



SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Patent No. 7,574,372 :
Issued: August 11, 2009 : DECISION ON REQUEST
Application No. 10/031,405 : FOR RECONSIDERATION
Filed: January 18, 2002 : OF PATENT TERM ADJUSTMENT
Attorney Docket No. A7736

This is a decision on the RENEWED REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed on August 18, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 605 days to 913 days.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See, MPEP 1002.02.

The patent term adjustment indicated in the previous decision mailed July 20, 2010 is properly indicated.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on November 23, 2005, three years and one day after the date the national stage commenced under 35 U.S.C. 371(f), and ended on August 7, 2007, the day before the RCE was filed, the B delay is 623 (not 931) days. See 35 U.S.C. 154(B).

Applicant argues that "the B delay started January 19, 2005, not November 23, 2005. The B delay ended on the day prior to the date on which the RCE was filed (August 7, 2007). Therefore, the B delay is 931 days, not 623 days. Applicant argues further that they "expressly requested an entry into the national stage on January 18, 2002 under 35 U.S.C. § 371(f) by submitting a transmittal letter expressly notifying the Office that the filing was "for the purpose of entering the National Stage," paying the applicable fees, and complying with the applicable requirements under 35 U.S.C. § 371(c)." The evidence presented included a copy of a transmittal letter to show that entry into the National Stage was "expressly" requested.

Applicants are advised that the transmittal filed with the application, which states ..."for the purpose of entering the National Stage," is not sufficient for treatment as a request for early examination pursuant to 35 U.S.C. § 371(f). An express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371 (b) and PCT Articles 22 and 39(1) was not indicated in the transmittal and as a result, examination began three years and one day after the date the national stage commenced (November 22, 20002) under 35 U.S.C. 371(f).

As such, the patent term adjustment is 605 days (458 "A delay days" + 623 "B delay days" - 476 days applicant delay) not 914 days.

As indicated in the previous decision, the Office will *sua sponte* issue a certificate of correction.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred five (605)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.


Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,574,372 B2
DATED : August 11, 2009
INVENTOR(S) : Frank Among

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (464) days

Delete the phrase "by 464 days" and insert – by 605 days--