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OFFICE OF PETITIONS

In re Application of :
Nelson A. Berger :
Application No. 07/484,872 :
Patent No. 5,038,969 : DECISION ON SECOND RENEWED
Filed: February 26, 1990 : PETITION PURSUANT TO
Issue Date: August 13, 1991 : 37 C.F.R. § 1.378(E)
Title: LID DISPENSER :

This is a decision on the second renewed petition pursuant to 37 C.F.R. § 1.378(e), filed on January 28, 2005, requesting reconsideration of a prior decision pursuant to 37 C.F.R. § 1.378(b), which refused to accept the delayed payment of maintenance fees for the above-referenced patent.

This second renewed petition pursuant to 37 C.F.R. § 1.378(b) is **DENIED.**¹

There will be no further reconsideration of this matter by this Office.

Background And Procedural History

The patent issued on August 13, 1991. The grace period for paying the 7½-year maintenance fee provided in 37 C.F.R.

¹ This decision may be regarded as a final agency action within the meaning of 5 U.S.C. § 704 for the purposes of seeking judicial review. See MPEP § 1002.02.

§ 1.362(e) expired at midnight on August 13, 1999, with no payment received. Accordingly, the patent expired on August 13, 1999.

Office records show that an original petition pursuant to 37 C.F.R. § 1.378(b) was filed on September 17, 2004, which was dismissed via the mailing of a decision on December 2, 2004.

A renewed petition pursuant to 37 C.F.R. § 1.378(e) was filed on March 23, 2005, which was dismissed via the mailing of a decision on December 7, 2005.

The paper file contains a copy of the decision on the original petition, mailed on December 2, 2004 and a copy of a letter entitled "renewed petition under 37 CFR 1.378(b)" that was received on August 31, 2006.

The paper file does not contain the following four documents:

1. A copy of the original petition pursuant to 37 C.F.R. § 1.378(b) was filed on September 17, 2004.
2. A copy of the renewed petition pursuant to 37 C.F.R. § 1.378(e) was filed on March 23, 2005.
3. A copy of the decision on the renewed petition pursuant to 37 C.F.R. § 1.378(e), mailed on December 7, 2005.
4. A copy of the second renewed petition pursuant to 37 C.F.R. § 1.378(e), filed on January 28, 2005.

A request for more information was mailed on December 16, 2008. The communication indicated, in pertinent part:

If on response to this inquiry, the delayed payment of the maintenance fee is not accepted, then the maintenance fees are subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for responding to this inquiry, if none is filed.

As such, Petitioner has one month to respond to this communication. After one month, if no response is received, the Office will deny this petition and refund the \$700 surcharge, the \$1610 maintenance fee payment, and the \$1045 maintenance fee payment submitted on September 7, 2004.

Alternatively, if Petitioner would prefer to have these payments refunded to him before the expiration of this two-month time

period, Petitioner should place this request in writing and indicate that he seeks to have this petition denied (emphasis added).

Petitioner will note that once a petition is denied, revival (sic) of this patent is no longer possible.

Request for More Information, pages 2-3.

On November 25, 2008, Petitioner submitted a response to this request for more information via facsimile transmission, indicating:

"I am asking you to 'deny' my patent reinstatement petition...please 'deny' application # 0484872 (sic) regarding patent # 5038969."

Pursuant to this request, this second renewed petition has been denied, and the \$700 surcharge, the \$1610 maintenance fee payment, and the \$1045 maintenance fee payment (each submitted concurrently on September 7, 2004) will be refunded to Petitioner.

This patent will not be reinstated.

Conclusion

It follows that the entire period of delay will not be regarded as unavoidable within the meaning of 35 U.S.C. § 41(c)(1) and 37 C.F.R. § 1.378(b).

Since this patent will not be reinstated, Petitioner is entitled to a refund of \$700 surcharge, the \$1610 maintenance fee payment, and the \$1045 maintenance fee payment submitted on September 7, 2004. A treasury check will be issued in due course.

Telephone inquiries should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

The application will be forwarded to Files Repository.



Charles Pearson
Director
Office of Petitions