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MAILED

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In re Application of	:	OFFICE OF PETITIONS
Golden	:	
Application No. 12/657,356	:	DECISION ON PETITION
Filed: January 20, 2010	:	
For: MULTI SENSOR DETECTION,	:	
STALL TO STOP AND LOCK	:	
DISABLING SYSTEM	:	

This decision is in response to renewed petition filed September 23, 2010 to accord the above-identified application a filing date of December 21, 2009. This matter is being treated under 37 CFR 1.53(e)(2) as a petition to accord the application a filing date of December 21, 2009.

The petition is hereby DENIED. This decision is a final agency decision within the meaning of 5 USC 704 for purposing of seeking judicial review. See, MPEP 1002.02.

BACKGROUND

The application papers for the above-identified application were received January 20, 2010. Petitioner asserts entitlement to an earlier filing date of December 21, 2009 on the basis that the application papers were submitted or were intended to be submitted via facsimile on December 21, 2009 on his behalf by attorney Theresa M. Seal.

Petitioner asserts that failure to receive an earlier filing date results in lack of continuity between the instant application and an earlier filed application.

Petitioner further seeks relief pursuant to Rule 60(b), presumably of the Federal Rules of Civil Procedure.

RELEVANT STATUES AND REGULATIONS

35 USC 111(a)(4) provides, in pertinent part, that:

The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

37 CFR 1.6(d) provides, in pertinent part, that:

Facsimile transmissions are not permitted and, if submitted, will not be accorded a date of receipt in the following situations: (3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D) and (F), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile.

37 CFR 1.8(a)(2)(i)(A) provides, in pertinent part, that 37 CFR 1.8(a)(1) does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:

Relative to Patents and Patent Applications - (A) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for a continued prosecution application under § 1.53(d).

37 CFR 1.53(b) provides that:

The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No new matter may be introduced into an application after its filing date. A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121 or 365(c) and § 1.78(a).

OPINION

The decision on this matter is controlled by 35 USC 111(a)(4) which provides that the filing date of a nonprovisional application shall be the date on which the specification and any required drawing are received in the U.S. Patent and Trademark Office (USPTO).

Applications for patent may be submitted to the United States Patent and Trademark Office by mail, in person, or via the Electronic Filing System. The instant application was filed in accordance with 37 CFR 1.53(b), the specification and drawings of which were received by the USPTO on January 20, 2010.

Receipt of the alleged facsimile transmission of the application papers on December 21, 2009 is not acknowledged as such does not appear in the official record. Even assuming arguendo that the application papers were submitted via facsimile and received via facsimile on December 21, 2009, the application would not be entitled to a filing date of December 21, 2009 as in accordance with 37 CFR 1.8(a)(i)(A), application papers are not given the benefit the of a Certificate of Mailing or Transmission.

As previously stated, petitioner's concern that the instant application may lack continuity with an earlier filed application is appreciated. However, the fact that an earlier filing date is desired to

maintain continuity is not grounds for changing the filing date as by law the application is entitled to a filing date of January 20, 2010, the date upon which the requirements of 37 CFR 1.53(b) were met.

The record establishes that the instant application for patent was filed in accordance with law on January 20, 2010. By law, the instant application simply is not entitled to an earlier filing date.

As to petitioner's request for relief pursuant to Rule 60(b), presumably of the Federal Rules of Civil Procedure, petitioner is advised that the rules of civil procedure are rules that courts of law in the judicial branch of government must follow. The USPTO is an administrative agency within the executive branch of government. Congress has set forth the rules that the USPTO must follow in Title 35 of the United States Code. Rule 60(b) of the Federal Rules of Civil Procedure is inapplicable to the USPTO. Finally, Title 35 of the United States Code does not provide for relief in this situation. Accordingly, the petition is denied.

Petitioner may wish to address any perceived conflict between applicant and prior counsel to the USPTO Office of Enrollment and Discipline. The contact information for the Office of Enrollment and Discipline is as follows:

Phone: 571-272-4097

FAX: 571-273-0074

Address: Mail Stop OED
U.S. Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

CONCLUSION

It is concluded that petitioner has failed to establish entitlement to an earlier filing date of December 21, 2009 as the specification and drawings for the instant application were received by the USPTO on January 20, 2010.

This application is being returned to the Group Art Unit 2612, maintaining a filing date of January 20, 2010.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.


Anthony Knight
Director
Office of Petitions