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OFFICE OF PETITIONS

In re Patent No. 4,961,406 :
Issued: 9 October, 1990 :
Application No. 07/178,467 : DECISION ON PETITION
Filed: 7 April, 1988 :
Atty Docket No. 1004/00003 :

This is a decision on the petition under 37 CFR 1.378(e), filed on 8 March, 2006, requesting reconsideration of a prior decision which refused to accept under 37 CFR 1.378(b)¹ the delayed payment of a maintenance fee for the above-referenced patent.

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

BACKGROUND

The patent issued on 9 October, 1990. The first maintenance fee could have been paid during the period from 12 October, 1993 through 11 April, 1994, or, with a surcharge, during the period from 12 April through 9 October, 1994. The patent expired at midnight on 9 October, 1994, for failure to timely pay the first maintenance fee.

¹A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must be include
(1) the required maintenance fee set forth in § 1.20(e) through (g);
(2) the surcharge set forth in § 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.

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

On 13 October, 2005 (certificate of mailing date 9 October, 2005), a petition under 37 CFR 1.378(b) was filed. The petition was dismissed on 31 October, 2005. A request for reconsideration under 37 CFR 1.378(e) was filed on 28 December, 2005. In response, on 1 February, 2006, a request for information was issued by the Office. On 8 March, 2006, the present request under 37 CFR 1.378(e) was filed.

STATUTE AND REGULATION

35 U.S.C. § 41(c) (1) states that:

The Commissioner may accept the payment of any maintenance fee required by subsection (b) of this section...after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable.

37 CFR 1.378(b) (3) states that any petition to accept delayed payment of a maintenance fee must include:

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.

OPINION

The Commissioner may accept late payment of the maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable."³

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c) (1) uses the identical language, *i.e.*,

³35 U.S.C. § 41(c) (1).

"unavoidable" delay.⁴ Decisions reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.⁵ In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."⁶ Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.⁷

Petitioner avers that that at the time the first maintenance fee was due, responsibility for payment of the maintenance fee was with then-assignee Investment Rarities, Inc. (hereinafter "IRI"). On 21 May, 2002, IRI assigned the patent back to the inventor, petitioner Corliss O. Burandt (hereinafter "Burandt"). In his declaration, petitioner Burandt states that he learned after 17 December, 2001, that the patent had expired.⁸

Petitioner further argues that the delay was unavoidable because (a) Burandt held an equitable title in the patent during the time it was assigned to IRI; (b) that Burandt was mentally incapacitated during the time the maintenance fee was delayed; and (c) that Burandt lacked the financial capacity to pay the maintenance fee.

This petition does not satisfy the requirement of 37 CFR 1.378(b)(3). The statements presented in the petition fail to satisfy the showing required to establish unavoidable delay within the meaning of 37 CFR 1.378(b).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.378(b):

- (1) The delay in reply that originally resulted in expiration;
- (2) The delay in filing an initial petition pursuant to § 1.378(b) to revive the application; and

⁴ Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)).

⁵ Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "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 man in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

⁶ Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

⁷ Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

⁸ Burandt declaration, Page 4, Paragraph 19.

(3) The delay in filing a *grantable* petition pursuant to § 1.378(b) to revive the application.⁹

With regard to period (1), petitioner's showing of evidence has been considered, but is not persuasive. Petitioner Burandt states that IRI owned the patent at the time the first maintenance fee was due, and that IRI failed to pay the maintenance fee.

Petitioner Burandt, as successor in title to assignee IRI, is the patentee (35 USC 100(d)), and asserts, in essence, that the delay in payment of the maintenance fee is unavoidable in that Burandt relied upon IRI to docket and pay the maintenance fee.

Petitioner has not carried the burden of proof to establish to the satisfaction of the Commissioner that the delay in payment of the second maintenance fee was unavoidable.

35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish that the delay was unavoidable.¹⁰ 35 U.S.C. § 133 does not require the Commissioner to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing). Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to the satisfaction of the Commissioner that the delay in payment of a maintenance fee is unavoidable.¹¹

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees.¹² That is, 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 by the

⁹ See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 at 53158 (October 10, 1997).

¹⁰ See Commissariat A. L'Energie Atomique v. Watson, 274 F.2d 594, 597, 124 USPQ 126, 128 (D.C. Cir. 1960).

¹¹ See Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd 937 F.2d 623 (Fed. Cir. 1991)(table), cert. denied, 502 U.S. 1075 (1992); Ray v. Lehman, *supra*.

¹² Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

responsible party to ensure the timely payment of the second maintenance fee for this patent.¹³

As the patent holder at the time of expiration, it was incumbent on IRI to have itself docketed this patent for payment of the maintenance fee in a reliable system as would be employed by a prudent and careful person with respect to his most important business, or to have engaged another for that purpose.¹⁴ Even where another has been relied upon to pay the maintenance fees, such asserted reliance *per se* does not provide a petitioner with a showing of unavoidable delay within the meaning of 37 CFR § 1.378(b) and 35 USC § 41(c).¹⁵ Rather, such reliance merely shifts the focus of the inquiry from the petitioner to whether the obligated party acted reasonably and prudently.¹⁶ Nevertheless, a petitioner is bound by any errors that may have been committed by the obligated party.¹⁷

Petitioner Burandt further argues that he had an "equitable interest" in the patent in that the contract he signed with IRI assigning the rights in the invention to IRI permitted Burandt to reacquire all rights in the invention from IRI if IRI "gives notice that it will no longer provide funds ... and the Project is not substantially completed." However, at the time the first maintenance fee was due, in 1994, IRI was the owner of the patent. As such, Burandt is bound by the actions or inactions errors or omission of IRI, the responsible entity. Burandt is bound by the business decisions, actions or inactions of IRI, such that the entire delay in payment of the maintenance fee has not been shown to be unavoidable.¹⁸

Petitioner asserts, via the declaration of attorney Jeffrey A. Carson, that Burandt gained equitable title to the patent as of March 30, 1989. Assuming Burandt did gain equitable title as of that date, and that Burandt assumed responsibility for payment of the maintenance fees, it is incumbent upon Burandt to show that he acted as a reasonable and prudent person in pursuit of their most important business.

¹³ Id.

¹⁴ See California Medical Products v. Technol Med. Prod., 921 F.Supp. 1219, 1259 (D.Del. 1995).

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ See, Winkler v. Ladd, 221 F.Supp 550, 552, 138 USPQ 666, 667 (D.D.C. 1963) (delay caused by a failure to act by or on behalf of the party in interest at the time the action needs to be taken is binding).

Additionally, with regard to period (2) above, it is noted that petitioner Burandt, despite learning of the expiration of the present patent in December, 2001, did not file the present petition under 37 CFR 1.378(b) until nearly four (4) years later. Petitioner's preoccupation with other matters which took precedence over timely payment of the maintenance fee in the present patent does not constitute unavoidable delay.¹⁹

In this regard, petitioner attempts to analogize this situation to that of *Futures Technology v. Quigg*.²⁰ However, unlike in *Futures Technology*, petitioner could have ascertained at any time the maintenance fee status of this patent by contacting the USPTO. Additionally, despite petitioner's arguments to the contrary, there has been no showing of fraud or inequitable conduct on the part of IRI.

Rather, the showing of record is that Burandt continued to rely on IRI to pay the maintenance fee. The record reveals that petitioner made no attempts to pay the maintenance fee until filing the first petition under 37 CFR 1.378(b). While petitioner argues that "[t]he USPTO would not have permitted Mr. Burandt to file the underlying petition until after regaining legal title,"²¹ this point is not well taken. 37 CFR 1.378(d) states that a petition to accept a late maintenance fee may be filed by the patentee. Burandt could have timely paid the maintenance fee. Further, as patentee, Burandt was not required to establish legal title as a condition precedent to filing a petition for reinstatement of the patent. As such, there was no legal impediment to Burandt earlier filing a petition to reinstate the patent. Further, as noted in the journal article included with the petition filed on 28 December, 2005, IRI "intentionally let the maintenance fee go unpaid".²² As petitioner took no steps to track or pay the maintenance fee, or earlier file a petition to reinstate the patent, he is estopped from now claiming that he acted with diligence. Clearly, Burandt relied on IRI to pay the maintenance fee during the time until 2001. While such reliance may have been misplaced, it does not constitute unavoidable delay.

¹⁹ See *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

²⁰ 7 USPQ.2d 1588 (E.D. Va. 1988)

²¹ Petition of 8 March, 2006, page 31.

²² *IEEE Spectrum*, May, 2005, page 57, Exhibit 32 of petition filed 28 December, 2005.

Assuming, *arguendo*, that the delay is due in whole or in part to a clerical error, then as noted in MPEP 711.03(c) §(III)(2), 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:

(A) the error was the cause of the delay at issue;

(B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and

(C) 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.²³

However, the record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of IRI or Burandt to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement therein for IRI or Burandt's showing of the steps taken to pay the fee.²⁴ In the absence of a showing of the steps taken by or on behalf of IRI, 37 CFR 1.378(b)(3) precludes acceptance of the maintenance fee.

In the absence of adequate evidence showing that IRI, had transferred its obligation to Burandt at the time the first maintenance fee was due in 1994, then IRI must show the steps it had in place to track the fee payment for this patent. Assuming that Burandt can show that IRI had been obligated, then IRI must show why it was "unavoidably" prevented from discharging its obligation to Burandt. Petitioner is reminded that the United States Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the party, and petitioner is bound by the consequences of those actions or inactions.²⁵ Specifically, petitioner's delay caused by the mistakes or omissions of his voluntarily chosen representative(s) does not constitute

²³ See In re Egbers, 6 USPQ2d 1869, 1872 (Comm'r Pat. 1988), rev'd on other grounds sub nom., Theodor Groz & Sohne & Ernst Bechert Nadelfabrik KG v. Quigg, 10 USPQ2d 1787 (D.D.C. 1988); In re Katrapat, 6 USPQ2d 1863, 1867-68 (Comm'r Pat. 1988).

²⁴ Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

²⁵ Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); Smith v. Diamond, 209 USPQ 1091, 1093 (D.D.C. 1981).

unavoidable delay within the meaning of 35 USC 41(c)(1) and 37 CFR 1.378(b)(3).²⁶

Moreover, a showing of diligence in matters before the USPTO is essential to support a finding of unavoidable delay herein.²⁷ There is no showing that IRI took any steps to track the fee payment. There is no "sliding scale" based upon the priority given to this maintaining this patent in force, or more diligently seeking reinstatement, *vis-a-vis* other matters by petitioner; the issue is solely whether the maintenance, or reinstatement, of the patent at issue was actually conducted with the care or diligence that is generally used and observed by prudent and careful persons in relation to their most important business. The delay was not unavoidable, because had petitioner exercised the due care and diligence of a reasonably prudent person, petitioner would have been able to act to pay the fee or seek reinstatement in a timely fashion. The record fails to adequately evidence that petitioner exercised the due care and diligence observed by prudent and careful men, in relation to their most important business, which is necessary to establish unavoidable delay.²⁸

Further, Burandt made diligent inquiries of IRI concerning the patent, *before* it expired, concerning whether the assignee was paying the maintenance fees in the present patent and other patents. If Burandt was able to inquire as to whether maintenance fees were being paid, he was capable of taking other action to ensure that the maintenance fee was timely paid.

More to the point, in the 1988 and 1989 letters to IRI filed with the original petition, Mr. Burandt sets forth that he knows that IRI is having financial difficulties and has let three of his other patents deliberately expire. This was before Mr. Burandt was determined to have been incapacitated, yet he continued to rely on IRI despite their failure to pay the maintenance fees in the other patents.

In regard to Burandt's claim that IRI breached its agreement by not timely notifying Burandt that IRI no longer wished to

²⁶ Haines v. Quigg, supra; Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); California, supra.

²⁷ See Futures Technology, Ltd. v. Quigg, 684 F. Supp. 430, 431, 7 USPQ2d 1588 (E.D. Va. 1988) (applicant's diligent inquiry into the status of the application is required to show unavoidable delay); Douglas v. Manbeck, 21 USPQ2d 1697, 1699-1700 (E.D. Pa. 1991), *aff'd*, 975 F.2d 869, 24 USPQ2d 1318 (Fed. Cir. 1992) (even representation by counsel does not relieve the applicant from his obligation to exercise diligence before the USPTO; applicant's lack of diligence extending two and one half years overcame and superseded any omissions by his counsel).

²⁸ Pratt, supra.

maintain the patent in force, both IRI and Burandt are further reminded that the USPTO is not the forum for resolving a dispute between a patentee and its representative as to who bore the responsibility for paying an unpaid maintenance fee.²⁹ Likewise, delay resulting from a failure of communication between a patent owner and his representative as to the responsibility for payment of a maintenance fee does not constitute unavoidable delay within the meaning of 35 USC 41(c) and 37 CFR 1.378(b).³⁰ That each party failed to take adequate steps to clarify the meaning of the various communications between them, and thus clarify its own obligations in this matter is not the action of a prudent and careful person with respect to its most important business.

In summary, the showing of record is inadequate to establish unavoidable delay. Petitioners have not shown that counsel, Burandt, or assignee IRI had docketed the patent for payment of the second maintenance fee in a reliable tracking system. Rather than unavoidable delay, the showing of record is that petitioners failed to take adequate precautions to ensure that maintenance fees were timely paid. As petitioners have not shown that they exercised the standard of care observed by a reasonable person in the conduct of his or her most important business, the petition will be denied.³¹

With regard to petitioner's assertion that "there is no requirement in 37 CFR 1.378(b) for a long-term calendar system,"³² petitioner is correct that the lack of a docketing system is not an absolute bar to reinstatement of patent. However, diligence requires that a person treat the maintenance fee as a prudent and careful person acting with respect to his or her most important business. Petitioner cannot reasonably argue that a prudent and careful person acting with respect to his or her most important business would not have utilized *some* means, however rudimentary, to inform him or her of when the maintenance fee was due.

Further, with regard to petitioner's Burandt's claims of medical incapacitation, the showing of record does not rise to the level of unavoidable delay. While physical or mental incapacitation can be a cause of delay, a showing of "unavoidable" delay based upon incapacitation must establish that petitioner's

²⁹ See Ray, 55 F.3d at 610, 34 USPQ2d at 1789.

³⁰ Id.

³¹ See note 7, supra.

³² See petition filed 8 March, 2006, page 10.

incapacitation was of *such a nature and degree as to render petitioner unable to conduct business (e.g. correspond with the Office) during the period between 9 October, 1994 and 13 October, 2005* (emphasis added).

Petitioner asserts that Burandt is "clearly mentally disabled" based upon the declaration by Dr. Paul Werner. It is noted that petitioner asserts that under the Americans with Disabilities Act of 1990 (hereinafter "ADA"), petitioner Burandt is entitled to "reasonable accommodation," and, essentially, that the Office erred in analyzing Burandt's behavior and determining that the delay was not unavoidable. However, petitioner's argument is speculative, at best, as petitioner has presented no legal or factual basis for granting relief under the ADA.

While the circumstances surrounding Burandt's personal life are certainly unfortunate, the showing of record does not substantiate a finding of unavoidable delay. In particular, the showing of record is not persuasive that Burandt was incapacitated because, by his own admission, he was able to draft and send numerous letters to Congressional representatives and automobile manufacturers requesting assistance in protecting his rights during the period that the patent was expired.

Further, petitioner's assertion that the Office "did not believe" that Mr. Burandt was disabled because of the actions he took is without merit. The Office does not dispute Mr. Burandt's medical diagnosis, and does not substitute its judgment for that of a physician. Rather, the Office looks to the actions of the petitioner to make a legal determination of whether the entire delay, from the date the maintenance fee was due until the date a grantable petition was filed, is unavoidable. The evidence shows that during the period of his incapacitation, Mr. Burandt wrote to IRI demanding that the patent be assigned to him, and to Honda, threatening adverse action if his demands were not met. These letters are lucid writings and weigh against a finding that Mr. Burandt was incapacitated or not aware of the circumstances surrounding the expiration of the patent. As previously stated, while physical or mental incapacitation can be a cause of delay, a showing of "unavoidable" delay based upon incapacitation must establish that petitioner's incapacitation was of such a nature and degree as to render petitioner unable to conduct business (e.g. correspond with the Office) during the period between 9 October, 1994 and 13 October, 2005. In this case, the showing of record suggests leads away from such a finding. In summary, petitioner's argument that an allegation of mental impairment

provides a blanket justification to excuse any and all actions and delays in submission of the maintenance fee lacks merit.

Despite his diagnosis of disability, the showing of record is that, through his actions, petitioner was aware of the circumstances surrounding his patent and capable of taking action to mitigate the delay. Lastly, as petitioner states that Burandt acted "reasonably and prudently" such an argument is suggestive of a person being responsible for his most important business. Petitioner thus takes two inconsistent positions in asserting that Burandt was incapacitated, and therefore unable to take care of his business, and at the same time also acting in a reasonable and prudent manner.

With regard to the assertion of financial hardship, petitioner has not presented a sufficient showing of unavoidable delay resulting from financial hardship. As noted previously, petitioner provided insurance and SSI statements from 1991 through the filing of the petition on 28 December, 2005. It is noted that petitioner apparently received regular payments from both insurance and SSI, and received over \$41,000.00 from 1 January, 1995, through 1 December, 2001. While it may be true that Burandt was not receiving an "exorbitant income," to use petitioner's words, the showing has not been made that petitioner was unable to timely pay the maintenance fees. While the Office is sympathetic to petitioner's difficulties, the showing of record does not indicate that petitioner lacked the ability to timely pay the maintenance fees.

The showing of record is that rather than unavoidable delay, petitioner was preoccupied with other matters during the time the maintenance fees on the present patent were due. Petitioner's preoccupation with other matters which took precedence over timely payment of the maintenance fee in the present patent does not constitute unavoidable delay.³³

In fact, the showing of record suggests that petitioner had little or no interest in ensuring that they were paid in this patent, until he learned, well after the patent had expired, that others might be using the invention which is the subject of the patent. As such, the delay was clearly not unavoidable, but rather an intentional act constituting a statutory bar to reinstatement.

³³ See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

With regard to petitioner's request for waiver under 37 CFR 1.183:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interest party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h). Under 37 CFR 1.183, the Commissioner may waive requirements of the rules so long as those requirements are not requirements of the statute.³⁴

The requirements how 37 CFR 1.378(b) that the delay be shown to be unavoidable is statutory³⁵ and cannot be waived, therefore the request is denied.

In summary, the showing of record has been considered, but does not rise to the level of unavoidable delay. Rather, the showing of record is of a lack of diligence on the part of petitioner.

CONCLUSION

The prior decision which refused to accept under § 1.378(b) the delayed payment of a maintenance fee for the above-identified patent has been reconsidered. For the above stated reasons, the delay in this case cannot be regarded as unavoidable within the meaning of 35 U.S.C. § 41(c)(1) and 37 CFR 1.378(b).

The petition under 37 CFR 1.378(e) is **DENIED**. As stated in 37 CFR 1.378(e), no further reconsideration or review of the decision refusing to accept the delayed payment of the maintenance fee under § 1.378(b) will be undertaken. This decision may be regarded as a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1001.02.

Since this patent will not be reinstated, a refund check covering, the maintenance fee and surcharge fee, less the \$400.00

³⁴ In re Kruysman, Inc., 199 USPQ 110 (Comm'r Pats. 1977).

³⁵ 35 U.S.C. § 41(c)

fee for the present request for reconsideration, has been scheduled.

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

Telephone inquiries should be directed to Senior Petitions Attorney Douglas I. Wood at 571-272-3231.

A handwritten signature in cursive script, appearing to read "Charles A. Pearson". The signature is written in dark ink and is positioned above the typed name.

Charles A. Pearson
Director, Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy