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In re Application of : **OFFICE OF PETITIONS**
Takuya Henmi :
Application No.10/921,172 : **DECISION ON PETITION**
Filed: August 19, 2004 :
Attorney Docket No. 4850-0103PUS1 :

This is a decision on the Renewed Petition Under 37 CFR 1.181, To Withdraw The Holding Of Abandonment, filed June 1, 2007.

The Petition is **DENIED**¹.

BACKGROUND

The instant application was filed on August 19, 2004.

On December 16, 2005 two notices were sent to applicant. The first was a Notice of Allowability and the second was a Notice of Allowance and Issue Fee Due. The Notice of Allowability indicates the examiner's final disposition of the application and the Notice of Allowance and Issue Fee Due sets the Issue Fee and a period for reply. The Notice of Allowability indicated that formal drawings must be filed and set a three-month period for reply.

The issue fee was timely filed on March 8, 2006; however, corrected drawings were not filed. On May 1, 2006 a Notice of Abandonment was mailed noting applicant's failure to provide the corrected drawings. On May 12, 2006, a petition under 37 CFR 1.181 to withdraw the holding of abandonment was filed. On July 27, 2006 a petition decision dismissing the May 12, 2006 petition was mailed. On September 1, 2006 a renewed petition was filed. On April 18, 2007 a petition decision dismissing the September 1, 2006 petition was mailed. On June 1, 2007 the instant petition was filed.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

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

STATUTE, REGULATION, AND EXAMINING PROCEDURE

37 CFR 1.2 states:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

37 CFR 1.135(b) states:

Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

OPINION

Petitioner requests that the holding of abandonment indicated in the Notice of Abandonment mailed May 1, 2006 be withdrawn.

Petitioner was notified in the Notice of Allowability mailed December 16, 2005 that corrected drawings were required (section 5 of the Notice of Allowability). Petitioner responded to the Notice of Allowance by timely submitting the issue fee but did not respond to the Notice of Allowability. The response was considered incomplete due to the lack of corrected drawings and the application went abandoned.

Petitioner argues that there were, in fact, no drawing corrections needed, there was no Notice of Draftperson's Patent Drawing Review (PTO-948) attached to the Notice of Allowability. Petitioner further states that upon receipt of the Notice of Allowability they contacted the examiner of record concerning the drawing requirements. Petitioner states that the examiner indicated the drawings were acceptable and that the examiner would be mailing a supplemental Notice of Allowability indicating no drawing corrections were needed. Petitioner indicates that the only properly required response to both Notice of Allowability and the Notice of Allowance was the issue fee.

The Notice of Allowability and the Notice of Allowance clearly indicated that the issue fee and corrected drawings were required within the statutory period for reply of three (3) months. While applicant did contact the examiner by phone concerning the drawing requirement and was told a supplemental Notice of Allowability would be forthcoming from the examiner this was not the proper procedure to be followed on applicant's part. All business with the Patent and Trademark Office should be transacted in writing (37 CFR 1.2). Upon receipt of the Notice of

6842.



Charles Pearson
Director, Office of Petitions