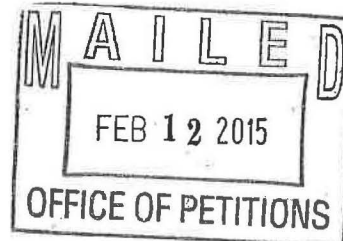




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In re Patent No. 8,568,457
Markus Hunziker
Issue Date: 10/29/2013
Application No. 12/957,447
Filing or 371(c) Date: 12/01/2010
Docket No.: 10154-040US1

: DECISION
: ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
:
:

This is a decision on the patent term adjustment in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)", filed December 27, 2013, requesting that the patent term adjustment determination for the above-identified patent be changed from 69 days to 89 days.

The request is **DENIED**.

This decision on patent term adjustment is the Director's decision on the applicant's request for reconsideration within the meaning of 35 U.S.C. 154(b)(4) that triggers a 180-day period for applicant disagreeing with the Office redetermination to commence a civil action in the District Court for the Eastern District of Virginia.

On August 6, 2013, the above-identified application matured into U.S. Patent No. 8,504,179. The patent issued with a PTA of 69 days. The present request for redetermination of the patent term adjustment was timely filed within two months of the issue date.

The present petition

Patentee asserts that he should not have been assessed Applicant delay of 98 days under 37 CFR 1.704(c)(10) for filing an Amendment on July 24, 2013, subsequent to the Notice of Allowance mailed June 24, 2013. Patentee argues that he should have only been assessed Applicant delay of 78 days, because the Office mailed an Issue Notification on October 9, 2013.

Patentee's argument has been considered, but is not persuasive. 37 CFR 1.704(c)(10) states that a circumstance that will constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application is:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months.


The Office is not persuaded by Patentee's argument that the Issue Notification was an "Office action or notice in response to the amendment". The Issue Notification did not reference the amendment. Rather, it simply notified Applicant of the projected patent number and issue date, as well as the number of days of patent term adjustment. In view thereof, the assessment of 98 days of Applicant delay under 37 CFR 1.704(c)(10) was proper.

Conclusion

Patentee is entitled to PTA of sixty-nine (69) days. Using the formula "A" delay + "B" delay + "C" delay - overlap - applicant delay = X, the amount of PTA is calculated as following: $169 + 0 + 0 - 0 - 100 = 69$ days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to Attorney Advisor Cliff Congo at (571) 272-3207.



John Cottingham
Director
Office of Petitions