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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/866,896	10/03/2007	Keisuke Hatasaki	NIT-5517-02	8001

24956                      7590                      01/11/2008  
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.  
1800 DIAGONAL ROAD  
SUITE 370  
ALEXANDRIA, VA 22314

EXAMINER
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ART UNIT	PAPER NUMBER
2115	

MAIL DATE	DELIVERY MODE
01/11/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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MAILED  
JAN 11 2008

In re Application of: HATASAKI, et al.	:	
Serial No.: 11/866,896	:	DECISION ON PETITION TO
Filed: October 03, 2007	:	MAKE SPECIAL FOR NEW
Title: METHOD AND COMPUTER PROGRAM FOR	:	APPLICATION UNDER 37
REDUCING POWER CONSUMPTION OF A	:	C.F.R. § 1.102 & M.P.E.P. §
COMPUTER SYSTEM	:	708.02

This is a decision in response to the submission denominated "Request for Reconsideration of the Petition Under 37 CFR 1.102(d), Petition to Make Special and for Accelerated Examination" received on December 17, 2007. The paper is being treated as a petition under 37 CFR 1.181 to review the decision mailed November 15, 2007, denying accelerated examination status for the instant application. The signatory of the November 15, 2007 decision denying accelerated examination status possessed delegated authority to act on behalf of the Technology Center Director in such matters. Therefore, the petition received on December 17, 2007 is a request for review of a decision of a Technology Center Director. Accordingly, the Office of the Deputy Commissioner for Patent Examination Policy has decision-making authority over Applicant's petition. M.P.E.P. § 1002.02(b)(15).

The petition under 37 CFR 1.181 to reconsider the denial of accelerated examination status for application No. 11/866,896 and to grant such status under 37 CFR 1.102 is **DENIED**.

**Background**

The above-identified application was filed under 35 U.S.C. § 111(a) on October 3, 2007 accompanied by a petition under 37 CFR 1.102(d) to make the application special under the accelerated examination program. See 71 Fed. Reg. 36,323.

On October 10, 2007, the United States Patent and Trademark Office (USPTO) issued a Notice to File Corrected Application Papers. The Notice required Applicant to submit replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121(d). The notice identified the deficiency in the drawings in that the drawings must be reasonably free from erasures and must be free from alterations, overwriting, interlineations, folds and copy marks, referencing in particular ALL Figures.

On November 26, 2007, Applicant responded to the notice to file corrected application papers by submitting, *inter alia*, replacement sheets for all drawing Figures (i.e. Figures 1 – 35 on 32 sheets).

On November 15, 2007, a decision was mailed by the USPTO denying Applicant's petition to make special. The decision outlined the requirements for accelerated examination pursuant to the "Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination" (71 Fed Reg. 36323), and cited the existence of an accurate and properly issued Notice to File Corrected Application Papers" as the justification for denying special examination status to the application.

On December 17, 2007, Applicant submitted the instant Petition under 37 CFR 1.181 requesting reconsideration of the November 15, 2007 denial of the petition to make special.

### **Applicable Regulations and Notice Sections**

#### **37 CFR § 1.84 Standards for drawings.**

(e) Type of paper. Drawings submitted to the Office must be made on paper which is flexible, strong, white, smooth, non-shiny, and durable. All sheets must be reasonably free from cracks, creases, and folds. Only one side of the sheet may be used for the drawing. Each sheet must be **reasonably free from erasures and must be free from alterations, overwritings, and interlineations.**

#### **37 CFR § 1.102 Advancement of Examination**

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Director to expedite the business of the Office, or upon filing of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a showing which, in the opinion of the Director, will justify so advancing it.

#### **Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination", 71 Fed. Reg. 36,323 (Jun. 26, 2006)**

The relevant portions of the Accelerated Examination Notice are as follows:

*Part I. Requirements for Petitions to Make Special under Accelerated Examination:*  
A new application may be granted accelerated examination status under the following conditions:

(4) The application, at the time of filing, must be complete under 37 CFR 1.51 and in condition for examination.

...  
*Part VIII: More Information:*

...  
*Conditions for Examination:* The application must be in condition for examination at the time of filing. This means the application must include the following:

...  
(F) Drawings in compliance with 37 CFR 1.84;

...  
The petition to make special will be dismissed if the application omits an item or includes a paper that causes the Office of Initial Patent Examination (OIPE) to mail a notice during the formality review (e.g. a notice of incomplete application, a notice to file missing parts, **a notice to file corrected application papers**, notice of omitted items, or notice of informal application). *The opportunity to perfect a petition (Part II) does not apply to applications that are not in condition for examination of filing.* (71 Fed. Reg. 36,323 at 36,327)

### Decision

Petitioner requests reconsideration of the denial of the petition based upon petitioner's assertions that: 1) the submitted drawings as filed did not contain an unreasonable amount of informalities as alleged in the Notice and were sufficient to permit immediate examination of the application, 2) the parent application (which had been incorporated by reference) to the instant application contained the exact same specification and drawings as in the present application however, the drawings of the parent application were accepted for examination as filed, and 3) the drawings filed with the present application were at worst informal drawings since each of the drawing sheets simply contained a very faint mark in its upper margin.

Petitioner's argument that the submitted drawings did not contain an unreasonable amount of informalities and therefore were sufficient to permit immediate examination of the application is without persuasive force in that petitioner was requesting, via petition, the status of accelerated examination. Under this program, the application must be, "*at the time of filing*" complete under 37 CFR 1.51 and in "*condition for examination*". These requirements include submission of drawings fully in compliance with 37 CFR 1.84. As the goal of this program is to advance prosecution of an application to final disposition, as defined by the Office, within 12 months from the date of filing, all applications must meet the requirements of the policy in order to meet the reduced examination time goals. The existence of a "Notice to File Corrected Application Papers" was the evidentiary basis for concluding the application was not in condition for examination. The issuance of the "Notice to File Corrected Application Papers" was proper. Petitioner has responded and corrected the errors. Therefore, Petitioner implicitly acknowledged that the application was not in condition for examination at the time of filing.

Petitioner's arguments that the parent application (which had been incorporated by reference) to the instant application contained the exact same specification and drawings as in the present application however, the drawings of the parent application were accepted for examination as filed is without persuasive force in as much as the rules which regulate the filing of any

application are fixed. The policy which regulates accelerated examination is well published. Petitioner should assume full application of the policy and rules in every application filed. Further, what transpires in other applications is of no bearing or influence in the instant application.

Finally, petitioner's argument that the drawings filed with the present application were at worst informal drawings since each of the drawing sheets simply contained a very faint mark in its upper margin is without persuasive force. Petitioner has again implicitly acknowledged that the application was not in condition for examination at the time of filing. Petitioner is reminded that the requirements include submission of drawings fully in compliance with 37 CFR 1.84 (as stated above). Each applicant must meet the requirements of the policy.

It is further noted that petitions to make special based upon applicant's health or age, as outlined in MPEP 708.02 III and IV respectively, are available to petitioner should the requirements of those programs be met.

### CONCLUSION

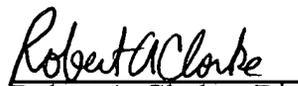
For the above-stated reasons, the petition under 37 CFR 1.181 to reconsider a dismissal to make special application No. 11/866,896 is **DENIED**. Therefore, the USPTO will examine the above-identified application in accordance with standard examination procedures.

This decision may be viewed as final agency action. See MPEP 1002.02.

Further correspondence with respect to this matter should be addressed as follows:

By mail:        Mail Stop  
                  Commissioner for Patents  
                  Post Office Box 1450  
                  Alexandria, VA 22313-1450

Telephone inquiries related to this decision should be directed to Pinchus M. Laufer, Legal Advisor at (571) 272-7726.



Robert A. Clarke, Director  
Office of Patent Legal Administration  
Office of the Deputy Commissioner for Patent Examination Policy