Shirene Willis Brantley at (571) 272-3230.



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Director

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