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**MAR 17 2008**

**OFFICE OF PETITIONS**

In re Patent No. 5862529 :  
Issued: 01/26/1999 :  
Application No. 08/590296 : ON PETITION  
Filed: 01/23/1996 :  
Atty Docket No. 0003366USO/3174 :

This is a decision on the "PETITION TO INVOKE SUPERVISORY AUTHORITY OF THE DIRECTOR UNDER 37 C.F.R. §1.181(a)(3)" filed on December 21, 2007, requesting that the Director accept the delayed payment of a maintenance fee the above-referenced patent.

The petition is **DENIED**.<sup>1</sup>

BACKGROUND

1. On January 26, 1999, the subject patent issued.
2. On December 8, 2006, a petition under 37 CFR 1.378(b) was filed, seeking acceptance of late payment of the first maintenance fee.
3. On March 12, 2007, a decision dismissing the petition was mailed.
4. On May 11, 2007, a request for reconsideration under 37 CFR 1.378(e) was filed.

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

5. On August 10, 2007, a decision denying the request for reconsideration under 37 CFR 1.378(e) was mailed.

STATUTE AND REGULATION

37 CFR 1.181 states, in pertinent part:

Petition to the Director

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances.

37 CFR 1.378 states, in pertinent part:

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(f). **After the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.**

(emphasis added)

OPINION

Petitioner requests that the Director review the previous decision under 37 CFR 1.378(e), mailed on August 10, 2007,

denying petitioner's request to accept the unavoidably delayed payment of the maintenance fee.

The petition is inappropriate, and must be denied, however, because consideration of the subject petition would in contrary to 37 CFR 1.378(e), which states that after the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.<sup>2</sup> Simply put, 37 CFR 1.181(a) does not provide the Director authority to further reconsider the decision on the petition for reconsideration under 37 CFR 1.378(e).

#### CONCLUSION

The petition under 37 CFR 1.181 for supervisory review is denied as inappropriate because the 37 CFR 1.378(e) expressly precludes further consideration of the matter by the Director.

As stated in 37 CFR 1.378(e), no further reconsideration or review of this matter will be undertaken.

As the petition was not necessitated by an error on the part of the Office, the fee submitted therewith will not be refunded.

The patent file will be returned to Files Repository.

Telephone inquiries should be directed to Senior Petitions Attorney Douglas I. Wood at 571-272-3231.



John J. Love  
Deputy Commissioner for Patent Examination Policy

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<sup>2</sup> Petitioner should also note that the Decision On Petition mailed on August 10, 2007, states that "As stated in 37 CFR 1.378(e), no further reconsideration or review of this matter will be undertaken." Lastly, footnote 2 of the decision mailed on August 10, 2007, states that "This decision may be regarded as a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02."