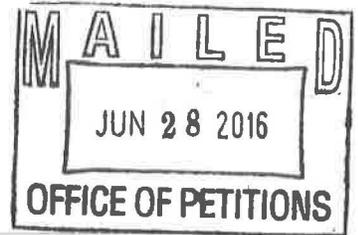




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In re Patent No. 8,846,693 : DIRECTOR'S DECISION ON  
Issued: September 30, 2014 : PATENT TERM ADJUSTMENT  
Application No. 12/746,231 :  
Filed: June 4, 2010 :  
Atty. Dkt. No.: IT-28-US :

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705," filed December 30, 2015, requesting that the patent term adjustment be increased from 569 days to 571 days.

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 five hundred sixty-nine (569) days.

This decision is the Director's decision on the applicant's request for reconsideration for purposes of seeking judicial review under 35 U.S.C. § 154(b)(4).

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

Relevant Procedural History

On September 30, 2015, this patent issued with a patent term adjustment determination of 569 days. On December 30, 2014, patentee timely filed a "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705" seeking an adjustment of the determination to 571 days.

Decision

Patentees dispute the Office's calculation of 317 days of "A" delay and the Office's calculation of 480 days of "B" delay.

The Office and Patentees are in agreement with respect to the zero days of "C" delay, the zero days of overlap, and the applicant delay of 228 days.

Patentees' basis for requesting the recalculation of the determination of patent term adjustment is the Office's calculation of the date of commencement for the instant application. Patentees argue that the USPTO is without the authority to advance the date of commencement to a Monday

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should the date that is 30 months after the priority date of a national stage application fall on a weekend or holiday.

For National Stage PCT applications that issue as patents after January 14, 2013, the 14 month period for calculating A-delay begins from commencement is *usually* 30 months after the priority date. Thus the date to start the calculation for the 14 month A-delay period and the 36 month B-delay period will be the same date. See, 78 Fed. Reg.19416 (April 1, 2013).

Herein, the priority date is December 6, 2007. However, the date that is 30 months thereafter is Sunday, June 6, 2010. Unless an applicant has expressly requested early processing and met the requirements for such pursuant to 35 USC 371(c), commencement cannot occur on a weekend or federal holiday. Accordingly, the date of commencement is Monday, June 7, 2010.

Please note PCT Rule 80.5 which states:

If the expiration of any period during which any document or fee must reach a national Office or intergovernmental organization falls on a day:

- (i) on which such Office or organization is not open to the public for the purposes of the transaction of official business;
- (ii) on which ordinary mail is not delivered in the locality in which such Office or organization is situated;
- (iii) which, where such Office or organization is situated in more than one locality, is an official holiday in at least one of the localities in which such Office or organization is situated, and in circumstances where the national law applicable by that Office or organization provides, in respect of national applications, that, in such a case, such period shall expire on a subsequent day; or
- (iv) which, where such Office is the government authority of a Contracting State entrusted with the granting of patents, is an official holiday in part of that Contracting State, and in circumstances where the national law applicable by that Office provides, in respect of national applications, that, in such a case, such period shall expire on a subsequent day; the period shall expire on the next subsequent day on which none of the said four circumstances exists.

Accordingly, the calculation of adjustment in accordance with 37 CFR 1.703(a)(1) was properly calculated, the period of adjustment having begun August 8, 2011, the day after the date that is 14 months after the date of commencement, and ended June 19, 2012, the date that the restriction requirement was mailed.

Further, the calculation of adjustment in accordance with 37 CFR 1.703(b) was properly calculated, the period of adjustment having begun June 8, 2013, the day after the date that is three years after the date of commencement, and ended September 30, 2014, the date that the patent issued.

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Accordingly, overall patent term adjustment remains 569 days.

#### Overall PTA Calculation

Formula:

“A” delay + “B” delay + “C” delay - Overlap - applicant delay = X

USPTO’s Calculation:

$317 + 480 + 0 - 0 - 228 = 569$

Patentee’s Calculation

$318 + 481 + 0 - 0 - 228 = 571$

#### Conclusion

Patentee remains entitled to PTA of 569 days, as reflected on the patent. Using the formula “A” delay + “B” delay + “C” delay - overlap - applicant delay = X, the amount of PTA is calculated as follows:  $317 + 480 + 0 - 0 - 228 = 569$  days.

Telephone inquiries specific to this matter should be directed to Attorney Advisor Alesia M. Brown at (571) 272-3205.

/ROBERT CLARKE/

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for Patent Examination Policy - USPTO