

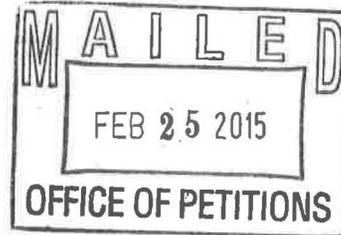


UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 8,195,605 :
Chellappa et al. :
Issue Date: June 5, 2012 :
Application No. 11/925,585 :
Filed: October 26, 2007 :
Title: DATA CACHE TECHNIQUES IN :
SUPPORT OF SYNCHRONIZATION OF :
DATABASES IN A DISTRIBUTED :
ENVIRONMENT :

: DIRECTOR'S DECISION ON
: PATENT TERM ADJUSTMENT



This is a response to applicants "Request for Reconsideration of Patent Term Adjustment" filed pursuant to 37 CFR 1.705(b) and a petition under 37 CFR 1.181 requesting the Office suspend the rules and consider on the merits a Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d) filed more than two months from the date the above-referenced patent issued on July 31, 2014 requesting that the Office adjust the PTA from 358 days to 496 days.

The petition under 37 CFR 1.181 is **DENIED**.

The redetermination of patent term adjustment is **DENIED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of 274 days.

THERE WILL BE NO FURTHER CONSIDERATION OF THIS MATTER BY THE OFFICE.

On June 5, 2012, the above-identified application matured into U.S. Patent No. 8,195,605, with a revised patent term adjustment of 358 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. Petitions for reconsideration of the patent term adjustment were filed on December 20, 2012. A decision dismissing the request as untimely was mailed on June 10, 2014. Patentee now petitions under 37 C.F.R. § 1.181 to (i) suspend or waive the requirement of 37 C.F.R. § 1.705(d) that a

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Request for Reconsideration of Patent Term Adjustment be filed within two months of the date the patent issued; and (ii) consider the enclosed Request for Reconsideration of Patent Term Adjustment.

**ON PETITION UNDER 37 CFR 1.181
TO WAIVE THE TWO-MONTH REQUIREMENT OF 37 CFR 1.705(d)**

35 U.S.C. 154 requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director, authorizes the Director to establish the procedures for requesting such reconsideration. [T]he USPTO promulgated 37 C.F.R. § 1.705(d), which required a patent holder dissatisfied with the USPTO's calculation of a patent term adjustment to file a request for reconsideration within two months after the patent issues. Additionally, under the version of Section 154(b) in effect in 2012, patent holders had 180 days from the patent's issuance to file suit challenging the calculation of a patent term adjustment. Patentee chose not to timely avail itself of either of these means to challenge the patent term adjustment determination of the '605 patent, it cannot belatedly seek to do so now—even if it styles its request as a Rule 1.181 petition seeking to suspend or waive the time limit of Rule 1.705(d) because patentee cannot show its untimeliness was due to an "extraordinary situation."

The USPTO's petition decision comports with this Court's decision in *Novartis* and the district court's decision below. This Court dismissed *Novartis*' claims with respect to the fifteen patents for which *Novartis* failed to file a timely request for reconsideration or lawsuit under section 154(b). This Court emphasized that a party cannot sit back and wait for another litigant to bring a successful challenge and then resuscitate its own time-barred claim by relying on a theory of equitable tolling. *Novartis*, 740 F.3d at 600; see also *Venture Coal Sales Co. v. United States*, 370 F.3d 1102, 1107 (Fed. Cir. 2004) (rejecting the argument that plaintiff's claims were "inherently unknowable" until accepted by a district court in another case); *Communications Vending Corp. of Arizona, Inc. v. F.C.C.*, 365 F.3d 1064, 1075-76 (D.C. Cir. 2004) ("suitor cannot toll or suspend the running of the statute by relying upon the uncertainties of controlling law" (quoting *Fiesel v. Bd. of Educ.*, 675 F.2d 522, 524-25 (2d Cir. 1982))). This is precisely

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what patentee admitted it did in this case when it claimed that its petition was untimely because it simply did not have a reasonable amount of time to respond to a recent court development at the tail end of the 180-day period.

In view thereof, the petition under 37 CFR 1.181 for waiver of the two-month requirement of 37 CFR 1.705(d) is Denied.

Accordingly, consideration now turns to the Request for Reconsideration of Patent Term Adjustment.

**ON REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705**

This is a decision on the request for reconsideration of the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed July 31, 2014. Therein, patentee requests correction of the patent term adjustment (PTA) indicated in the patent to three hundred ten (496) days.

Since the request was not filed within two months of the issue date of the patent, the request is properly DENIED.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

/JOHN COTTINGHAM/
Director
Office of Petitions/
Petitions Officer