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In re Application of :
Ronald Doda Jr. :
Application No. 11/933,824 : DECISION ON PETITION
Filed: November 1, 2007 :
For: APPAREL FOR PROVIDING :
LOCATION INFORMATION :
: :
: :

This is a decision on the petition under 37 CFR 1.181 filed September 15, 2016,¹ to withdraw the finality of the Office action of December 14, 2011 and issue a notice of allowance in the above-identified application.

The petition to withdraw the finality of the Office action of December 14, 2011 and issue a notice of allowance in the above-identified application is **DENIED**.

37 CFR 1.181(f) provides that:

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 most recent decision, or action of any kind by the United States Patent and Trademark Office (USPTO), in the above-identified application is the decision of May 21, 2013. The decision of May 21, 2013 advised petitioner that the petition to withdraw the finality of the Office action of December 14, 2011 and issue a notice of allowance in the above-identified application was **denied** in the decision of February 11, 2013, and that the above-identified application was an abandoned application by operation of 35 U.S.C. § 133.

¹ The petition filed on September 15, 2016 appears to be a duplicate of the petition filed on April 23, 2012.

The instant petition was filed on September 15, 2016, more than three (3) years after the most recent decision (May 21, 2013) on petitioner's request to withdraw the finality of the Office action of December 14, 2011. Accordingly, petitioner's renewed petition to withdraw the finality of the Office action of December 14, 2011 and issue a notice of allowance in the above-identified application is **denied** as untimely. *See* 37 CFR 1.181(f).

This decision represents the conclusion of the consideration by the USPTO of petitioner's request to withdraw the finality of the Office action of December 14, 2011 and issue a notice of allowance in the above-identified application. **No further reconsideration of petitioner's requests to withdraw the finality of the Office action of December 14, 2011 and issue a notice of allowance in the above-identified application will be entertained.**

35 U.S.C. § 133 provides that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto.

37 CFR 1.113 provides that:

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

A final Office action was issued in the above-identified application on December 14, 2011. A reply to a final Office action must include cancellation of, or appeal from the rejection of, each rejected claim. *See* 37 CFR 1.113(c). In addition, the filing of petitions requesting withdrawal of the finality of the Office action of December 14, 2011 does not stay the period for filing a

proper reply to the Office action of December 14, 2011. See 37 CFR 1.181(f) (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). Accordingly, the above-identified application is abandoned for failure to reply, within the meaning of 37 CFR 1.113, to the final Office action of December 14, 2011.

Petitioner is advised that no further proceedings with regards to the above-identified application will be conducted unless and until the above-identified application has been revived and restored to pending status. An abandoned application may be revived under the provisions of 37 CFR 1.137. A grantable petition under 37 CFR 1.137 must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137 was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP § 711.03(c)(II)(C)-(H).



Robert W. Bahr
Deputy Commissioner for
Patent Examination Policy

Enclosure: Form PTO/SB/64- PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137