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OFFICE OF PETITIONS

In re Application of :
Michael C. Scroggie et al. :
Application No. 09/756,788 : ON PETITION
Filed: January 10, 2001 :
Attorney Docket No.: CAT/29US-SCRCO3 :

This is a decision on the petition filed May 13, 2009, which was supplemented on May 26, 2009, supplemented a second time on June 2, 2009 and supplemented a third time on June 29, 2009. The petition and three supplements were filed under 37 CFR 1.181, requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated April 10, 2009, which refused to issue a response on the merits to the Appeal Brief filed October 23, 2008 and further refused to remove the examiner and SPE from the instant application. Specifically:

The petition filed May 13, 2009 requests reconsideration of the refusal to enter and consider the appeal filed October 23, 2008. The petition further requests reconsideration of the refusal to remove the instant application from the current examiner.

The first supplemental petition filed May 26, 2009 requests the same relief as the petition filed May 13, 2009.

The second supplemental petition filed June 2, 2009 requests the examiner to respond to the amendment filed September 29, 2008.

The third supplemental petition filed June 29, 2009 requests reconsideration of the examiner's decision in the notice of non-compliant brief filed October 23, 2008.

The petition to overturn the decision of the Technology Center Director in regard to the Appeal Brief filed October 23, 2008 is **DISMISSED as being MOOT.**

The petition to overturn the decision of the Technology Center Director in regard to the removal of the examiner and SPE is **DENIED.**

BACKGROUND

The papers filed relevant to the instant petition are as follows:

A non-final Office action was mailed September 17, 2008.

An amendment responsive to the Office action was filed September 29, 2008.

A Notice of Appeal and Appeal Brief were filed October 23, 2008.

A Notice of Defective Appeal Brief was mailed January 26, 2009.

A Petition under 37 CFR 1.181 was filed January 30, 2009 and was Granted in Part by the Technology Center Director in a decision mailed April 10, 2009.

An Examiner's Answer was mailed May 29, 2009.

Between May 15, 2009 and June 29, 2009 the instant petition and three supplements were filed.

OPINION

In regard to consideration of the Appeal Brief filed October 23, 2008:

A review of the file record to date indicates that the Examiner's Answer mailed May 29, 2009 is in response to the Appeal Brief filed October 23, 2008, see lines 1-2 of page 2 of the Examiner's Answer. The Examiner's Answer indicates on page 3, last paragraph, that the applicant agreed to cancel the amendment filed under 37 CFR 1.111 (it appears that the amendment in question is the one filed September 29, 2008). The relief requested in this petition has been satisfied by the Examiner's Answer.

In regard to the request to remove the examiner and SPE:

The gravamen of petitioners' complaint seems to be that the examiner of record has allegedly made seven procedural errors in the Office actions and thus the appearance of bias against applicant has been shown. The Technology Center Director indicated in her decision that only the last two actions had been issued by the examiner of record. The Technology Center Directors' decision further indicated that there was no evidence of bias on the part of the examiner or SPE.

As noted in In re Ovshinsky, 24 USPQ2d 1241, 1251-2 (Comm'r Pats.1992), the issue is not whether the perceptions of an applicant regarding alleged bias are reasonable; rather, the issue is whether an applicant has demonstrated improper conduct, including bias or the appearance of

bias, on the part of the examiner or Technology Center Director. A full review of the facts set forth in the petition, as well as a full consideration of the entire record of this application, fails to reveal bias or improper conduct on the part of either the Technology Center Director the examiner. As such, there is no reversible error in the Technology Center Director's decision.

For the above reasons, there is no reason for disturbing the Technology Center Director's decision to refuse petitioners' request to assign a new examiner and SPE to this application.

DECISION

Since the record shows the amendment filed September 29, 2008 has been "canceled" and the examiner has mailed an Examiner's Answer in response to the Appeal Brief filed October 23, 2008, the relief requested in regard to the amendment and Appeal Brief is **dismissed as moot**.

Since the record shows no error on the part of the Technology Center Director in regard to refusing to reassign the application to a new examiner and SPE, the petition to overturn the Technology Center Director in regard to this matter is **denied**.

This decision becomes a final agency action within the meaning of 5 U.S.C. § 704 for the purposes of seeking judicial review upon entry of a final decision by the Board of Patent Appeals and Interferences. See MPEP 1002.02.

This application is being forwarded to Technology Center 3600 for further processing.

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



Robert W. Bahr
Acting Associate Commissioner
For Patent Examination Policy

ak/cf