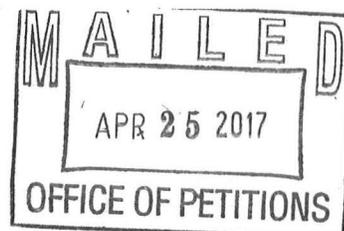




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In re Patent No. 9,379,336 : DECISION ON  
David Sisk : PATENT TERM ADJUSTMENT  
Issue Date: June 28, 2016 :  
Application No. 13/975,959 :  
Filing Date: August 26, 2013 :  
Attorney Docket No. 1958616.00023 :  
(F4338) :  
Title: COMPOUNDS FOR USE IN LIGHT :  
EMITTING DEVICES :

This is a response to patentee's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)" filed January 27, 2017, stating that an applicant delay of 28 days appears to be understated.

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 June 28, 2016, the Office determined that patentee was entitled to 320 days of PTA.

On January 27, 2017, patentee filed this "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," stating that an applicant delay of 28 days appears to be understated. This request was made timely by an accompanying petition for extension of time for response within the fifth month.

**DECISION**

Upon review, the Office finds that patentee remains entitled to three hundred twenty (320) days of PTA.

Art Unit: OPET

Patentee disagrees with the amount of PTA reduction due to applicant delay under 35 U.S.C. 154(b)(2)(C)(iii) and 37 CFR 1.704.

**ON APPLICANT DELAY**

The 28-day reduction for the filing of a response on February 8, 2016 in response to a non-final Office action mailed October 9, 2015 is correct. Patentee fails to consider that the three-month time period from the Office communication fell on a Saturday.

As stated in MPEP 2732, regarding calculation of applicant delay pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b):

If the last day of the three-month time period from the Office communication notifying the applicant of the rejection, objection, argument, or other request falls on a Saturday, Sunday, or federal holiday within the District of Columbia, then action, may be taken, or fee paid, on the next succeeding secular or business day without loss of any patent term adjustment under 37 CFR 1.704(b). See *ArQule v. Kappos*, 793 F.Supp2d 214 (D.D.C. 2011). For example, no reduction in patent term adjustment would occur if an applicant's three-month reply time period expires on a Saturday and the applicant files a reply that is received by the Office on the following Monday, which is not a federal holiday within the District of Columbia. In this case, any patent term adjustment would not be reduced under 37 CFR 1.704(b) because the reply was received on Monday, the next succeeding secular or business day after the expiration of the three-month reply time. If applicant files his reply on Tuesday, then any patent term adjustment for the patent issuing from the application would be reduced under 37 CFR 1.704(b) by one day.

In this instance, the three-month period expired on January 9, 2016, a Saturday. The patent term adjustment was properly reduced by 28 days, counting the number of days beginning on the day after the next succeeding business day after the expiration of the three-month reply time (November 12, 2016) and ending on the date of filing of the reply (February 8, 2016).

In view thereof, total applicant delay is 28 days.

Art Unit: OPET

**OVERALL PTA CALCULATION**

Formula:

"A" delay + "B" delay + "C" delay - Overlap - Applicant delay =  
X days of PTA

USPTO's Calculation:

348 + 0 + 0 - 0 - 28 = 320 days

Patentee's Calculation:

348 + 0 + 0 - 0 - 30 = 318 days

**CONCLUSION**

The patent term adjustment (PTA) remains three hundred twenty (320) days. Using the formula "A" delay + "B" delay + "C" delay - overlap - applicant delay = X, the amount of PTA is calculated as follows: 348 + 0 + 0 - 0 - 28 = 320 days.

As the patent issued with 320 days of PTA, no further action will be undertaken by the Office with respect to the patent term adjustment.

Telephone inquiries specific to this matter should be directed to Attorney Advisor, Nancy Johnson at (571) 272-3219.

/ROBERT CLARKE/  
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For Patent Examination Policy