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In re Application of .
Jean-Luc Bonnet et al. : DECISION ON
Application No. 08/674,261 . REQUEST FOR
Filed: September 17, 1996 . RECONSIDERATION
Attorney Docket No 8707-2025

This is a decision on the request for reconsideration filed March 28, 1997, requesting reconsideration of the Decision mailed February 5, 1997, in the above-identified application and again requesting that the application be accorded a filing date of July 1, 1996.

The request for reconsideration has been granted-in-part to the extent that reconsideration has been given and dismissed-in-part to the extent that the request for reversal is dismissed.

The application was deposited on July 1, 1996. However, on August 30, 1996, Initial Patent Examination Division mailed a "Notice Of Incomplete Application" requiring a specification in compliance with 35 U.S.C. 112 and any drawings required by 35 U.S.C. 113 and stating that the filing date would be the date of receipt of the omitted specification and drawings.

In response, on September 17, 1996, applicants filed a specification, 5 sheets of drawings and a petition requesting the July 1, 1996 filing date based on an allegation that a specification and 5 sheets of drawings were deposited in Express Mail service pursuant to 37 CFR 1.10 on July 1, 1996. However, the petition was dismissed in the Decision mailed February 5,

1997, because the evidence submitted to establish applicants' entitlement to a filing date of July 1, 1996, was insufficient

The present request for reconsideration again argues that a specification and 5 sheets of drawings were deposited in Express Mail on July 1, 1996. In support, the request is accompanied by a declaration of Robert M. Isackson, a registered practitioner

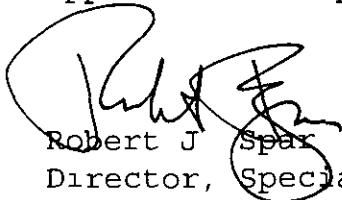
In his declaration, Isackson states that he specifically recalls checking the application papers for completeness on July 1, 1996, before returning the complete application papers to a temporary secretary for making copies. However, it is clear that Mr. Isackson has no present recall that he checked the application papers for completeness after the copies were made and before the papers were sealed in the Express Mail envelope, e g., Mr. Isackson states in ¶ 7, "I firmly believe that . . . I checked both the order and contents of the material placed in the express mail envelope" and in ¶ 8, "I firmly believe I followed my usual practice "

All the evidence present in the file has been carefully considered, but is not persuasive of applicants' entitlement to a July 1, 1996 filing date

In order to be accorded the July 1, 1996 filing date, petitioners must prove by a preponderance of the evidence that the application papers deposited on July 1, 1996, included a specification and 5 sheets of drawings. The evidence in the official file includes the original application papers removed from the Express Mail envelope which was mailed on July 1, 1996. The original papers located in the official file include an application transmittal letter, an unsigned declaration naming the inventors and an information disclosure statement. The official file does not include a specification or 5 sheets of drawings filed on July 1, 1996. Thus, the official file shows that a specification and drawings were not received with the application papers deposited in Express Mail on July 1, 1996. The application file maintained by the Patent and Trademark Office (PTO) is an official government record prepared and maintained by disinterested PTO employees as a part of their customary and usual duties

On the other hand, petitioners rely on the Isackson declaration to establish that the specification and 5 sheets of drawings were deposit in Express Mail on July 1, 1996. The Isackson declaration filed on March 28, 1997, was signed almost 9 months after the application was filed. Clearly, the Isackson declaration does not have more probative value than the official government record of what was actual received in the Express Mail envelope deposited on July 1, 1996.

The application is being returned to Examining Group 3300 with the presently accorded filing date of September 17, 1996, to await applicants' response to the Office action mailed April 28, 1997.



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