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QD VISION, INC.
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Inventors: Linton et al.	:	
Patent No. 9,134,459	:	FINAL AGENCY DECISION ON
Issue Date: September 15, 2015	:	REQUEST FOR RECONSIDERATION
Application No. 13/448,079	:	OF PATENT TERM ADJUSTMENT
Filing Date: April 16, 2012	:	
Attorney Docket No. QDV139US	:	

This is a decision on the "Application for Patent Term Adjustment Reconsideration ("Request") filed pursuant to 37 C.F.R. § 1.705 on 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 179 days to 109 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 179 days on September 15, 2015. The Request seeking an adjustment of 109 days was timely filed 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 249 days;
(2) The period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 67 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 137 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:

PTA = A Delay + B Delay + C Delay – Overlap – Applicant Delay

The patent sets forth a PTA of 179 days (249 days of A Delay + 67 days of B Delay + 0 days of C Delay - 0 days of Overlap - 137 days of Applicant Delay).

The Request asserts the Office incorrectly calculated the period of Applicant Delay, and as a result, incorrectly calculated the PTA set forth on the patent.

An information disclosure statement ("IDS-1") was filed February 14, 2015. An information disclosure statement ("IDS-2") was also filed on August 3, 2015.

The Request asserts the Office should have entered a 44-day reduction in patent term adjustment based on the submission of IDS-1 on a date 44 days beyond the 30-day period specified in 37 C.F.R. §§ 1.704(d)(1) and (d)(2) ("30-Day Period").

The Request asserts the Office should have entered a 26-day reduction in patent term adjustment based on the submission of IDS-2 on a date 26 days beyond the 30-Day Period.

37 C.F.R. § 1.704 identifies circumstances that will result reduction in patent term adjustment for Applicant Delay. The provisions of 37 C.F.R. § 1.704 do not provide for a reduction in patent term adjustment based on a failure to file an IDS within the 30-Day Period. Therefore, entry of reductions in patent term adjustment based on the submission of IDS-1 and IDS-2 beyond the 30-Day Period is not warranted.

Conclusion

In view of the prior discussion, the correct period of Applicant Delay is 137 days. Therefore, the correct PTA is 179 days as previously calculated by the Office.

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

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