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OFFICE OF PETITIONS

In re Application of :
Steven Howard Ernst et al. :
Application No. 09/281,266 :
Filed: March 30, 1999 :
Attorney Docket No. 36996-163329 :

ON PETITION

This is a decision on the petition filed November 26, 2004 under 37 CFR 1.181, requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 2800 (Technology Center Director), dated May 25, 2004, which refused to withdraw the holding of abandonment.

The petition to overturn the decision of the Technology Center Director dated May 25, 2004, is **DENIED**.

BACKGROUND

The application became abandoned for failure to pay the issue fee and file corrected drawings in response to the Notice of Allowance/Allowability (Notice) mailed October 16, 2001 which set a statutory period for response of three (3) months. As noted in the Technology Center Director's petition decision of May 25, 2004, the Notice was mailed to the proper correspondence address. The firm prosecuting the above identified application, Lane, Aitken & McCann (Lane) had merged with Venable prior to the mailing of the Notice but no change of correspondence address had been filed in the instant application at that time.

A petition to withdraw the holding of abandonment was filed February 14, 2002 and was dismissed in the decision by the Technology Center Director mailed May 25, 2004.

The instant petition was filed November 26, 2004.

The Request for Reconsideration is not considered timely filed within the meaning of 37 CFR 1.181(f) which states:

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

The Technology Center Director's petition decision was mailed May 25, 2004. The instant petition was filed November 26, 2004 which was six (6) months later. The Request for Reconsideration gives no explanation for the delay in filing the petition.

The instant petition now avers that the failure to receive the Notice in a timely manner was due to the mail interruption that occurred in the fall of 2001. Specifically, petitioner references the anthrax contamination of the Brentwood Post Office and suggests that the delay in receiving the Notice "was most likely attributed to the anthrax contamination."

A petition under 37 CFR 1.181 based on mail delays involving outgoing Office correspondence mailed on or after October 13, 2001 and before January 2, 2002 is a petition to reset a time period set in an Office action (or notice) where delivery to applicant has been delayed. There are five requirements for such a petition:

A) **Separate Petition:** In order to provide a complete file history, a separate petition must be filed for each application for which a reset time period is requested;

B) **Timeliness:** A written petition must be filed within two weeks of actual receipt of the action/notice;

C) **Significant Delay:** More than one month of a two or three month time period set for reply must have elapsed, or more than two weeks of a month/30 day time period set for reply must have elapsed (e.g., written restriction, or a notice of non-compliant amendment);

D) **Evidence:** In general, because of the recent problems of the USPS mail delay, the requisite evidence is considered met by the statement in (E) below;

E) **Statement:** There must be a clear statement that the action/notice was received on the date indicated, and a request that the period for reply be reset as of the date of receipt;

F) **Signature:** The petition must be signed by applicant or a registered practitioner.

The instant petition lacks items (B) and (E).

As to item (B), the petition indicates the Notice was received on March 11, 2002. The petition was filed on November 26, 2004, more than two years after receipt of the Notice rather than the required two weeks.

As to item (E), while petitioner has stated the Notice was received on the specified date, he did not request the period be reset.

DECISION

The petition is granted to the extent that the decisions of the Technology Center Director of May 25, 2004 has been reviewed, but is denied with respect to making any changes therein. As such, the decision of May 25, 2005 will not be disturbed. The petition is denied.

Petitioner may wish to file a petition for unintentional abandonment of the application under 37 CFR 1.137(b).

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



Anthony Knight
Director
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