



UNITED STATES PATENT AND TRADEMARK OFFICE



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In re Patent No. 9,421,223 : DECISION
Glaser, et al. : ON REQUEST FOR
Issue Date: 08/23/2016 : RECONSIDERATION OF
Application No. 14/622,131 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 02/13/2015 :
Docket No.: 050623.01870 :

This is a decision on the patent term adjustment in response to the “APPLICATION FOR PATENT TERM ADJUSTMENT”, filed October 20, 2016, requesting that the patent term adjustment determination for the above-identified patent be changed from 0 days to 5 days.

The request is **DENIED**.

This decision on patent term adjustment is the Director's decision on the applicant's request for reconsideration within the meaning of 35 U.S.C. 154(b)(4) that triggers a 180-day period for applicant disagreeing with the Office redetermination to commence a civil action in the District Court for the Eastern District of Virginia.

On August 23, 2016, the above-identified application matured into U.S. Patent No. 9,421,223. The patent issued with a PTA of 0 days. The present request for redetermination of the patent term adjustment was timely filed within two months of the issue date.

The present petition

The petition asserts that the patentee should not have been assessed Applicant delay of 36 days under 37 CFR 1.704(c)(10) for filing a Rule 312 Amendment on July 19, 2016, subsequent to the Notice of Allowance mailed April 22, 2016. Patentee argues that the patentee should have only been assessed Applicant delay of 4 days, because the Office indicated in PAIR on July 22, 2016 that the Amendment was “OK TO ENTER”.

Patentee’s argument has been considered, but is not persuasive. 37 CFR 1.704(c)(10) states that a circumstance that will constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application is:

Submission of an amendment under § 1.312 or other paper 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 (emphasis added).

The Office is not persuaded by Patentee's argument that the fact PAIR indicated the Amendment was "OK TO ENTER" on July 22, 2016 should have stopped the clock. 37 CFR 1.704(c)(10) expressly states that the reduction runs until the earlier of the mailing date of the Office action or notice in response to any paper filed after a Notice of Allowance or four months. In view thereof, the assessment of 36 days of Applicant delay under 37 CFR 1.704(c)(10) was proper.

Conclusion

Patentee is entitled to PTA of zero (0) days. Using the formula "A" delay + "B" delay + "C" delay - overlap - applicant delay = X, the amount of PTA is calculated as following: $9 + 0 + 0 - 0 - 36 = 0$ days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to Attorney Advisor Cliff Congo at (571) 272-3207.

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