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OFFICE OF PETITIONS

In re Application of	:	
Nemoto et al.	:	
Application No. 10/069,732	:	DECISION ON RENEWED
Patent No. 7,688,685	:	PETITION PURSUANT TO
Filed: February 26, 2002	:	37 C.F.R. § 1.181
Issued: March 30, 2010	:	
Attorney Docket No.: ASA-1074	:	
Title: MAGNETO-OPTICAL	:	
RECORDING DEVICE CAPABLE OF	:	
CHANGING THE SHAPES OF HEATING	:	
AREAS	:	

This is a decision on the renewed petition filed March 24, 2011, requesting that the above-identified patent be accorded a filing date of February 28, 2002.

The renewed petition pursuant to 37 C.F.R. § 1.181 is **DENIED**.¹

No further reconsideration or review of this matter will be undertaken.

BACKGROUND

The application was deposited on February 26, 2002, and a notice of acceptance of application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 was mailed on May 2, 2002, indicating that the date of receipt of all 35 U.S.C. 371(c)(1), (c)(2), and (c)(4), and all 35 U.S.C. requirements, was February 26, 2002.

¹ 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.

An original petition pursuant to 37 C.F.R. § 1.181 was filed on October 8, 2010, where Petitioner asserted that this application was deposited on February 28, 2002. Petitioner included a date-stamped postcard receipt, which contains a date-stamp from the Office of Initial Patent Examination dated "Feb 28 2002" along with the following pre-printed text: "[f]iled: February 28, 2002."

The original petition was dismissed via the mailing of a decision on January 24, 2011.

APPLICABLE PORTION OF THE MPEP

37 C.F.R. § 1.181, states, *in pertinent part*:

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

Emphases added.

ANALYSIS

With this renewed petition, Petitioner asserts that "Patentee did not realize the error in the Patent Office records until the patent issued."² It is noted that Petitioner does not dispute the fact that the application was prosecuted using February 26, 2002 as the filing date.

² Renewed petition, page 5.

It is further noted that Applicant placed a filing date of "February 28, 2002" on the papers which were included on initial deposit, received a "notice of acceptance of application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" which contains a date of "02/26/2002," placed a filing date of "February 28, 2002" on the response to the restriction requirement which was submitted on April 26, 2005, and then placed a filing date of February 26, 2002 on further submissions to the Office.³ As such, it is clear that "Applicant was aware of and accepted the filing date of the application, now U.S. Patent No. 7,688,685, as February 26, 2002," as indicated on page 2 of the decision on the original petition.

The decision on the original petition further indicated that "the patent issued more than six months before the filing of the present petition, and the public has a right to rely upon the filing date of the application as shown in Office records since February 26, 2002."⁴ With this renewed petition, nothing has changed: 37 C.F.R. § 1.181(f) explicitly requires any petition pursuant to Rule 1.181 to be filed within two months of the action from which relief is requested. It is noted that the action being complained against is the according of the filing date which occurred in February 28, 2002. Accordingly, any petition requesting that the filing date be changed should have been filed April 28, 2002. The present petition is untimely.

Finally, the decision on the original petition indicated "Applicant does not assert that the validity of the patent is affected by the filing date of February 26, 2002."⁵ This point has not been addressed on renewed petition.

CONCLUSION

In view of the foregoing, and no objection having been received within two months of the date of the patent having issued with the filing date of February 26, 2002 via the submission of a timely petition pursuant to Rule 1.181, the renewed petition requesting a change in Office records to reflect the filing date of the present patent to February 28, 2002 is denied as untimely.

³ See the submissions of November 4, 2005, April 6, 2006, November 13, 2006, July 13, 2007, December 4, 2007, June 18, 2008, January 26, 2009, February 25, 2009, and September 8, 2009.

⁴ Decision on original petition, page 2.

⁵ Id.

The filing date for the application from which this patent issued remains February 26, 2002.

Petitioner may wish to seek either reexamination or reissue as a means of correcting the filing date. Petitioner will note that these avenues are cited merely as a courtesy to Petitioner, and this reference should not be misinterpreted as a commentary on the likelihood of whether or not either avenue would be successful.

Telephone inquiries **regarding this decision** should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.⁶


Anthony Knight
Director
Office of Petitions

⁶ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.