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DEC 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,495,109 : ON PETITION  
Sun et al. : UNDER 37 CFR 1.183, 37 CFR  
Issue Date: February 24, 2009 : 1.182 and  
Application No. 11/032,955 : ON APPLICATION FOR  
Filed: January 11, 2005 : PATENT TERM ADJUSTMENT  
Attorney Docket No. 085742-0495 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF DISMISSAL OF PETITION UNDER 37 C.F.R. § 1.183 AND 37 CFR §1.182 AND OF DISMISSAL OF REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR. 1.705 (d)", filed July 22, 2010, requesting reconsideration on the merits and revision of the patent term in accordance with Wyeth. This is also a decision on the request for certificate of correction filed on August 23, 2010.

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 petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,495,109 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 Fed. Reg. 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept any requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a

PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

The present renewed petition under 37 CFR 1.183 and 37 CFR 1.182 is granted to the extent that the decision of June 8, 2009 has been reconsidered; however, the renewed petition requesting suspension of the time limit for consideration of an application for patent term adjustment under 37 CFR 1.183 and 37 CFR 1.182 is **DENIED**. Accordingly, patentees' request for a certificate of correction filed on August 23, 2010 is **DENIED**.

Telephone inquiries specific to this matter should be directed to Charlema Grant, Attorney, Office of Petitions, at (571) 272-3215.



Anthony Knight  
Director  
Office of Petitions