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OFFICE OF PETITIONS

In re Application of :
Michael A. Kelly :
Application No. 08/550,164 : RESPONSE TO REQUEST FOR
Patent No. 5,583,336 : RECONSIDERATION
Filed: October 30, 1995 :
Issue December 10, 1996 :
Attorney Docket Number: P-1899 :
Title: HIGH THROUGHPUT ELECTRON :
ENERGY ANALYZER :

This decision is in response to the letter of February 14, 2007, which is properly treated as a request for reconsideration of the denial of the renewed petition filed March 8, 2006, pursuant to 37 C.F.R. §1.378(e)¹, which refused to accept the delayed payment of a maintenance fee for the above-referenced patent.

The patent issued December 10, 1996. The grace period for paying the 7½ year maintenance fee provided in 37 C.F.R.

1 Any petition to accept an unavoidably delayed payment of a maintenance fee filed under 37 C.F.R. §1.378(b) must include:

- (1) The required maintenance fee set forth in 37 C.F.R. §1.20 (e) through (g);
- (2) The surcharge set forth in 37 C.F.R. §1.20(i)(1), and;
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

§1.362(e) expired at midnight on December 10, 2004, with no payment received. Accordingly, the patent expired on December 10, 2004 at midnight.

The original petition was submitted on November 7, 2005, and was dismissed via the mailing of a decision on February 6, 2006. A renewed petition was submitted on March 8, 2006, and a Request for More Information was mailed on June 21, 2006. A response was received on June 29, 2006, and a denial was mailed on September 25, 2006.

Pursuant to the present submission, it is clear that Applicant failed to receive a copy of this denial. Consequently, a copy of the denial has been included with this decision.

In a final agency action, within the meaning of 35 U.S.C. § 704, mailed September 25, 2006, the petition under § 1.378(e) and the included request to accept the delayed payment of the maintenance fee was DENIED. It was concluded for reasons, set forth in the decision, that Applicant had failed to establish that the entire period of delay was unavoidable. Office records show that the payments of the maintenance fee and the associated surcharge have been refunded to Applicant.

There will be no further consideration of this matter by the Office.

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



Charles Pearson
Director
Office of Petitions
United States Patent and Trademark Office

Encl. Courtesy copy of the decision which denied Petitioner's petition pursuant to 37 C.F.R. §1.378(e), mailed September 25, 2006.