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OFFICE OF PETITIONS

In re Application of	:	
Doers, et al.	:	DENIAL
Application No. 11/158,416	:	
Filed: June 22, 2005	:	
Attorney Docket No. 25234-9002-02	:	
For: INTERNAL COMBUSTION ENGINE	:	

This is a decision on the reconsideration petition captioned under 37 CFR 1.182, filed October 26, 2005, requesting that the application be assigned an earlier filing date of August 3, 2004 to achieve copendency with previously filed application no. 10/350,748, which issued as U.S. Patent No. 6,769,383 on August 3, 2004.

The contents of the previous decision on petition, mailed August 22, 2005, are incorporated herein.

The petition under 37 CFR 1.182 is **DENIED**.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. The terms of 37 CFR 1.137(d) do not apply to this decision.

The above-identified application's filing date is currently June 22, 2005. Petitioners desire a filing date of August 3, 2004 in order to obtain copendency with application no. 10/350,748 – Pat. No. 6,769,383, issued August 3, 2004.

Petitioners are reminded that the statutory basis for 37 CFR 1.53(b) is 35 U.S.C. 111. 35 U.S.C. 111(a)(4) states in pertinent part, "...The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office."

¹ Petitioners are advised that this is a final agency action. See MPEP § 1002.02.

It is undisputed that the above-identified application satisfied the requirements for accordation of a filing date on June 22, 2005. Petitioners have clearly stated that the failure to file a continuing application prior to the patenting of 10/350,748 was due to unintentional prosecutorial error.

An application exists in three states: pending, abandoned or patented. The provisions of 35 U.S.C. 41(a)(7) and 37 CFR 1.137 are immaterial to the issue at hand, because they pertain to revival of abandoned applications, not "revival" of issued patents in order to achieve copendency with subsequently filed applications.

The only specific remedy applicable to petitioners' situation would be under the statutory scheme set forth in 35 U.S.C. 251. Rules 182 and 183 cannot be used to circumvent the statute pertaining to correction of an issued patent.

Petitioners should not infer that any reissue patent would be granted.

The decision of August 22, 2005 been reconsidered, but for the reasons given in the previous decision and noted above, the request under 37 CFR 1.182 to accord an August 2, 2004 filing date to application no. 11/158,416 is **denied**. The filing date of application no.11/158,416 remains June 22, 2005.

The application is being forwarded to Technology Center G.A.U. 3747 for examination in due course.

Telephone inquiries pertaining to this decision may be directed to Petitions Attorney Shirene Willis Brantley at (571) 272-3230.

A handwritten signature in black ink, appearing to read "Charles Pearson", with a long horizontal flourish extending to the right.

Charles Pearson
Director, Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy