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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/019,912	01/25/2008	Margherita Arvanites	Y7.0026	1885
29438	7590	03/17/2008	EXAMINER	
MATHEW R. P. PERRONE, JR. 210 SOUTH MAIN STREET ALGONGUIN, IL 60102-2639			ART UNIT	PAPER NUMBER
			3643	
			MAIL DATE	DELIVERY MODE
			03/17/2008	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.



Mathew R. P. Perrone, Jr.  
210 South Main Street  
Algonquin, IL 60102-2639

In re Application of: Margherita Arvanites : DECISION ON PETITION TO  
Serial No.: 12/019,912 : MAKE SPECIAL FOR NEW  
Filed: January 25, 2008 : APPLICATION UNDER 37  
Title: FLUID-FILLED DURABLE PET BED : C.F.R. § 1.102 & M.P.E.P. §  
: 708.02

This is a decision in response to the submission denominated “Petition and Response to Decision to Make Special for New Application under 37 CFR 1.102” received on February 27, 2008. The paper is being treated as a petition under 37 CFR 1.181 to review the decision mailed February 11, 2008, denying accelerated examination status for the instant application. The signatory of the February 11, 2008 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 February 27, 2008 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. 12/019,912 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 January 25, 2008 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 January 31, 2008, 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 submitted to the Office are not electronically reproducible because portions of figure 2 are missing and/or blurry.

On February 8, 2008, Applicant responded to the notice to file corrected application papers by submitting new set of drawing figures.

On February 11, 2008, 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 Missing Parts of Non-Provisional Application” as the justification for denying special examination status to the application.

On February 27, 2008, Applicant submitted the instant paper, which is being treated as a Petition under 37 CFR 1.181, requesting reconsideration of the January 9, 2008 denial of the petition to make special.

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

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

(l) Character of lines, numbers, and letters. All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. **The weight of all lines and letters must be heavy enough to permit adequate reproduction.** This requirement applies to all lines however fine, to shading, and to lines representing cut surfaces in sectional views. Lines and strokes of different thicknesses may be used in the same drawing where different thicknesses have a different meaning.

#### **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 (a) the submitted drawings have been accepted in the past and that (b) Applicant in accordance with USPTO request, promptly submitted a replacement Figure 2. Applicant requests reconsideration of the USPTO denial to have the current application prosecuted as special 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 such drawings "were neither objected to in the initial filing of the parent application nor in either rejection of the parent application's petition" is not persuasive. Attached to this decision is a copy of Figure 2 as submitted<sup>1</sup> by Applicant. A review of the drawing applicant submitted clearly indicates that some of the text are of a size which make them illegible, and are thus not of a sufficient quality for reproduction. In response to the Notice, Applicant submitted corrected drawings, in which Figure 2 was enlarged and submitted on a separate sheet. Applicant did not resubmit the originals (or provide paper copies of the originals)

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<sup>1</sup> This sheet was printed from the PDF file uploaded by Applicant as received by the Office. The received PDF file is thereafter converted to a TIFF image for inclusion in the IFW. The original PDF format files are stored for a limited time at the Office.

with argument as to their adequacy. Applicant must, when filing electronically, prepare drawings which will comply with the provisions of 37 CFR 1.84 when so filed. Furthermore, even if similar drawings filed electronically in other applications were not objected to, that would not be persuasive inasmuch 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.

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. 12/019,912 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

Enc: 1 Sheet of Drawings

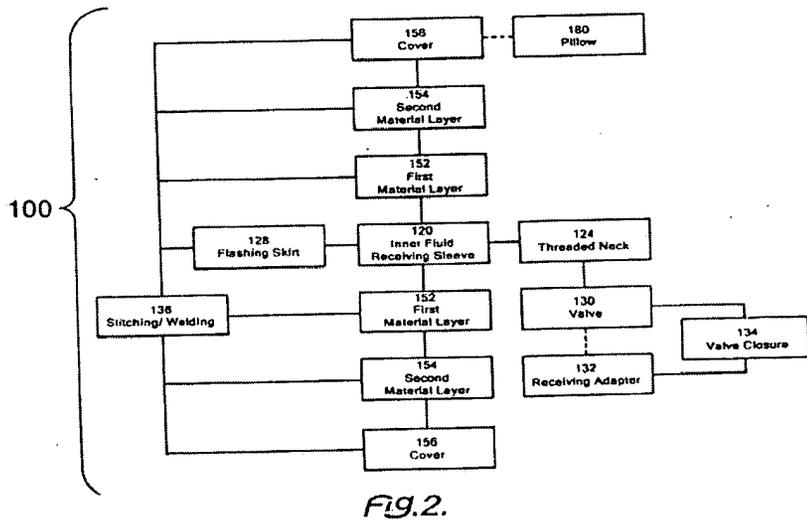
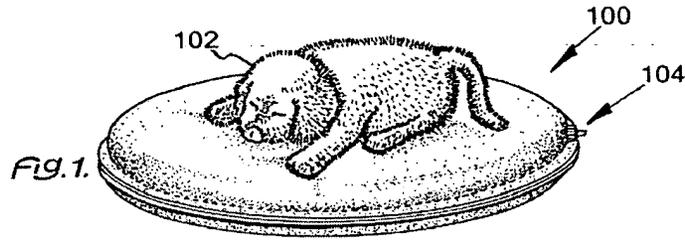


Fig. 2.