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SEP 25 2006

OFFICE OF PETITIONS

In re Application of :
MADHAVJI A UNDE :
Application No. 09/239,095 :
Patent No. 6,127,643 :
Filed: January 27, 1999 : DECISION ON RENEWED PETITION
Issue Date: October 3, 2000 : UNDER 37 C.F.R. §1.378(E)
Title: IMPROVEMNT IN WELDING :
PROCESS :

This is a decision on the renewed petition filed March 7, 2006, under 37 C.F.R. §1.378(e), requesting reconsideration of a prior decision pursuant to 37 C.F.R. §1.378(b)¹, which refused to accept the delayed payment of a maintenance fee for the above-referenced patent. On July 19, 2006, Petitioner submitted supplemental material.

¹ Any petition to accept an unavoidably delayed payment of a maintenance fee filed under 37 C.F.R. §1.378(b) must include:

- (1) The required maintenance fee set forth in 37 C.F.R. §1.20 (e) through (g);
- (2) The surcharge set forth in 37 C.F.R. §1.20(i)(1), and;
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

The request to accept the delayed payment of the maintenance fee is **DENIED**².

BACKGROUND

The patent issued on October 3, 2000. The grace period for paying the 3½ year maintenance fee provided in 37 C.F.R 1.362(e) expired at midnight on October 3, 2004, with no payment received. Accordingly, the patent expired on October 3, 2004.

The original petition was submitted on March 15, 2005, and was dismissed via the mailing of a decision on November 19, 2005, for failure to submit the surcharge associated with the filing of this petition. On January 25, 2006, Petitioner submitted a renewed petition, and included neither the \$400 fee associated with the filing of the same or the \$700 surcharge. A letter was mailed to Petitioner, informing him of the need to submit the appropriate documentation in order to substantiate his allegation of medical incapacitation and financial difficulty. The notice further indicated that his continued failure to submit the necessary fees appeared to evince intentional delay.

With the present petition pursuant to 37 C.F.R. §1.378(e), Petitioner has submitted the maintenance fee and the surcharge associated with the filing of a petition under this section of the C.F.R.

ANALYSIS

Petition fee requirement

On the final page of his submission of March 15, 2006, Petitioner sets forth the following:

If you still think I am at fault and I should deposit \$700.00, I am authorizing USPTO to charge the said fees to my Visa card...and request grant of time to submit documentation as stated in the letter of Attorney Shanoski, I will defend my innocence on additional grounds - (I) this inventor is living on income below the poverty level determined by IRA and (ii) further explanation of medical reasons.

² This decision may be regarded as a final agency action within the meaning of 5 U.S.C. §704 for the purposes of seeking judicial review. See MPEP 1002.02.

As such, Petitioner has authorized the Office to charge the \$700 surcharge to his credit card, but has not authorized the Office to charge the fee associated with the filing of the renewed petition.

The surcharge associated with the filing of a renewed petition for the acceptance of an unavoidably delayed submission of a maintenance fee is \$400. Petitioner has not included the surcharge with this petition. As such, his submission cannot be processed, and consideration of the merits of the petition before receipt of this surcharge would be premature.

It is noted in passing that even if this surcharge had been submitted, Petitioner would still not have met the requirements of 37 C.F.R. §1.378(b)(3). Regarding his offer to file the required documentation in order to substantiate his allegation of medical incapacitation and financial difficulty at some point in the future, Petitioner will note the text which appears at the bottom of the second page of the letter mailed February 6, 2006: "Thereafter there will be no further reconsideration of this matter" (emphasis included).

Petitioner, after receiving notice that no further reconsideration would be accorded to him, failed to submit the petition fee and requested another opportunity to provide the documentation which he knew was required. It appears that Petitioner has failed to provide these items in an effort to stall for more time.

The letter of February 6, 2006 set forth

If Petitioner wishes to assert either medical incapacitation or financial difficulty, he will need to provide a **complete and thorough** (emphasis included) showing of his medical and financial condition during the entire period between October 3, 2004 and the date on which this renewed petition is filed. Petitioner should include a listing of income, expenses, tax return statements, bank records, assets, credit and obligations which made the delay in payment of the maintenance fee, the surcharge, and the fee associated with the filing of a renewed petition unavoidable. Petitioner should provide copies of all documents or records pertaining to each of these so as to confirm the financial difficulty.

Petitioner has submitted a one page bill from Blue Cross. In lieu of submitting the documentation which he knew would be required, he merely proffered an offer to do so at a later time.

As such, Petitioner has intentionally delayed the revival of this patent, and it is clear that he will not be able to establish that the entire period of delay was unavoidable, pursuant to 37 C.F.R. §1.378(b)(3).

CONCLUSION

The prior decision which refused to accept, under 37 C.F.R. §1.378(b), the delayed payment of a maintenance fee for the above-identified patent, has been reconsidered. For the above stated reasons, the delay in this case cannot be regarded as unavoidable within the meaning of 35 U.S.C. §41(c)(1) and 37 C.F.R. §1.378(b).

Since this patent will not be reinstated, Petitioner is entitled to a refund of the surcharge and the maintenance fee he submitted with this renewed petition, less the \$400 fee associated with the filing of a renewed petition under 37 C.F.R. §1.378(e). A treasury check will be issued in due course.

Telephone inquiries should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

The application will be forwarded to Files Repository.

THERE WILL BE NO FURTHER RECONSIDERATION OF THIS MATTER BY THIS OFFICE.



Charles Pearson
Director
Office of Petitions
United States Patent and Trademark Office