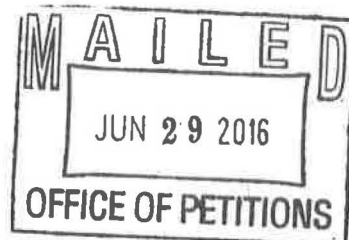




UNITED STATES PATENT AND TRADEMARK OFFICE



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. 9,072,871

Spinoza

Issue Date: 07/07/2015

Application No. 13/126721

Filing or 371(c) Date: 09/30/2011

Atty. Docket No.:

FIFW.P0066US/11304535

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: ON REDETERMINATION OF
: PATENT TERM ADJUSTMENT
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This is in response to applicants "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed September 24, 2015, requesting that the patent term adjustment determination for the above-identified patent be changed from 1011 days to 1033 days. The Office has re-determined the PTA to be 1011 days.

This petition is hereby **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

On July 7, 2015 the above-identified application matured into U.S. Patent No. 9,072,871. The patent issued with a PTA of 1019 days. Patentee FILED A request for redetermination of the Patent Term Adjustment on September 8, 2015, requesting an adjustment of the patent term to 1033 days. Patentee averred that a reduction of 14 days in connection with the filing of an Information Disclosure Statement ("IDS") should not have been considered a failure to engage in reasonable efforts to conclude prosecution of the application because the IDS was filed in accordance with 37 CFR 1.704(d).

In a redetermination of the PTA mailed September 23, 2015, the Office agreed with applicant's assertion that the IDS was filed in accordance with 37 CFR 1.704(d), and the reduction of 14 days in connection with the filing of the IDS was removed; however, in a review of the application file history the Office found that the Office had erred in calculating the period of applicant delay in connection with the filing of an after final amendment, filed June 5, 2015. The Office assessed reductions of 11 days in connection with the amendment based upon the putative mailing of a response to the amendment on June 15, 2015. The review of the application file history confirmed that no response to the amendment was mailed. Here, the amendment was filed on June 5, 2015, and the next Office action in response to the amendment was the issuance of the patent on July 7, 2015. Pursuant to 37 CFR 1.704(c)(10), the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the lesser of: (1) the number of days, if any, beginning on the date the amendment under 37 CFR 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 37 CFR 1.312 or such other paper; or (2) four months. The adjustment was therefore corrected to 33 days.

Art Unit: OPET

The present request for reconsideration of patent term adjustment

Patentee files the present request for reconsideration of patent term adjustment and requests reconsideration of the patent term adjustment to 11 days. Patentee provides that the "Transaction History" and "Patent Term Adjustment" from the Patent Application Information and Retrieval System ("PAIR"), note that an Office action in response to the amendment was mailed on June 15, 2015.

Decision

Patentees' argument has been carefully considered. Upon review, the USPTO finds that patentee is entitled to **1011** days of PTA. Applicant is advised that the USPTO file is the official record of the papers actually mailed or filed in an application. Here, the USPTO file contains no record of a response to the amendment filed on June 5, 2015. Office records confirm that the amendment was filed on June 5, 2015, and the next Office action in response to the amendment was the issuance of the patent on July 7, 2015. Accordingly, the Office maintains the reduction of 33 days for applicant delay in connection with the amendment filed June 5, 2015, beginning the date the amendment under 37 CFR 1.312 was filed, June 5, 2015, and ending on the issue date of the patent, July 7, 2015.

Overall PTA Calculation**Formula:**

"A" delay + "B" delay + "C" delay - Overlap - applicant delay = X

USPTO's Calculation:

$$638 + 435 + 0 - 0 - 62(29+33) = 1011$$

Patentee's Calculation

$$638 + 435 + 0 - 0 - 40 = 1033$$

Conclusion

The present REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT has been considered; however, the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, is DENIED.

Telephone inquiries specific to this decision should be directed to Attorney Advisor Derek Woods at (571) 272-3232.

Application/Control Number: 13/126,721
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