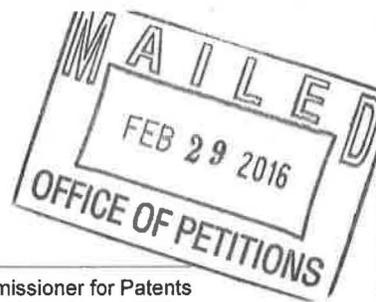




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In re Patent No. 9,104,662 :
Srihari et al. : DIRECTOR'S DECISION ON
Issue Date: August 11, 2015 : PATENT TERM ADJUSTMENT
Application No. 12/188,521 :
Filed: August 8, 2008 :
Attorney Docket No. OID-2008- :
288-01 :
Title: METHOD AND SYSTEM FOR :
IMPLEMENTING PARALLEL :
TRANSFORMATIONS OF RECORDS :

This is a response to the "Request for Reconsideration of Patent Term Adjustment" filed pursuant to 37 CFR 1.705(b) on October 9, 2015 requesting that the Office adjust the PTA from 953 days to 2284 days.

The request for 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 953 days.

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

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).

Deposit account no. 50-1105 will be charged the will be charged the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required. The fee set forth in 37 CFR 1.18(e) is required and will not be refunded.

Relevant Procedural History

On August 11, 2015, this patent issued with a patent term adjustment determination of 953 days. On October 9, 2015, patentee filed this request for redetermination of patent term adjustment, requesting that patentee be granted a patent term adjustment of 2,284 days.

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Decision

Patentee agrees with the Office's calculation of A delay of 1267 days, C delay of 0 day, 0 days of overlap and 447 days of applicant delay. Patentee disputes B delay calculated as 133 days.

Patentee contends that the USPTO failed to properly account for the delay under 35 U.S.C. §154(b)(1)(B), referred to as the "B delay." Patentee maintains that the B delay is 1464 days (not 133 days). With a B delay of 1464, Patentee states that the correct PTA is 2284 days. Patentee argues the Patent Office calculated a B delay of 133 days by measuring from the filing date (August 8, 2008) to the date of issuance (August 11, 2015). Since the RCE submitted on August 12, 2011 (after the 3 year period) does not suspend the calculation of the B delay, the delay should be 1464 days.

The Federal Circuit reviewed the statutory interpretation of 35 U.S.C. § 154(b)(1)(B)(i) and issued a decision regarding the effects of a Request for Continued Examination ("RCE") on "B" delay in *Novartis AG v. Lee*, 740 F.3d 593 (Fed. Cir. 2014). In *Novartis*, the Federal Circuit agreed with the Office that "no ["B" delay] adjustment time is available for any time in continued examination, even if the continued examination was initiated more than three calendar years after the application's filing." *Novartis*, 740 F.3d at 601. However, the *Novartis* court found that if the Office issues a notice of allowance after an RCE is filed, the period after the notice of allowance should not be excluded from the "B" delay period but should be counted as "B" delay. *Id.* at 602.

The B delay is calculated as follows: the application was filed on August 8, 2008 and the patent issued on August 11, 2015. Thus, the application was pending for 2560 days. During this period, applicant filed two RCEs the first on August 12, 2011 and the second on February 13, 2015. The Office mailed a single Notice of Allowance on April 3, 2015. Under 35 USC 154(b)(1)(B)(i), the time period consumed by continued examination ("RCE period") began on August 12, 2011 and ended on April 3, 2015 i.e., 1331 days. Subtracting the RCE period from the total number of days the application was pending results in $2560 - 1331 = 1229$ days. Thus, for purposes of "B" delay, the application was pending for $1229 - 1096$ [i.e., 3 years from the

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actual filing date] = 133 days beyond the three-year anniversary of the filing date.

Overall PTA Calculation

Formula:

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

USPTO's Calculation:

1267 + 133 + 0 - 0 - 447 = 953

Patentee's Calculation

1267 + 1464 + 0 - 0 - 447 = 2284

Conclusion

Patentee remains entitled to PTA of nine hundred fifty-three (953) days. Using the formula "A" delay + "B" delay + "C" delay - overlap - applicant delay = X, the amount of PTA is calculated as follows: 1267 + 133 + 0 - 0 - 447 = 953 days.

Telephone inquiries specific to this matter should be directed to Attorney Advisor Charlema Grant at (571) 272-3215.

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Office of the Deputy Commissioner
for Patent Examination Policy