



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

FINNEGAN HENDERSON FARABOW  
GARRETT & DUNNER LLP  
901 NEW YORK AVENUE NW  
WASHINGTON DC 20001-4413

**MAILED**

**SEP 27 2010**

**OFFICE OF PETITIONS**

In re Patent No. 6,972,322 : ON PETITION  
Fleer, et al. : UNDER 37 CFR 1.183  
Issue Date: 12/06/2005 : and  
Application No. 10/237,866 : ON APPLICATION FOR  
Filed: 09/10/2002 : PATENT TERM ADJUSTMENT  
Attorney Docket No. 06832.0004-06 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT (37 C.F.R. 1.705(d))" and the "MEMORANDUM IN SUPPORT OF PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR (37 C.F.R. 1.181(a)(3)) AND/OR PETITION FOR SUSPENSION OF 37 C.F.R. 1.705(d) (37 C.F.R. 1.183)", filed March 5, 2010, requesting suspension of the time limit for consideration of an application for patent term adjustment ("PTA"). The response is properly treated as a request for reconsideration of petition under 37 CFR 1.183.

This petition is **DENIED**.

Your petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 6,972,322 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A), 75 Fed. Reg. 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept any requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's

PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

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



Anthony Knight  
Director  
Office of Petitions