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In re Application of :
Edwin F. Phelps, Jr. :
Application No. 09/436,274 :
Patent No. 6,322,651 : DECISION ON RENEWED PETITION
Filed: November 8, 1999 : PURSUANT TO 37 C.F.R.
Issue Date: November 27, 2001 : § 1.378(E)
Attorney Docket Number: :
373.6676USU :
Title: A METHOD FOR :
CONTINUOUSLY PRODUCING EXPANDED :
THERMOFORMABLE MATERIALS :

This is a decision on the renewed petition pursuant to 37 C.F.R. § 1.378(e) to revive the above-identified application, filed on May 15, 2008.

The request to accept the delayed payment of the maintenance fee is **DENIED**¹.

The patent issued on November 27, 2001. The grace period for paying the 3½-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 November 27, 2005, with no payment received. Accordingly, the patent expired on November 27, 2005 at midnight.

With the original petition, Petitioner submitted the surcharge associated with a petition to accept late payment of a maintenance fee as unavoidable, along with the 3½-year maintenance fee, and a statement of facts.

Any petition to accept an unavoidably delayed payment of a maintenance fee filed pursuant to 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.

With this renewed petition pursuant to Rule 1.378(e), Petitioner has met the first and second requirements of Rule 1.378(b). The third requirement of Rule 1.378(b) has not been met.

The standard

35 U.S.C. §41(c)(1) states:

The Director may accept the payment of any maintenance fee... after the six-month grace period if the delay² is shown to the satisfaction of the Director to have been unavoidable. § 1.378(b)(3) is at issue in this case. Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 37 C.F.R. § 1.137(a). This is a very stringent standard.

² This delay includes the entire period between the due date for the fee and the filing of a grantable petition pursuant to 37 C.F.R. § 1.378(b).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business³.

In addition, decisions are made on a "case-by-case basis, taking all the facts and circumstances into account." Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable⁴."

The burden of showing the cause of the delay is on the person seeking to revive the application⁵.

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action⁶.

The portions of the MPEP relevant to the facts as presented

MPEP § 2504 sets forth, *in toto*:

37 CFR 1.362. Time for payment of maintenance fees.

(a) Maintenance fees as set forth in §§ 1.20(e) through (g) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for any plant patents or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

(c) The application filing dates for purposes of payment of maintenance fees are as follows:

(1) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

3 In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

4 Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

5 Id.

6 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

(2) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date of the application.

(3) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.

(4) For a reissue application, including a continuing reissue application claiming the benefit of a reissue application under 35 U.S.C. 120, the United States filing date of the original non-reissue application on which the patent reissued is based.

(5) For an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

(d) Maintenance fees may be paid in patents without surcharge during the periods extending respectively from:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20(h) during the respective grace periods after:

(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee.

(2) 7 years and 6 months and through the day of the 8th anniversary of the grant for the second maintenance fee, and

(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

(f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee and any necessary surcharge may be paid under paragraph (d) or paragraph (e) respectively on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.

(g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

(h) The periods specified in §§ 1.362 (d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.

Maintenance fees are required to be paid on all patents based on applications filed on or after December 12, 1980, except for plant patents and design patents. Furthermore, maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees. Application filing dates for purposes of determining whether a patent is subject to payment of maintenance fees are as follows:

(A) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

(B) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119(a)-(d), the actual United States filing date of the application.

(C) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.

(D) For a reissue application, including a continuing reissue application claiming the benefit of a reissue application under 35 U.S.C. 120, the United States filing date of the original nonreissue application on which the patent reissued is based.

(E) For an international application that has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

MPEP § 2506 sets forth, *in toto*:

37 CFR 1.362(d) sets forth the time periods when the maintenance fees for a utility patent can be paid without surcharge. Those periods, referred to generally as the "window period," are the 6-month periods preceding each due date. The "due dates" are defined in 35 U.S.C. 41(b). The window periods are (1) 3 years to 3 1/2 years after the date of issue for the first maintenance fee payment, (2) 7 years to 7 1/2 years after the date of issue for the second maintenance fee payment, and (3) 11 years to 11 1/2 years after the date of issue for the third and final maintenance fee payment. A maintenance fee paid on the last day of a window period can be paid without surcharge. The last day of a window period is the same day of the month the patent was granted 3 years and 6 months, 7 years and 6 months, or 11 years and 6 months after grant of the patent. 37 CFR 1.362(e) sets forth the time periods when the maintenance fees for a utility patent can be paid with surcharge. Those periods, referred to generally as the "grace period," are the 6-month periods immediately following each due date. The grace periods are (1) 3 1/2 years and through the day of the 4th anniversary of the grant of the patent, (2) 7 1/2 years and through the day of the 8th anniversary of the grant of the patent and, (3) 11 1/2 years and through the day of the 12th anniversary of the grant of the patent. A maintenance fee may be paid with the surcharge on the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant to prevent the patent from expiring. Maintenance fees for a reissue patent are due based upon the schedule established for the original utility patent. The filing of a request for ex parte or inter partes reexamination and/or the publication of a reexamination certificate does not alter the schedule of maintenance fee payments of the original patent. If the day for paying a maintenance fee falls on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the maintenance fee may be paid on the next succeeding day that is not a Saturday, Sunday, or Federal holiday. For example, if the window period for paying a maintenance fee without a surcharge ended on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the maintenance fee can be paid without surcharge on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia. Likewise, if the grace period for paying a maintenance fee with a surcharge ended on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the maintenance fee can be paid with surcharge on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia. In the latter situation, the failure to pay the

maintenance fee and surcharge on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia will result in the patent expiring on a date (4, 8, or 12 years after the date of grant) earlier than the last date on which the maintenance fee and surcharge could be paid. This situation results from the provisions of 35 U.S.C. 21, but those provisions do not extend the expiration date of the patent if the maintenance fee and any required surcharge are not paid when required. For example, if the grace period for paying a maintenance fee with a surcharge ended on a Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g., Monday, but the patent will have expired at midnight on Saturday if the maintenance fee and surcharge were not paid on the following Monday. Therefore, if the maintenance fee and any applicable surcharge are not paid, the patent will expire as of the end of the grace period as listed above. A patent that expires for failure of payment will expire on the anniversary date the patent was granted in the 4th, 8th, or 12th year after the grant.

MPEP § 2515 sets forth, *in pertinent part*:

If a patent expires because the maintenance fee and any necessary surcharge have not been paid in the manner required by 37 C.F.R. 1.366, the patentee could proceed under 37 C.F.R. 1.378 (see MPEP § 2590), if appropriate, or could file a petition under 37 C.F.R. 1.377 (see MPEP § 2580) within the period set therein seeking to have the maintenance fee accepted as timely even though not all of the required identifying data was present prior to expiration of the grace period

MPEP § 2575 sets forth, *in pertinent part*:

Under the statutes and the regulations, the Office has no duty to notify patentees when their maintenance fees are due. It is the responsibility of the patentee to ensure that the maintenance fees are paid to prevent expiration of the patent. The Office will, however, provide some notices as reminders that maintenance fees are due, but the notices, errors in the notices or in their delivery, or the lack or tardiness of notices will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. The notices provided by the Office are courtesies in nature and intended to aid patentees. The Office's provision of notices in no way shifts the burden of monitoring the time for paying maintenance fees on patents from the patentee to the Office.

Docketing error

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay. Such a showing should identify the specific error, the individual who made the error, and the business routine in place for performing the action which resulted in the error. The showing must establish that the individual who erred was sufficiently trained and experienced with regard to the function and routine

for its performance that reliance upon such employee represented the exercise of due care. The showing should include information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (1) the error was the cause of the delay at issue⁷,
- (2) a business routine was in place for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, and;
- (3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

See MPEP 711.03(c)(III)(C)(2).

An adequate showing should include (when relevant):

- (1) statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them;
- (2) a thorough explanation of the docketing and call-up system in use;
- (3) identification of the type of records kept;
- (4) identification of the persons responsible for the maintenance of the system;
- (5) copies of mail ledger, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing;
- (6) an indication as to why the system failed in this instance, and;
- (7) information regarding the training provided to the personnel responsible for the docketing error, degree of

⁷ Petitioner must identify the error which caused the delay. If the specific error cannot be identified, the petitioner must identify any and all possible causes and prove that any of them, if they were the true cause, constitute unavoidable delay. A full and complete discussion for each possible error must be presented. A full and complete discussion of each possible error must be presented. Petitioner is reminded that he has the burden of proof.

supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

Application of the standard to the current facts and circumstances

Petitioner's explanation of the delay has been considered, and it has been determined that it fails to meet the standard for acceptance of a late payment of the maintenance fee and surcharge.

The period for paying the 3½-year maintenance fee without the surcharge extended from November 27, 2004 to May 27, 2005 and for paying with the surcharge from May 28, 2005 to November 27, 2005. Thus, the delay in paying the 3½-year maintenance fee extended from November 27, 2005 at midnight to the filing of this renewed petition on May 15, 2008.

An original petition pursuant to 37 C.F.R. § 1.378(b) was filed on January 28, 2008, and was dismissed via the mailing of a decision on March 12, 2008.

The relevant facts, as provided by Petitioner on original petition, are summarized below:

- Petitioner is Panterra Engineered Plastics, Inc. (PEP), which is the current assignee⁸.
- This patent issued on November 27, 2001, and was assigned to the Phelps Engineered Plastics Corporation (PEPC)⁹.
- On April 17, 2003, PEPC sold this patent to Innovative Materials and Technology, Inc. (IM & T). IM & T retained the law firm of Alston & Bird, LLP (Alston & Bird) to oversee this patent, and at that time, the Fee Address was changed to that of Alston & Bird¹⁰.
- Several months after acquiring this patent, IM & T went into bankruptcy, and this patent was transferred from IM & T to Saugatuck Land Trust Company (Saugatuck)¹¹. Saugatuck is the

8 Original petition, page 2.

9 Id.

10 Id.

11 Original petition at 3.

"predecessor-in-interest" to PEP¹². As such, Petitioner obtained the rights to this patent out of bankruptcy proceedings.

- Petitioner has asserted that "Attorney Stephen Geissler, acting on behalf of Saugatuck and Petitioner, retained the Corporation Service Company ("CSC"), New York, New York, which recorded the assignment of the '651 patent to Petitioner¹³."
- Petitioner has asserted that the Maintenance Fee Reminder was mailed to Alston & Bird. Petitioner has asserted "Alston & Bird continued to receive notices about maintenance fees for the '651 patent from the USPTO but provided none of the information to Petitioner¹⁴."

The decision on the original petition was dismissed for the following three deficiencies:

- (1) It was not shown that Petitioner had any steps in place for monitoring the timely payment of the maintenance fees for this patent, and instead relied on the Office to provide notice of the same. However, the Office has no duty to notify patentees when their maintenance fees are due. The failure of a patentee to receive a reminder notice cannot establish that the failure to timely submit the maintenance fee was unavoidable.
- (2) It was not made clear what prevented Petitioner from making an inquiry with the Office and determining whether the maintenance fee had been paid, and it was further unclear why Petitioner was not aware that the maintenance fee had not been submitted in a timely manner, when this information was publicly available.
- (3) Petitioner did not reveal the date and the manner in which Petitioner became aware of the expiration of the patent.

With this renewed petition, Petitioner has established the date and the manner in which Petitioner became aware of the expiration of the patent. The deficiencies with this renewed petition will be addressed below.

¹² Id.

¹³ Id.

¹⁴ Original petition at 4.

First, regarding the matter of Petitioner's failure to seek out publicly available information to determine whether the maintenance fee had been paid, it does not appear that this point has been addressed on renewed petition.

Second, with this renewed petition, Petitioner has further reiterated the argument that the maintenance fee reminder was not received, and that another law firm failed to forward this notice to Petitioner¹⁵. This argument is not persuasive. As was set forth on page 8 of the decision on the original petition, the failure of a patentee to receive a reminder notice cannot establish that the failure to timely submit the maintenance fee was unavoidable.

Moreover, with this renewed petition, Petitioner has further asserted

...the Letters Patent remained with IM&T or Alston & Bird, and was never transferred to the Bankruptcy Trustee or Petitioner, hence neither had any notice of the requirement to pay the maintenance fee.

Renewed petition, page 5.

Notice of the requirement to submit maintenance fees is well publicized and is provided in 37 C.F.R. § 1.362 and MPEP § 2504, both reproduced above. As such, the assertion that Petitioner had no notice of the need to submit maintenance fees does not appear to be accurate. Moreover, it is not clear what prevented Petitioner from ordering a copy of the Letters Patent from the Office.

Third, with this renewed petition, Petitioner has failed to establish that any steps were in place for monitoring the timely submission of maintenance fees.

Petitioner has asserted:

The responsibility for monitoring the maintenance fee due dates remained with Computer Patent Annuities, Ltd ("CPA")...CPA had properly docketed the maintenance fee...on behalf of Ed Phelps.

Emphases added. Renewed petition, page 7.

15 See renewed petition, page 3-6 and 9-10.

The emphasized text establishes that CPA entered into a contractual agreement to track the maintenance fee payments not with the Applicant, but rather with a predecessor in interest (Ed Phelps).

Fourth, *assuming arguendo* that Petitioner had established that steps were in place for monitoring the timely submission of the maintenance fee, the issue of determining why the maintenance fee was not timely submitted becomes relevant. On original petition, it does not appear that any mention was made of a contractual agreement with CPA. With this renewed petition, Petitioner has asserted that subsequent to the issuance of a Re-examination Certificate, an unnamed "docket entry clerk" at CPA erroneously modified the "annuity base date" from the date of issuance of the original patent to the issue date of the Re-examination certificate^{16, 17}.

In short, with this renewed petition, Petitioner has now asserted that a docketing error resulted in the failure to timely submit the required maintenance fee.

Petitioner has established the error that was the cause of the delay at issue. It is noted that Petitioner has included a print-out of a document that is purported to be a record from CPA, however Petitioner has not included a statement from an employee of CPA.

It is further noted that the MPEP clearly sets forth each of the requirements for successfully establishing that the failure to submit a maintenance fee was unavoidable due to a docketing error.

Petitioner has not established that CPA has in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance.

Petitioner has not established that the docket entry clerk was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

Petitioner has not provided a statement from the docket entry clerk, or any other employee of CPA, and as such, Petitioner has not provided statements by all persons with direct knowledge of

¹⁶ Renewed petition, page 7.

¹⁷ Maintenance fees for a reissue patent are due based upon the schedule established for the original utility patent.

the circumstances surrounding the delay, setting forth the facts as they know them.

Petitioner has not provided a thorough explanation of the docketing and call-up system in use.

Petitioner has not identified the type of records kept.

Petitioner has not identified the persons responsible for the maintenance of the system, in that the identity of the data entry clerk who "erroneously over-wrote"¹⁸ the patent issue date with the date on which the Re-examination Certificate was issued.

Petitioner has not provided an indication as to why the data entry clerk would have made this error.

Finally, Petitioner has not provided information regarding the training provided to the data entry clerk, the degree of supervision of his/her work, examples of other work functions carried out by this individual, and checks on his/her work which were used to assure proper execution of assigned tasks.

Conclusion

In summary, this petition is denied since:

- Petitioner has not addressed the point raised in the decision on the original petition that an inquiry to the Office would have determined that the maintenance fee had not been paid;
- the failure of a patentee to receive a reminder notice cannot establish that the failure to timely submit the maintenance fee was unavoidable;
- Petitioner has failed to establish that any steps were in place for monitoring the timely submission of maintenance fees;
- Petitioner has not established that CPA has in place a business routine that could reasonably be relied upon;
- Petitioner has not established that the data entry clerk was sufficiently trained and experienced such that reliance upon him/her represented the exercise of due care;
- Petitioner has not provided a statement from all persons with direct knowledge of the circumstances surrounding the delay;

¹⁸ Renewed petition, page 7.

- Petitioner has not provided a thorough explanation of the docketing and call-up system in use;
- Petitioner has not identified the type of records kept;
- Petitioner has not identified the persons responsible for the maintenance of the system;
- Petitioner has not provided an indication as to why the system failed in this instance, and
- Petitioner has not provided information regarding the training provided to the data entry clerk, the degree of supervision of his/her work, examples of other work functions carried out by this individual, and checks on his/her work which were used to assure proper execution of assigned tasks.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at <http://www.uspto.gov/web/forms/sb0123.pdf>.

A blank fee address form may be found at <http://www.uspto.gov/web/forms/sb0047.pdf>.

The requirements of 37 C.F.R. § 1.378(b)(3) have not been satisfied. The burden of establishing that the entire period of delay was unavoidable rests with Petitioner, and this showing has not been made. Consequently, the Office cannot accept the delayed payment of the 3½ and the 7½-year maintenance fees, and this petition cannot be granted.

The prior decision that refused to accept, pursuant to 37 C.F.R. § 1.378(b), the delayed payment of a maintenance fee for the above-identified patent, has been reconsidered. For the above stated reasons, the delay in this case cannot 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 the surcharges and both the 3½ and the 7½-year maintenance fees, but not the \$400 fee associated with the filing of a renewed petition pursuant to 37 C.F.R. § 1.378(e). These fees will be refunded to Petitioner's Deposit Account in due course.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanowski at (571) 272-3225¹⁹.



Charles Pearson
Director
Office of Petitions

cc: PAUL D GREELEY ESQ
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¹⁹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.