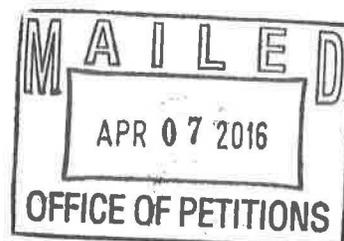




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In re Patent No. 9,209,173 :
Hebert : DIRECTOR'S DECISION ON
Issue Date: December 8, 2015 : PATENT TERM ADJUSTMENT
Application No. 13/415,384 :
Filed: March 8, 2012 :
Attorney Docket No. 125.288US02 :
Title: SINGLE DIE OUTPUT POWER :
STAGE USING TRENCH-GATE LOW- :
SIDE AND LD MOS HIGH-SIDE :
MOSFETS, STRUCTURE AND METHOD :
:

This is a response to the "Request for Reconsideration of Patent Term Adjustment" filed pursuant to 37 CFR 1.705(b) on February 11, 2016 requesting that the Office adjust the PTA from 181 days to 307 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 181 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).

Relevant Procedural History

On December 8, 2015, this patent issued with a patent term adjustment determination of 181 days. On February 11, 2016, patentee filed this request for redetermination of patent term adjustment with a one month extension of time, requesting that patentee be granted a patent term adjustment of 307 days.

Decision

Art Unit: OPET

Patentee agrees with the Office's calculation of A delay of 181 days, C delay of 0 day, 0 days of overlap and 0 days of applicant delay. Patentee disputes B delay calculated as 0 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 126 days (not 0 days). Patentee argues the time consumed by continued examination after a Request for Continued Examination does not include the time after a Notice of Allowance is mailed. With a B delay of 126, Patentee states that the correct PTA is 307 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 March 8, 2012 and the patent issued on December 8, 2015. Thus, the application was pending for 1371 days. During this period, applicant filed one RCE on March 4, 2014. The Office mailed one Notice of Allowance, on August 4, 2015. Under 35 USC 154(b)(1)(B)(i), the time period consumed by continued examination ("RCE period") began on March 4, 2014 and ended on August 4, 2015 i.e., 519 days. Subtracting the RCE period from the total number of days the application was pending results in $1371 - 519 = 852$ days. Thus, for purposes of "B" delay, the application was pending for $852 - 1096$ [i.e., 3 years from the actual filing date] = 0 days beyond the three-year anniversary of the filing date.

Overall PTA Calculation

Formula:

Art Unit: OPET

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

USPTO's Calculation:

181 + 0 + 0 - 0 - 0 = 181

Patentee's Calculation

181 + 126 + 0 - 0 - 0 = 307

Conclusion

Patentee remains entitled to PTA of one hundred eighty-one (181) days. Using the formula "A" delay + "B" delay + "C" delay - overlap - applicant delay = X, the amount of PTA is calculated as follows: 181 + 0 + 0 - 0 - 0 = 181 days.

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

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for Patent Examination Policy