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Inventors: Modi et al.	:	
Patent No. 9,133,388	:	FINAL AGENCY DECISION ON
Issue Date: September 15, 2015	:	REQUEST FOR RECONSIDERATION
Application No. 13/283,382	:	OF PATENT TERM ADJUSTMENT
Filing Date: October 27, 2011	:	
Attorney Docket No. QDV128US	:	

This is a decision on the request under 37 C.F.R. § 1.705 filed January 15, 2016, which requests the United States Patent and Trademark Office (“Office”) adjust the patent term adjustment (“PTA”) set forth on the patent from 112 days to 73 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 112 days on September 15, 2015. The instant request seeking an adjustment of 73 days was timely filed with a payment for a two-month extension of time on January 15, 2016.

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 82 days;
- (2) The period of delay under 35 U.S.C. § 154(b)(1)(B) (“B Delay”) is 217 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 187 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 112 days (82 days of A Delay + 217 days of B Delay + 0 days of C Delay - 0 days of Overlap - 187 days of Applicant Delay).

The request includes the following assertions:

- (1) The Office's calculations erroneously fail to include a 7-day period of Applicant Delay based on the submission of an information disclosure statement ("IDS") on April 23, 2014;
- (2) The Office's calculations erroneously fail to include a 32-day period of Applicant Delay under 37 C.F.R. § 1.704(d)(1) based on the submission of an information disclosure statement ("IDS") on June 22, 2015; and
- (3) The correct PTA is 73 (112 - 7 - 32) days.

The IDS Filed April 23, 2014

The following facts are relevant to the 7-day period of delay referenced in the request:

- (1) A reply to a notice of allowance in the form of a request for continued examination ("RCE") and an IDS was filed on April 16, 2014;
- (2) A second IDS was filed without a statement under 37 C.F.R. § 1.704(d) on April 23, 2014;
- (3) A third IDS was filed without a statement under 37 C.F.R. § 1.704(d) on May 12, 2014;
- (4) The Office entered a 24-day reduction in patent term adjustment for Applicant Delay based on the submission of the third IDS; and
- (5) The Office did not enter a separate reduction in patent term adjustment for Applicant Delay based on the submission of the second IDS.

The request asserts the submission of the second IDS warrants entry of a 7-day reduction in patent term adjustment for Applicant Delay.

The period of Applicant Delay resulting from the submission of the second IDS consists of the 7-day period beginning on the day after the date the reply was filed (April 17, 2014) and ending on the date the second IDS was filed (April 23, 2014).

The period of Applicant Delay resulting from the submission of the third IDS consists of the 26-day period beginning on the day after the date the reply was filed (April 17, 2014) and ending on the date the third IDS was filed (May 12, 2014).

The 7-day period of delay and the 26-day period of delay include 7 days of overlapping delay. Specifically, both periods of delay include the 7-day period beginning April 17, 2014, and ending on April 23, 2014.

The total reduction in patent term adjustment resulting from the submission of the second IDS and the third IDS is 26 days, which is the sum of 7 days of delay and 26 days of delay reduced by 7 days of overlap.

The Office entered a 26-day reduction in patent term adjustment for Applicant Delay based on the submission of the third IDS. In view of the Office's entry of a 26-day reduction in patent term adjustment based on the submission of the third IDS, entry of an additional 7-day reduction in patent term adjustment based on the submission of the second IDS is not warranted.

The IDS Filed June 22, 2015

The following facts are relevant to the alleged 32-day period of delay referenced in the request:

- (1) The Office issued a notice of allowance on April 29, 2015;
- (2) An IDS was filed without a statement under 37 C.F.R. § 1.704(d)(1) on June 22, 2015;
- (3) The Office issued a communication in response to the IDS on July 1, 2015.

The Office entered a reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) based on the submission of the IDS in the amount of 10 days, which is the number of days beginning on the date the IDS was filed (June 22, 2015) and ending on the date the Office issued a response to the IDS (July 1, 2015).

The request states the IDS was filed 32 days beyond the 30-day periods set forth in 37 C.F.R. § 1.704(d)(1). The request asserts the Office's calculation of Applicant Delay erroneously fails to include a 32-day reduction in patent term adjustment under 37 C.F.R. § 1.704(d)(1) based on the submission of the IDS.

37 C.F.R. § 1.704(d)(1) states,

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement:

- (i) Was first cited in any communication from a patent office in a counterpart foreign or international application or from the Office, and this communication was not received by any individual designated in Sec. 1.56(c) more than thirty days prior to the filing of the information disclosure statement; or

- (ii) Is a communication that was issued by a patent office in a counterpart foreign or international application or by the Office, and this communication was not received by any individual designated in Sec. 1.56(c) more than thirty days prior to the filing of the information disclosure statement.

The provisions of 37 C.F.R. § 1.704(d)(1) do not include any language indicating a failure to submit an IDS within the 30-day time limit set forth in 37 C.F.R. § 1.704(d)(1)(i) or the 30-day time limit set forth in 37 C.F.R. § 1.704(d)(1)(ii) will warrant entry of a reduction in patent term adjustment. Therefore, the failure to file the IDS in this case within one of the 30-day periods does not warrant entry of a reduction in patent term adjustment.

Conclusion

The request does not establish entry of an additional 7-day reduction in patent term adjustment based on the submission of the April 23, 2014 IDS is warranted.

The request does not establish entry of an additional 32-day reduction in patent term adjustment based on the failure to submit the June 22, 2015, within one of the 30-day time periods set forth in 37 C.F.R. § 1.704(d)(1) is warranted.

The correct period of Applicant Delay remains 187 days, and the correct PTA remains 112 days (82 days of A Delay + 217 days of B Delay + 0 days of C Delay - 0 days of Overlap - 187 days of Applicant Delay).

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

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