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In re Patent of Colucci et al. :
Patent No. 8,637,671 : REDETERMINATION OF PATENT
Issue Date: January 28, 2014 : TERM ADJUSTMENT
Application No. 13/120,074 :
371(c) date: March 21, 2011 :
Docket No. MCC-BRE-00003-US-PCT :

This is a decision on the “APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)”, filed January 29, 2014, which requests the United States Patent and Trademark Office (“Office”) correct the patent term adjustment determination (“PTA”) set forth on the patent to indicate the term of the patent is extended or adjusted by three hundred and three (303) days.

The request for reconsideration for the Office to correct the PTA set forth on the patent to indicate the term of the patent is extended or adjusted by 303 days is **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704.

Relevant Procedural History

The patent issued with a PTA determination of 302 days on January 28, 2014. The instant request seeking an adjustment of 303 days was timely filed on January 29, 2014.

Decision

The PTA set forth on the patent is based on the following determination previously made by the Office:

- (1) The period of delay under 35 U.S.C. § 154(b)(1)(A) (“A Delay”) is 302 days;
- (2) The period of delay under 35 U.S.C. § 154(b)(1)(B) (“B Delay”) is 0 days;
- (3) The period of delay under 35 U.S.C. § 154(b)(1)(C) (“C Delay”) is 0 days;
- (4) The number of days of overlapping delay (“Overlap”) between the periods of A Delay, B Delay, and C Delay is 0 days; and

- (5) The period of delay under 35 U.S.C. § 154(b)(2)(C) (“Applicant Delay”) is 0 day.

The PTA to be set forth on a patent is the sum of the days of A Delay, B Delay, and C Delay reduced by the number of days of Overlap and Applicant Delay. In other words, the following formula may be used to calculate the PTA:

$$\text{PTA} = \text{A Delay} + \text{B Delay} + \text{C Delay} - \text{Overlap} - \text{Applicant Delay}$$

The patent sets forth a PTA of 302 days (302 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 day of Applicant Delay).

The Request asserts the period of A Delay is 303 days, not 302 days. The Request argues that since the requirements under 35 U.S.C. 371(c) were met on March 21, 2011, that national stage processing should have commenced on that date, pursuant to section (f) of the aforementioned statute.

The Request argues the correct PTA is 303 days (303 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 days of Applicant Delay).

As will be discussed, the period of Applicant Delay is 335 days, based on a commencement date of March 22, 2011. Because early processing was not explicitly requested, the national stage commenced 30 months from the earliest claimed priority date, which is September 22, 2008.

The correct PTA is 302 days (302 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 day of Applicant Delay).

A Delay

The Request disputes the Office’s prior determination the period of A Delay is 302 days. The Office has recalculated the period of A Delay as part of the Office’s redetermination of the PTA and confirmed the period of A Delay is 302 days.

37 C.F.R. § 1.703(a) reads, as follows, with emphasis added:

The period of adjustment under § 1.702(a) is the sum of the following periods:

- (1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or the date the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first[.]¹

¹ See Revisions to Patent Term Adjustment (Interim Final Rule), 78 Fed. Reg. 19416, 19420 (April 1, 2013).

The period of delay under 37 CFR 1.703(a)(1) (“A-1 delay”) is based on the date the national stage commenced (“Commencement Date”).

The Request asserts the Commencement Date is March 21, 2011. However, the correct Commencement Date is March 22, 2011.

The date the national stage of an international application commences is addressed in MPEP § 1893.01, which states, with emphasis added,

Subject to 35 U.S.C. 371(f), commencement of the national stage occurs upon expiration of the applicable time limit under PCT Article 22(1) or (2), or under PCT Article 39(1)(a). See 35 U.S.C. 371(b) and 37 CFR 1.491(a). PCT Articles 22(1), 22(2), and 39(1)(a) provide for a time limit of not later than the expiration of 30 months from the priority date. Thus, *in the absence of an express request for early processing* of an international application under 35 U.S.C. 371(f) and compliance with the conditions provided therein, *the U.S. national stage will commence upon expiration of 30 months from the priority date of the international application.*

The March 21, 2011 papers **do not** include an express request for early processing. Therefore, the national stage commenced upon the expiration of 30 months from the priority date of the international application. The date 30 months after September 22, 2008, which is the priority date of the international application, is March 22, 2011. The Commencement Date is March 22, 2011.

The correct period of A-1 Delay is 302 days, which is the number of days beginning May 23, 2012, the day after the date 14 months after the Commencement Date, and ending March 20, 2013, the date the Office mailed a restriction requirement.

The period of Applicant Delay is 302 days.

B Delay

The Request does not dispute the Office’s prior determination the period of B Delay is 0 days. The Office has recalculated the period of B Delay as part of the Office’s redetermination of the PTA and confirmed the period of B Delay is 0 days.

C Delay

The Request does not dispute the Office’s prior determination the period of C Delay is 0 days. The Office has recalculated the period of C Delay as part of the Office’s redetermination of the PTA and confirmed the period of C Delay is 0 days.

Overlap

The Request does not dispute the Office's prior determination the number of days of Overlap is 0 days. The Office has recalculated the number of days of Overlap as part of the Office's redetermination of the PTA and confirmed the number of days of Overlap is 0 days.

Applicant Delay

The Request does not dispute the Office's prior determination the period of Applicant Delay is 0 days. The Office has recalculated the period of Applicant Delay as part of the Office's redetermination of the PTA and confirmed the period of Applicant Delay is 0 days.

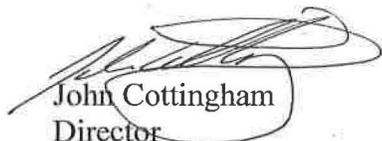
Conclusion

The Request asserts the correct PTA is 303 days (303 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 days of Applicant Delay).

As previously discussed, the period of A Delay is 302 days.

Therefore, the correct PTA is 302 days (302 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 0 days of Applicant Delay).

Telephone inquiries specific to this decision should be directed to Attorney Advisor Shirene Willis Brantley at (571) 272-3230.



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Director

Office of Petitions/Petitions Officer