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In re Patent No. 9,408,726 :
ROWE, Jr., et al. :
Issue Date: August 9, 2016 : DECISION ON PETITION
Application No. 14/341,430 :
Filed: July 25, 2014 :
Attorney Docket No. OWW-159 :

This is a decision on patentee's "PETITION REQUESTING RECONSIDERATION OF THE PATENT TERM ADJUSTMENT AFTER ISSUANCE OF THE PATENT" filed January 12, 2017, requesting that the Office adjust the patent term adjustment from 13 days to 14 days. The Office has reviewed the calculations and determined that the patent term adjustment of 13 days is correct.

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 August 9, 2016, this patent issued with a patent term adjustment determination of 13 days. On January 12, 2017, patentee timely filed this "PETITION REQUESTING RECONSIDERATION OF THE PATENT TERM ADJUSTMENT AFTER ISSUANCE OF THE PATENT" seeking an adjustment of the determination to 14 days.

Decision

Patentee agrees with the Office's calculation of "A" delay of 119 days, "B" delay of 0 days, "C" delay of 0 days and overlap of 0 days. At issue is the period of applicant delay.

ON APPLICANT DELAY

The Office has reviewed the disputed calculation of applicant delay and has determined that the period of reduction of 106 days for filing of drawings after mailing of the Notice of

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Allowance is correct. Patentee calculates the applicant delay as 105 days counting from Monday, August 9, 2016, the -Patentee Issue Date, counting backwards to Wednesday, April 26, 2016. This calculation is incorrect.

37 CFR 1.704(c)(10)¹ provides, in pertinent part, that:

.. Submission of an amendment under § 1.312 or other paper, other than a request for continued examination in compliance with § 1.114, after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months;

As stated in MPEP 2731,

When a period is indicated (in 37 CFR 1.703 or 1.704) as "beginning" on a particular day, that day is included in the period, in that such day is "day one" of the period and not "day zero." For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length.

Accordingly, in this instance, the correct calculation of applicant delay pursuant to 37 CFR 1.704(c)(10) is 106 days, counting the number of days beginning on April 26, 2016 (the undisputed date of filing of a paper after the mailing of the notice of allowance) and ending on August 9, 2016 (the undisputed date of issuance of the patent²).

¹ Paragraph (c)(10) was revised to add the language "other than a request for continued examination in compliance with § 1.114." See *Changes to Patent Term Adjustment in View of the Federal Circuit Decision in Novartis v. Lee*, 80 FR 1346, Jan. 9, 2015, effective Mar. 10, 2015.

² The Office has stated that "If the Office does not mail a response to the paper that triggered the delay under this provision and the patent issues in less than four months, then the applicant delay under this provision will end on the date of the patent issuance. The Office will treat the issuance of the

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In view thereof, total applicant delay remains 106 days.

Overall PTA Calculation

Formula:

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

USPTO's Calculation:

119 + 0 + 0 - 0 - 106 = 13

Patentee's Calculation

119 + 0 + 0 - 0 - 105 = 14

Conclusion

The patent term adjustment (PTA) remains **thirteen (13)** days of PTA. Using the formula "A" delay + "B" delay + "C" delay - Overlap - Applicant delay = X, the amount of PTA is calculated as follows: 119 + 0 + 0 - 0 - 106 = 13 days.

As the patent issued with 13 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.

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Office of the Deputy Commissioner
for Patent Examination Policy

patent as the response to the paper that triggered the delay." Patentee does not dispute the treatment of the issuance of the patent on August 9, 2016 as the response to the paper filed April 26, 2016.