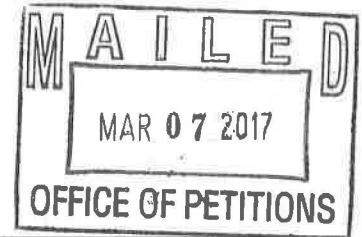




UNITED STATES PATENT AND TRADEMARK OFFICE



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In re Patent of Ball et al. :
Patent No. 9,349,130 : FINAL AGENCY DECISION ON
Issue Date: May 24, 2016 : REQUEST FOR RECONSIDERATION
Application No. 13/298,977 : OF PATENT TERM ADJUSTMENT
Filing Date: November 17, 2011 :
Attorney Docket No. ORA140076-US-NP :

This is a decision on the “REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT,” (“Request”) filed July 22, 2016, which requests the United States Patent and Trademark Office (“Office”) correct the patent term adjustment determination (“PTA”) set forth on the patent to indicate the term of the patent is extended or adjusted by one thousand two hundred thirteen (1213) days.

The request for reconsideration is granted to the extent that the determination has been reconsidered; however, the request for reconsideration of patent term adjustment (“PTA”) is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of eight hundred seventy-eight (878) days.

This decision is the Director’s decision on patentee’s request for reconsideration for the purposes of seeking judicial review under 35 U.S.C. § 154(b)(4).

Relevant Procedural History

The patent issued with a PTA determination of 878 days on May 24, 2016. The present Request seeking a PTA of 1213 days was timely filed on July 22, 2016.

Decision

The PTA 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 689 days;
- (2) The period of delay under 35 U.S.C. § 154(b)(1)(B) (“B Delay”) is 219 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

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- (5) The period of delay under 35 U.S.C. § 154(b)(2)(C) (“Applicant Delay”) is 30 days.

The PTA 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 set forth a PTA of 878 days (689 days of A Delay + 219 days of B Delay + 0 days of C Delay - 0 days of Overlap - 30 days of Applicant Delay).

The Request asserts the Office incorrectly calculated the period of B Delay. The Request asserts the correct period of B Delay is 554 days. The Request argues the correct PTA is 1213 days (689 days of A Delay + 554 days of B Delay + 0 days of C Delay - 0 days of Overlap - 30 days of Applicant Delay).

As will be discussed, the period of B Delay is 219 days. Therefore, the correct PTA is 878 days (689 days of A Delay + 219 days of B Delay + 0 days of C Delay - 0 days of Overlap - 30 days of Applicant Delay).

A Delay

The Request does not dispute the Office’s prior determination the period of A Delay is 689 days. The Office has recalculated the period of A Delay as part of the Office’s redetermination of the PTA and confirmed the period of A Delay is 689 days.

B Delay

The Request disputes the Office’s prior determination the period of B Delay is 219 days. The Office has recalculated the period of B Delay as part of the Office’s redetermination of the PTA and confirmed the period of B Delay is 219 days.

Pursuant to the *Novartis AG v. Lee*, 740 F.3d 593 (Fed. Cir. Jan. 15, 2014) decision, the Office has determined patentee is entitled to 219 days of “B” Delay. In this case, applicant filed the application on November 17, 2011, and the patent issued on May 24, 2016. Thus, the application was pending for 1651 days. During this time, applicant filed a RCE on February 20, 2015. The Office mailed a Notice of Allowance on January 20, 2016. Under 35 U.S.C. § 154(b)(1)(B)(i), the time period consumed by continued examination (“RCE period”) began on February 20, 2016, and ended on January 20, 2016, which amounts to 335 days. Subtracting the RCE period from the total number of days the application was pending results in 1316 days. Thus, for purposes of “B” delay, the application was pending for 219 days beyond the three-year anniversary of the filing date.

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C Delay

The Request does not dispute the Office's prior determination the period of C Delay is 0 days. The Office has recalculated the period of C Delay as part of the Office's redetermination of the PTA and confirmed the period of C Delay is 0 days.

Overlap

The Request does not dispute the Office's prior determination the number of days of Overlap is 0 days. The Office has recalculated the number of days of Overlap as part of the Office's redetermination of the PTA and confirmed the number of days of Overlap is 0 days.

Applicant Delay

The Request does not dispute the Office's prior determination the number of days of Applicant Delay is 30 days. The Office has recalculated the number of days of Applicant Delay as part of the Office's redetermination of the PTA and confirmed the number of days of Applicant Delay is 30 days.

Conclusion

The Request argues the correct PTA is 1213 days (689 days of A Delay + 554 days of B Delay + 0 days of C Delay - 0 days of Overlap - 30 days of Applicant Delay).

The petition fee has been charged to counsel's deposit account. No additional fees are due.

As previously discussed, the correct period of B Delay is 219 days. Therefore, the correct PTA is 878 days (689 days of A Delay + 219 days of B Delay + 0 days of C Delay - 0 days of Overlap - 30 days of Applicant Delay).

Telephone inquiries specific to this decision should be directed to Attorney Advisor Shirene Willis Brantley at (571) 272-3230.

/ROBERT CLARKE/

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for Patent Examination Policy - USPTO