



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of)
TASHIRO)
Application Number: 11/703,164)
Filed: February 7, 2007)
For: STORAGE APPARATUS, STORAGE SYSTEM, AND)
DATA READ METHOD)
ATTORNEY DOCKET NO. TMIA.0072)

Art Unit 2442
Examiner
John Moore Jain
Macilwinen

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO REVIVE UNINTENTIONALLY ABANDONED
APPLICATION PURSUANT TO 37 C.F.R. §1.137 (b) and (c)**

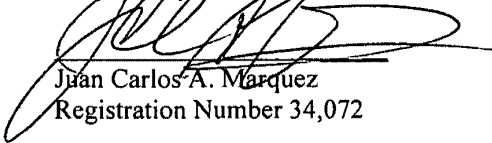
Sir:

Applicant hereby files a Petition to Revive for the above-captioned application, which had been abandoned by the Applicant filing a Notice of Express Abandonment which was filed in error on March 22, 2010. The Notice of Abandonment from the U.S. Patent and Trademark Office was mailed on April 1, 2010.

The submission of the Notice of Express Abandonment and thus the subsequent abandonment of the above-referenced application was unintentional. Applicant is hereby submitting the requisite fee under 37 C.F.R. §1.17(m)

Applicant having fulfilled all of the requirements of 37 C.F.R. §1.137(c), respectfully requests early notification that the application has been revived.

Respectfully submitted,


Juan Carlos A. Marquez
Registration Number 34,072

STITES & HARBISON PLLC
1199 North Fairfax Street, Suite 900
Alexandria, VA 22314
Telephone: (703) 739-4900
Facsimile: (703) 739-9577
Customer No. 38327
April 23, 2010

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UNITED STATES PATENT AND TRADEMARK OFFICE

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JUAN CARLOS A. MARQUEZ
C/O STITES & HARBISON PLLC
1199 NORTH FAIRFAX STREET
SUITE 900
ALEXANDRIA VA 22314-1437

MAILED

JUL 14 2010

OFFICE OF PETITIONS

In re Application of :
Tashiro, Naomitsu :
Application No. 11/703,164 : **ON PETITION**
Filed: February 7, 2007 :
Attorney Docket No. TMIA.0072 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 23, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned in response to the petition under 37 CFR 1.138(c) filed March 22, 2010 requesting express abandonment of the above-identified application. The express abandonment was recognized on April 1, 2010. Accordingly, the above-identified application became abandoned on April 1, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(II)(C) and (D).

This petition lacks item (3). The showing of record raises questions as to whether the abandonment of this application was unintentional within the meaning of 35 USC 41(a)(7) and 37 CFR 1.137(b).

Petitioner asserts that the Notice of Express Abandonment filed March 22, 2010 was filed in error.

MPEP 711.01 states:

The applicant (acquiesced in by an assignee of record), or the attorney/agent of record, if any, can sign an express abandonment. It is imperative that the attorney or agent of record exercise every precaution in ascertaining that the abandonment of the application is in accordance with the desires and best interests of the applicant prior to signing a letter of express abandonment of a

patent application. Moreover, special care should be taken to ensure that the appropriate application is correctly identified in the letter of abandonment.

A thorough review of USPTO records shows that: (1) petitioner filed in the above-identified application, on March 22, 2010, a petition for express abandonment under 37 CFR 1.138(c) and (2) the Office recognized the express abandonment in the above-identified application on April 1, 2010.

Petitioner has filed no evidence, which would lead one to reasonably believe that this application was unintentionally abandoned. In this regard, petitioner has failed to submit any evidence of the circumstances surrounding the abandonment of this application. No specific explanation has been given as to how and why a miscommunication regarding this application occurred.

35 U.S.C. § 41(a)(7) applies to the situation of the above-identified application (i.e., to the revival of an abandoned application), however, it precludes the Director from reviving the above-identified application. This is because § 41(a)(7) only authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of \$500 or a fee of \$50 would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application, as this application was, is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Commissioner to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where there is a question whether the delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). See *In re Application of G*, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989). Here, in view of Express Abandonment of record, there is a question whether the entire delay was unintentional.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.


Liana Walsh
Petitions Examiner
Office of Petitions



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of)	
TASHIRO)	
Application Number: 11/703,164)	Art Unit 2442
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For: STORAGE APPARATUS, STORAGE SYSTEM, AND)	Examiner:
DATA READ METHOD)	John Moore Jain Macilwinen
Attorney Docket No. TMIA.0072)	

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Alexandria, VA 22313-1450

**RENEWED PETITION TO REVIVE UNINTENTIONALLY
ABANDONED APPLICATION PURSUANT TO 37 C.F.R. §1.137(b)-(c)**

Sir:

In response to the Decision on Petition dated July 14, 2010, Applicant is hereby submitting a Renewed Petition to Revive for the above-captioned application, which had been abandoned by the Applicant filing a Notice of Express Abandonment which was filed in error on March 22, 2010. The Notice of Abandonment from the U.S. Patent and Trademark Office was mailed on April 1, 2010.

The entire circumstances in the submission of the Notice of Express Abandonment and thus the subsequent abandonment of the above-referenced application was unintentional. The unintentional abandonment of the above-referenced application was the result of a miscommunication with the Applicant. Specifically, the undersigned representative received on March 19, 2010, instructions to file a request for abandonment immediately (see Exhibit 1). Thus, in accordance with those instructions, the undersigned representative submitted on March 22, 2010, a Notice of Express Abandonment which was then reported to the Applicant (see Exhibit 2).

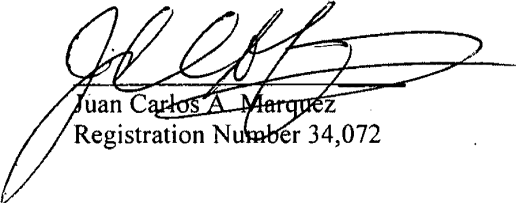
Thereafter, the undersigned representative received via email on March 24, 2010, further instructions indicating that the abandonment of the application was in error (see Exhibit

3), and that the Notice of Express Abandonment should be withdrawn or canceled. The undersigned representative contacted the Office to inquire about the procedure to withdraw the Notice, and was informed that such Notice after being filed cannot be withdrawn. Rather, the undersigned representative was advised to wait until the Notice of Abandonment was issued, and then to submit a Petition to Revive under 37 C.F.R. §1.137. After the Notice of Abandonment was received by mail on April 5, 2010 (see Exhibit 4), the undersigned representative submitted the Petition to Revive on April 23, 2010 (see Exhibit 5).

In view of the above discussion and the attached documents in support of the this Petition, Applicant will submit that sufficient evidence has been presented to support the propriety of the Petition to Revive and that all of the requirements of 37 C.F.R. §1.137(b)-(c) have been fulfilled. Applicant submitted the requisite fee under 37 C.F.R. §1.17(m) with the initially-filed Petition to Revive on April 23, 2010.

Applicant having fulfilled all the above-noted requirements respectfully requests early notification that the application has been revived.

Respectfully submitted,



Juan Carlos A. Marquez
Registration Number 34,072

STITES & HARBISON PLLC
1199 North Fairfax Street, Suite 900
Alexandria, VA 22314
Telephone: (703) 739-4900
Facsimile: (703) 739-9577
Customer No. 38327

September 3, 2010

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