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SEP 30 2011

OFFICE OF PETITIONS

In re Application of
Steven J. Andre
Application No. 11/449,021
Filed: June 6, 2006
Attorney Docket No. N/A

DECISION ON PETITION

This is a decision on the request for reconsideration filed on June 13, 2011, to withdraw the holding of abandonment in the above-identified application.

The request for reconsideration under 37 CFR 1.181 is DENIED.

BACKGROUND

The application was held abandoned for failure to timely file a response to the non-final Office action mailed December 29, 2006. A Notice of Abandonment was mailed July 12, 2007. On August 16, 2010, a petition was filed requesting the Office to withdraw the holding of abandonment, on the basis that no new application existed. On April 13, 2010, the petition was dismissed, citing that petitioner's error caused the Office to consider the transmittal letter as a new application. On April 26, 2011, a renewed petition was filed along with a copy of the papers filed on March 1, 2007.

Petitioner states "...It remains the position of petitioner that there was no abandonment, that the reply of March 1, 2007, was a sufficient reply and that any holding of abandonment should be withdrawn." Petitioner further states "...For this reason it would seem inappropriate to characterize this petition as one for either unavoidable or unintentional delay or abandonment. In fact there was no delay and there was no abandonment, just a filing error. To treat the matter otherwise would elevate form over substance. Please withdraw the holding of abandonment..."

STATUTE AND REGULATION

37 CFR 1.135. Abandonment for failure to reply within time period.

- (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the

application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

OPINION

Petitioner argues that the decision mailed May 23, 2011, which states that the abandonment of the above application was the fault of petitioner, is inaccurate. Petitioner further argues that, based on common understanding, checking box 18 on the form does not indicate that the applicant is filing a new application and "How was Petitioner to know that checking Box 18 on the form was an error?"

37 CFR 1.53 states in part:

(a) Application number. Any papers received in the Patent and Trademark Office which purport to be an application for a patent will be assigned an application number for identification purposes.

(b) Application filing requirements - Nonprovisional application. 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).

Here, with respect to 1.53(a) and (b), petitioner provided everything necessary to accord the papers filed on March 1, 2007, a new serial number and filing date; and thus, such was accorded Application No. 11/712,598.

Additionally, petitioner should note that at the top of the Utility Patent Application Transmittal form it clearly says that it is used only for new applications under 37 CFR 1.53(b) (See copy below). If petitioner did not want to file a continuation application, the Utility Patent Application Transmittal form should not have been used. This form alone is clear that petitioner wanted to file a new continuation application from prior Application No. 11/449,021.

UTILITY PATENT APPLICATION TRANSMITTAL <small>(Only for new nonprovisional applications under 37 CFR 1.53(b))</small>	Attorney Docket No.	11/449,021
	First Inventor	André, Steven J.
	Title	Vanagon Center Console
	Express Mail Label No.	

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

<input checked="" type="checkbox"/> Continuation	<input type="checkbox"/> Divisional	<input type="checkbox"/> Continuation-in-part (CIP)
Prior application information:		of prior application No. 11/449,021
Examiner Joseph D. Page		Art Unit: 3612

DECISION

The undersigned acknowledges that the petition filed on August 16, 2010, states that no new application (11/712,598) should exist. However, since using the wrong form to respond to an Office action was an error necessitated by petitioner, this application 11/449,021 was properly held abandoned. Therefore, the petition under 37 CFR 1.181 is hereby **denied**.

The USPTO will not further consider or reconsider any petition filed under 37 CFR 1.181.

Should petitioner desire to revive the above-identified application, a petition under 37 CFR 1.137(b) and \$930 petition fee should be promptly filed. Petitioner is again reminded that the filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b)¹.

Telephone inquiries related to this decision should be directed to Petitions Examiner Andrea Smith at (571) 272-3226.



Anthony Knight
Director, Office of Petitions

Enclosure: Blank Petition under 37 CFR 1.137(b) form (PTO/SB/64)

¹ A form for complying with the requirements of 37 CFR 1.137(b) was enclosed with the decision mailed April 13, 2011.