



OSHA LIANG L.L.P.
TWO HOUSTON CENTER
909 FANNIN, SUITE 3500
HOUSTON, TX 77010

Inventors: Angelle et al.	:	
Patent No. 8,919,429	:	FINAL AGENCY DECISION ON
Issue Date: December 30, 2014	:	REQUEST FOR RECONSIDERATION
Application No. 13/459,314	:	OF PATENT TERM ADJUSTMENT
Filing Date: April 30, 2012	:	
Attorney Docket No. 17456/066002	:	

This is a decision on the request under 37 C.F.R. § 1.705 filed February 25, 2015, which requests the United States Patent and Trademark Office (“Office”) adjust the patent term adjustment (“PTA”) set forth on the patent from 261 days to 281 days.

The request is **DENIED**.

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).

Relevant Procedural History

The patent issued with a PTA determination of 261 days on December 30, 2014. The instant request seeking an adjustment of 281 days was timely filed with the required fee of \$200 on February 25, 2015.

Decision

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

- (1) The period of delay under 35 U.S.C. § 154(b)(1)(A) (“A Delay”) is 327 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 66 days.

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 261 days (327 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 66 days of Applicant Delay).

The request argues the Office incorrectly calculated the period of Applicant Delay, and as a result, incorrectly calculated the PTA for the patent. The request asserts the total period of Applicant Delay is 46 days. The request asserts the correct PTA is 281 days.

The period of Applicant Delay consists of a period of delay under 37 C.F.R. § 1.704(b) and a period of delay under 37 C.F.R. § 1.704(c)(10).

The period of delay under 37 C.F.R. § 1.704(b) is not in dispute. The period of delay under 37 C.F.R. § 1.704(b) is 26 days.

The period of delay under 37 C.F.R. § 1.704(c)(10) is in dispute. The Office previously determined the period of delay under 37 C.F.R. § 1.704(c)(10) is 40 days. The request asserts the correct period of delay under 37 C.F.R. § 1.704(c)(10) is 20 days.

The Office acknowledges the total period of Applicant Delay is 46 days and the correct PTA is 281 days *if* the correct period of delay under 37 C.F.R. § 1.704(c)(10) is 20 days.

37 C.F.R. § 1.704(c)(10) states,

[Upon] [s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed ... 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 issued a Notice of Allowance on August 26, 2014. An amendment under 37 C.F.R. § 1.312 was filed with the issue fee on November 21, 2014. The Office issued an Issue Notification on December 10, 2014. The patent issued on December 30, 2014. The patent includes the changes set forth in the amendment.

The Office determined the period of delay under 37 C.F.R. § 1.704(c)(10) is 40 days, which is the number of days beginning on the date the amendment was filed and ending on the date the patent issued.

The request states the period of delay under 37 C.F.R. § 1.704(c)(10) ended on “the mailing date of an Office Action or notice in response to the amendment, in this case the Issue Notification”

The request argues the correct period of delay under 37 C.F.R. § 1.704(c)(10) is 20 days, which is the number of days beginning on the date the amendment was filed and ending on the date the Office issued the Issue Notification.

The request fails to establish that the submission of the amendment on November 21, 2014 caused or contributed to the issuance of the Issue Notification. In other words, the request fails to establish the Issue Notification was issued in “response to” the amendment.

The Issue Notification does not discuss, or even mention, the amendment. In other words, the Issue Notification does not constitute a response to the amendment.

In view of the prior discussion, the Issue Notification is not an Office action or notice issued in response to the amendment, and the correct period of delay under 37 C.F.R. § 1.704(c)(10) is 40 days, as previously calculated by the Office.

Conclusion

The period of delay under 37 C.F.R. § 1.704(c)(10) is 40 days.

The total period of Applicant Delay is 66 (26 + 40) days.

The correct PTA is 261 days (327 days of A Delay + 0 days of B Delay + 0 days of C Delay - 0 days of Overlap - 66 days of Applicant Delay).

Telephone inquiries specific to this decision should be directed to Attorney Advisor Steven Brantley at (571) 272-3203.

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