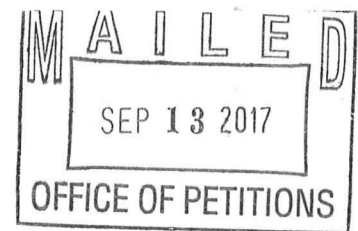




UNITED STATES PATENT AND TRADEMARK OFFICE



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In re Application of	:	
HEIDENREICH et al.	:	
Application No. 13/134,675	:	
Filed: June 13, 2011	:	DECISION ON SECOND RENEWED
Attorney Docket No.: none	:	PETITION UNDER 37 C.F.R. § 1.181(a)
Title: SYSTEMS AND METHODS FOR	:	AND PETITION UNDER 37 C.F.R.
FACILITATING USER THINKING ABOUT	:	§ 1.182
AN ARBITRARY PROBLEM WITH	:	
ADDITIONAL SEARCH CAPABILITIES	:	

This is a decision on the second renewed petition filed on May 15, 2017¹ pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

This is also a decision on the petition pursuant to 37 C.F.R. § 1.182, filed on May 15, 2017, requesting expedited handling of the aforementioned petition requesting that the holding of abandonment in the above-identified application be withdrawn

The petition pursuant to 37 C.F.R. § 1.182 requesting expedited handling is **DISMISSED**. Office records have been reviewed, and there is no record of the required fee having been received. The petition requesting that the holding of abandonment in the above-identified application be withdrawn has not been accorded expedited handling.

The second renewed petition pursuant to 37 C.F.R. § 1.181(a) is **DENIED**.

THERE WILL BE NO FUTHER RECONSIDERATION OF THIS MATTER BY THE OFFICE.

A discussion follows.

BACKGROUND

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. § 1.113 in a timely manner to the final Office action mailed April 2, 2015, which set a shortened statutory period for reply of three months. A first after-final amendment was received on July 2, 2015 along with a certification and request for consideration under the after final consideration pilot program 2.0, and an advisory action was mailed on July 16, 2015. A second after-final amendment was received on August 3, 2015 along with both a certification and request for consideration under the after final consideration pilot program 2.0 and a one-month extension of time so as to make timely the response (it is noted August 2, 2015 fell on a Sunday).

¹ It is noted May 13, 2017 fell on a Saturday.

Art Unit: OPET

An Information Disclosure Statement (IDS) was received on September 28, 2015. An advisory action was mailed on October 30, 2015 which indicates the amendment would not be entered since the subject matter had not been changed and Applicant's remarks would require consideration in excess of the time allotted.² The maximum extendable period for providing a response to the final Office action expired at midnight on October 2, 2015. Remarks were received on November 19, 2015, subsequent to the expiration of the maximum extendable period of response. No additional extensions of time under the provisions of 37 C.F.R. § 1.136(a) were available, and no further responses were received. Accordingly, the above-identified application became abandoned on August 3, 2015. A notice of abandonment was mailed on February 1, 2016.

RELEVANT STATUTE, FEDERAL REGISTER NOTICE, PORTIONS OF THE C.F.R., AND
MPEP, AND EFS-WEB LEGAL FRAMEWORK

35 U.S.C. § 133 sets forth, *in toto*:

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.

After Final Consideration Pilot Program 2.0, 78 Fed. Reg. 29117, 29118 (May 17, 2013) sets forth, *in pertinent part*:

Only one request for consideration under AFCP 2.0 may be filed in response to an outstanding final rejection. Second or subsequent requests for consideration under AFCP 2.0 filed in response to the same outstanding final rejection will be processed consistent with current practice concerning responses after final rejection under 37 CFR 1.116. In addition, all papers associated with this pilot program must be filed via the USPTO's Electronic Filing System-Web (EFS-Web).

37 C.F.R. § 1.2 sets forth, *in toto*:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

37 C.F.R. § 1.134 sets forth, *in toto*:

² See *After Final Consideration Pilot Program 2.0*, 78 Fed. Reg. 29117, 29117 and 29118 - 29119 (May 17, 2013), viewable here: <https://www.gpo.gov/fdsys/pkg/FR-2013-05-17/pdf/2013-11870.pdf>.

Art Unit: OPET

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

37 C.F.R. § 1.135 sets forth, *in pertinent part*:

- (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** (emphasis added).

MPEP § 714.13(III) sets forth, *in pertinent part*:

Any amendment timely filed after a final rejection **should** be immediately considered to determine whether it places the application in condition for allowance or in better form for appeal. An examiner is expected to turn in a response to an amendment after final rejection within an average of 11 calendar days from the time the amendment is received by the examiner. A reply to an amendment after final rejection **should** be mailed within 30 days of the date the amendment is received by the Office. In all instances, both before and after final rejection, in which an application is placed in condition for allowance, applicant should be notified promptly of the allowability of the claims by a Notice of Allowability form PTOL-37. If delays in processing the Notice of Allowability are expected, e.g., because an extensive examiner's amendment must be entered, and the end of a statutory period for reply is near, the examiner should notify applicant by way of an interview that the application has been placed in condition for allowance, and an Examiner Initiated Interview Summary PTOL-413B should be mailed. Prompt notice to applicant is important because it may avoid an unnecessary appeal and act as a safeguard against a holding of abandonment. Every effort should be made to mail the letter before the period for reply expires.

Emphases added.

LEGAL FRAMEWORK FOR EFS-WEB (06APRIL11) D2³ sets forth, *in pertinent part*:

³ The legal framework for EFS-Web is viewable here: <https://www.uspto.gov/patents-application-process/applying-online/legal-framework-efs-web-06april11#heading-4>

Art Unit: OPET

Proper Usage of EFS-Web (Former Section IV)

Entering Information on EFS-Web Screens

EFS-Web collects information from on-screen entries made by the user through the EFS-Web graphical user interface (GUI) data collection screens. **Through these data collection screens, the user provides the USPTO with information regarding the electronic submission, such as the type of application being filed, the application number of the application in which a follow-on document is being submitted, or the type of document being submitted. The USPTO systems (e.g., EFS-Web, IFW, etc.) will use the information entered by the user on the EFS-Web screens to automatically: (1) assign the application number, create the application, and process the application, if a new patent application is being filed; (2) upload the follow-on document into the application file specified by the user; or (3) message the deciding official based on the document description selected by the user. Therefore, providing incorrect information regarding the submission could lead to: (1) an incorrect type of application file being created; (2) a delay in processing the document; (3) filing a document in an incorrect application; or (4) the deciding official not recognizing the document in sufficient time to avoid publication, to withdraw the application from issue, or to avoid the abandonment of the application.**

1. Follow-on documents: When a user submits a follow-on document (e.g., a reply to an Office action or notice) via EFS-Web, the user is required to enter the correct application number and confirmation number of the application in which the follow-on document is being filed. Providing the incorrect application number and confirmation number pair will result in filing the follow-on document in the wrong application. Therefore, it is important for the user to enter the correct application number on the EFS-Web screen when filing the follow-on document. Furthermore, users cannot file a follow-on document as a new application.

After the submission of the follow-on document is completed, the user should log on to PAIR to review the application file and check whether the follow-on document has been filed in the correct application. Checking the application file via PAIR would also help the user to discover other filing errors, such as filing a wrong document or omitting a portion of the document.

...

3. Document indexing: **When a user submits a patent application or a follow-on document in a patent application using EFS-Web, the user must select from the list of document descriptions to specify the files being submitted via EFS-Web.** For instance, when the user is filing a patent application, the submission must be separated into appropriate sections: specification, claims, abstract, and drawing; and when the user is filing an amendment, the user must select the appropriate type of amendment: amendment after non-final, amendment after allowance, preliminary amendment, and amendment after final. **Based on the document description selected by the user, a document code is assigned and a message regarding the document submitted to the USPTO will be forwarded to the appropriate organization for processing, and to the appropriate official for consideration.** Furthermore, the IFW and PAIR systems use the document code for identifying the document maintained in the application file. Therefore, **accurate document indexing is important to facilitate efficient processing and proper consideration of the document by the USPTO.** For example: (a) if the user indicated an after-final amendment as a non-final amendment, the processing of such amendment may be delayed and the examiner may not have sufficient time to consider the amendment before the time period expires; (b) if the user selects the "Pre-Grant Publication" radio button on the EFS-Web data collection screen for submitting a substitute specification filed in response to a non-final Office action, the submission will be forwarded to the publication branch rather than processed into IFW and forwarded to the examiner for consideration; and (c) if the user selects "drawings - only black and white line drawings" for submitting color drawings in a utility application rather than "drawing - other than black and white line drawings", the color drawings would not be processed as color drawings, and would be maintained as black and white drawings in IFW.

More information on document indexing is available on the USPTO Web site. **It is important for users to select the correct document description, and check the application file via PAIR after the submission is completed.**

Emphases added.

PROCEDURAL HISTORY AND ANALYSIS

Art Unit: OPET

An original petition pursuant to 37 C.F.R. § 1.181(a) was filed on March 1, 2016, supplemented on April 2, 2016, and dismissed via the mailing of a decision on April 27, 2016.

It is noted that Petitioners submitted a \$200 petition fee on June 27, 2016 and a \$100 petition fee on August 1, 2016. Neither of these petition fees is required, and Office records show that each was refunded to the appropriate credit card on January 18, 2017.

The decision on the original petition set forth on pages 3-5, *in pertinent part*:

With this petition, Petitioner takes issue with the propriety of rejections contained within the final Office action. Petitioner further takes issue with the advisory action mailed on October 30, 2015, points out that it was not signed, and argues it was responsive to the IDS that had been filed on September 28, 2015 instead of the second after-final amendment that had been filed on August 3, 2015.

Petitioner's arguments have been carefully considered, but have not been found to be persuasive, for it is controlling that **this application went abandoned for failure to properly respond to the final action that was mailed on April 2, 2015. The propriety of a rejection, objection, or other requirement set forth in an Office action is not relevant to an applicant's burden to timely prosecute the application to avoid abandonment** (emphasis included).⁴ Put another way, this application went abandoned due to Petitioner's failure to place the claims in condition for allowance, and Petitioner's contention that the after-final amendment received on August 3, 2015 should have been entered by the Examiner is not relevant to the abandonment of this application.

It is clear from rules 37 C.F.R. §§ 1.116 and 1.135 that abandonment of an application is risked when the applicant proffers an amendment after the mailing of a final Office action. The rule clearly indicates that the mere filing of an amendment does not relieve applicant of the duty to take appropriate action to save the application from abandonment.

If steps are not taken after final to maintain pendency prior to the expiration of the maximum extendable period for reply, the application will go abandoned. Put another way, the submission of an after final amendment which fails to place the application in condition for allowance will result in the abandonment of the application, unless one of the following four items is filed prior to the maximum extendable period for reply:

- a subsequent amendment which prima facie places the application in condition for allowance;
- a Notice of Appeal;
- a Request for a Continuation Application pursuant to 37 C.F.R. § 1.53(b), if applicable;
- a Request for Continued Examination pursuant to 37 C.F.R. § 1.114 (RCE), or;
- a Terminal Disclaimer, if applicable.

None of these items was submitted prior to the expiration of the maximum extendable period for reply to the final Office action.

Moreover, the Office agrees the advisory action mailed on October 30, 2015 was not executed. However this does not change the fact that prior to the maximum extendable period for responding to the final Office action, an amendment which prima facie places the application in condition for allowance, a Notice of Appeal, or a RCE was not filed.

⁴ See 35 U.S.C. § 133 and 37 C.F.R. §§ 1.134 and 1.135(a) and (b), reproduced above.

Art Unit: OPET

Finally, the Office does not agree that the advisory action pertained to the IDS filed on September 28, 2015 and the second after-final amendment filed on August 3, 2015 has not been considered by the Examiner. While it is unfortunate the first page of the advisory action indicates "the reply filed 28 September 2015 fails to place this application in condition for allowance," the continuation sheet of the advisory action makes it clear this date is a typographical error, for the following two reasons.

First, the IDS submitted on September 28, 2015 consists of a one-page facsimile cover sheet, a one-page transmittal form, three pages of references, and a one-page letter. Hence, the submission totals six pages in length, and neither an amendment nor remarks was submitted therewith. However, the continuation sheet of the advisory action mailed on October 30, 2015 quotes from pages six and eight of the "Amendment" and refers to "Remarks." *Since there cannot be an eighth page of a six-page submission, and neither an amendment nor remarks was submitted on September 28, 2015, it is clear the advisory action mailed on October 30, 2015 was not mailed in response to the IDS that had been filed on September 28, 2015.*

Second, as set forth in the immediately preceding paragraph, the continuation sheet of the advisory action mailed on October 30, 2015 quotes from pages six and eight of the "Amendment." The undersigned has compared the advisory action mailed on October 30, 2015 with the second after-final amendment filed on August 3, 2015. *The quoted material that is indicated to be present on pages six and eight of the "Amendment" are direct quotes of material that is present on pages six and eight of the second after-final amendment filed on August 3, 2015.*

As such, when the advisory action is considered in full, there is no doubt that the communication was mailed in response to the second after-final amendment filed on August 3, 2015, the erroneous date of "28 September 2015" on the first page notwithstanding.

For these reasons, the record does not support a finding that the holding of abandonment should be withdrawn, and it follows this petition must be dismissed.

A renewed petition pursuant to 37 C.F.R. § 1.181(a) was filed on June 27, 2016, supplemented on July 27, 2016, August 1, 2016, December 1, 2016, and December 9, 2016, and dismissed via the mailing of a decision on March 13, 2017.

The decision on the renewed petition set forth on pages 4-5, *in pertinent part*:

With this renewed petition, Petitioners makes a plurality of arguments where it is asserted that the August 3, 2015 submission was lost or misplaced by the Office for 2.5 months,⁵ the August 3, 2015 submission was not reviewed,⁶ the October 30, 2015 advisory action has not been executed,⁷ the August 3, 2015 amendment is compliant with 35 USC 116,⁸ and the online version of the October 30, 2015 mailing differs from the paper version which was received from Petitioners.⁹

Applicant's arguments have been carefully considered, but have been found to be unpersuasive. **It is controlling that 35 U.S.C. § 133 sets a six-month statutory deadline for filing an amendment which prima facie places the application in condition for allowance, a Notice of Appeal, or a request for**

⁵ Renewed petition, page 1. July 27, 2016 supplement, page 3. August 1, 2016 supplement, pages 2 and 3. December 1, 2016 supplement, page 1.

⁶ Renewed petition, pages 1 and 2. July 27, 2016 supplement, page 3. August 1, 2016 supplement, pages 2, 3, 4, and 5. December 1, 2016 supplement, page 1.

⁷ Renewed petition, pages 1 and 2. July 27, 2016 supplement, page 3. August 1, 2016 supplement, page 4.

⁸ Renewed petition, page 2.

⁹ December 1, 2016 supplement, page 2.

Art Unit: OPET

continued examination (RCE), and none of these items was filed with the Office prior to the expiration of this deadline (emphasis included).

Regarding Petitioners' individual arguments, a review of Office records does not support a finding that the submission of August 3, 2015 was lost or misplaced. It is noted the papers were submitted electronically via EFS-Web, and as such it is not clear how it would have been possible for the USPTO to have lost or misplaced the electronic filing.

Regarding the issue of whether the August 3, 2015 submission was reviewed, this matter was fully explored in the decision on the original petition, and a review of the October 30, 2015 advisory action reveals a detailed discussion of the merits of the submission is present on the second page of the advisory action in the "continuation" section, the inclusion of the wrong date in the first field of the first page of the advisory action notwithstanding.

Regarding Petitioners' third argument, it is acknowledged that the October 30, 2015 advisory action has not been executed, however this does not change the validity of the finding set forth therein. Office records show that another advisory action which contains the correct date of the second after-final amendment and has been executed by the Supervisory Patent Examiner of Art Unit 2129 was mailed on January 31, 2017.

Regarding Petitioners' fourth argument, as set forth in the advisory action, the Office has found that the August 3, 2015 amendment is not compliant with 35 USC 116. *See* the October 30, 2015 advisory action.

Regarding Petitioners' assertion that the online version of the October 30, 2015 mailing differs from the paper version which was received from Petitioners, the paper which Petitioners have asserted was not included with the paper mailing is the cover page of the second after-final amendment. Petitioners will note this paper is typically not included with the paper mailing of an advisory action, as it is an internal document which is scanned into the electronic record by the Examiner with the notation "DO NOT ENTER" to show that the amendment has not been approved by the Examiner for entry, and is coded "ANE.I" which stands for "Amendment After Final or under 37 CFR 1.312, initialed by the examiner."

With this second renewed petition, Petitioners makes a plurality of arguments where it is asserted:

1. Petitioners do not believe the Office action mailed on April 2, 2015 should have been made final, and Petitioners do not agree with the contents of the Office Action.¹⁰
2. The August 3, 2015 submission was halted or suspended or misplaced by the Office for 2.5 months.¹¹
3. The October 30, 2015 advisory action has not been executed.¹²
4. Terminal disclaimers were filed on February 1, 2016,¹³ and terminal disclaimers are "an appropriate reply to a Final Office Action."¹⁴
5. When the USPTO mailed an executed version of the October 30, 2015 advisory action on January 31, 2017 the USPTO should have restarted the period for response at that time.¹⁵

¹⁰ Second renewed petition, page 3.

¹¹ *Id.* at 1, 5-6, and 7.

¹² *Id.* at 2 and 7.

¹³ *Id.*

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 8.

Art Unit: OPET

Petitioners' arguments have been carefully considered, but have been found to be unpersuasive. **It is controlling that 35 U.S.C. § 133 sets a six-month statutory deadline for filing an amendment which prima facie places the application in condition for allowance, a Notice of Appeal, or a request for continued examination (RCE), and none of these items was filed with the Office prior to the expiration of this deadline.**

A discussion of Petitioners' five individual arguments follows.

Regarding Petitioners' first argument on second renewed petition, as set forth on pages 3-4 of the decision mailed on April 27, 2016 and reprinted on pages 3-4 of the decision mailed on March 13, 2017, this application went abandoned for failure to properly respond to the final Office action mailed on April 2, 2015. The propriety of a rejection, objection, or other requirement set forth in an Office action is not relevant to an applicant's burden to timely prosecute the application to avoid abandonment. *See* 35 U.S.C. § 133 and 37 C.F.R. §§ 1.134 and 1.135(a) and (b), reproduced above. For a further discussion on this topic, see pages 3-4 of these two decisions.

Regarding Petitioners' second argument on second renewed petition, as discussed on page 5 of the decision mailed on March 13, 2017, a review of Office records does not support a finding that the submission of August 3, 2015 was lost or misplaced. It is noted the papers were submitted electronically via EFS-Web, and as such it is not clear how it would have been possible for the USPTO to have lost or misplaced the electronic filing.

Moreover, a review of the record shows no indication that prosecution was either halted or suspended. For a discussion on suspension of action by the Office, *see* 37 C.F.R. § 1.103 and MPEP § 709, which set forth that the Office may grant a suspension of action by the Office upon the request of the applicant. While it is noted an Examiner may suspend action for potential interference, such an occurrence would have occurred in writing and notification would have been provided to Applicants, and there is no documentation in the application file which would suggest that such an event occurred. *See* 37 C.F.R. § 1.2.

However, a review of the record does show that two filing errors committed by Petitioners could have caused delay in the review of the August 3, 2015 submission. A review of the Electronic Acknowledgement Receipt shows that Petitioners did not properly describe the documents they submitted on that date when selecting from the list of document descriptions. Petitioners did not describe the after-final amendment as an after-final amendment, and they did not describe the remarks as remarks: it appears that both were combined into a single 26-page document that was described as "examination support document." As set forth in the section D2 of the Legal Framework reproduced above, a document description selected by the user results in the assignment of a particular document code, and based on the document code, a message is sent to the appropriate official for consideration. By misidentifying the after-final amendment and the accompanying remarks as an examination support document, Petitioners caused the Office's

Art Unit: OPET

computer system from automatically routing after-final amendment and remarks for appropriate processing.

Regarding Petitioners' third argument on second renewed petition, as discussed on page 5 of the decision mailed on March 13, 2017, the fact that the October 30, 2015 advisory action has not been executed does not change the validity of the finding set forth therein. Moreover, Office records show on January 31, 2017 another advisory action which contains the correct date of the second after-final amendment executed by the Supervisory Patent Examiner of Art Unit 2129 was mailed.

Regarding Petitioners' fourth argument on second renewed petition, it is true that a terminal disclaimer and the associated fee were both filed on February 1, 2016 (the same date on which the notice of abandonment was mailed). However, the maximum extendable period of time for responding to the final Office action of April 2, 2015 expired at midnight on October 2, 2015. In other words, the terminal disclaimer submitted in response to a final Office action was submitted four months after the expiration of the maximum extendable period for responding to the same.

Assuming arguendo that the terminal disclaimer was timely filed, it is noted the terminal disclaimer could have potentially obviated the double patenting rejection of claims 1-18 on pages 5-46 of the final Office action. However, the terminal disclaimer would not have had any effect on the 35 U.S.C. § 101 rejection of claims 1-2 on page 2 of the final Office action, or the 35 U.S.C. § 102 rejection of claims 1-18 on pages 46-53 of the final Office action. Put another way, even if the terminal disclaimer was both timely filed and obviated the nonstatutory double patenting rejection, all claims would remain rejected under 35 U.S.C. § 102, and two claims would remain rejected under 35 U.S.C. § 101, and therefore such a terminal disclaimer would not have been sufficient to avoid abandonment.

Regarding Petitioners' fifth argument on second renewed petition, it is not clear how the mailing of an executed version of a previously-mailed advisory action could warrant the restarting of the period for response, since it is the final Office action – and not the advisory action – which sets the period for reply. The mailing of the final Office action on April 2, 2015 set an extendable three-month period for response (extendable out to six months). As discussed on pages 3-4 of the decision mailed on April 27, 2016 and reprinted on pages 3-4 of the decision mailed on March 13, 2017, abandonment is risked when the applicant proffers an amendment after the mailing of a final Office action. The mailing of a final Office action starts the clock for responding to the same. The receipt of an unsigned - or even belated – notification that the claims remain rejected has no bearing on the fact that either a subsequent amendment which *prima facie* places the application in condition for allowance, a Notice of Appeal, or a RCE was not submitted prior to the expiration of the maximum extendable period for responding to the final Office action.

CONCLUSION

It follows this petition is denied, and the holding of abandonment will not be withdrawn.

Art Unit: OPET

Petitioners may wish to consider filing a petition pursuant to 37 C.F.R. § 1.137(a). A grantable petition pursuant to 37 C.F.R. § 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed (an amendment which prima facie places the application in condition for allowance, a Notice of Appeal and the associated fee,¹⁶ or an RCE and the associated fee¹⁷);
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m);¹⁸
- (3) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section (which is not applicable to the present application); and,
- (4) 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 this section was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form Petitioners might find useful may be downloaded here:
<http://www.uspto.gov/sites/default/files/forms/sb0064.pdf>.

Telephone inquiries regarding this decision should be directed to Attorney Advisor Paul Shanoski at (571) 272-3225.¹⁹

/ROBERT CLARKE/
Robert A. Clarke
Patent Attorney
Office of the Deputy Commissioner
for Patent Examination Policy

¹⁶ Currently set at \$800 at the non-reduced rate, \$400 at the small entity rate, and \$200 for micro entity status entities.

¹⁷ Currently set at \$170 at the non-reduced rate, \$850 at the small entity rate, and \$425 for micro entity status entities.

¹⁸ Currently set at \$1700 at the non-reduced rate, and \$850 at the small entity rate, with no additional reduction available for micro entity status.

¹⁹ Petitioners will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. *See* 37 C.F.R. § 1.2. As such, Petitioners are reminded that no telephone discussion may be controlling or considered authority for any of Petitioners' further action(s).