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In re Application of: FEHER, KAMILO
Serial No.: 11/766,766
Filed: June 21, 2007
Title: **RFID WIRELESS 2G, 3G, 4G INTERNET
SYSTEMS INCLUDING WI-FI, WI-MAX,
OFDM, CDMA, TDMA, GSM**

OFFICE OF PETITIONS
DECISION ON PETITION TO
MAKE SPECIAL FOR NEW
APPLICATION UNDER 37
C.F.R. § 1.102 & M.P.E.P. §
708.02

This is a decision in response to the submission denominated "PETITION TO REVIEW BY THE OFFICE OF PETITIONS RECONSIDERATION REQUEST OF DECISION TO MAKE SPECIAL-ACCELERATED EXAMINATION" received on July 25, 2007. The paper is being treated as a petition under 37 CFR 1.181 to review the decision mailed July 18, 2007, denying accelerated examination status for the instant application. The signatory of the July 18, 2007 decision denying accelerated examination status possessed delegated authority to act on behalf of the Technology Center Director in such matters. Therefore, the petition received on July 25, 2007 is a request for review of a decision of a Technology Center Director. Accordingly, the Office of the Deputy Commissioner for Patent Examination Policy has decision-making authority over Applicant's petition. M.P.E.P. § 1002.02(b)(15).

The petition under 37 CFR 1.181 to reconsider the denial of accelerated examination status for application No. 11/766,766 and to grant such status under 37 CFR 1.102 is **DENIED**.

Background

The above-identified application was filed under 35 U.S.C. § 111(a) on June 21, 2007 accompanied by a petition under 37 CFR 1.102(d) to make the application special under the accelerated examination program. See 71 Fed. Reg. 36,323.

On June 25, 2007, the United States Patent and Trademark Office (USPTO) issued a Notice to File Corrected Application Papers. The Notice required Applicant to submit replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121(d). The notice identified the deficiency in that the application includes photographs of the invention subject matter that appear capable of illustration and which are illegible after scanning (see 37 CFR 1.84(b)). See Figure(s) 8.

On June 28, 2007, Applicant responded to the notice to file corrected application papers by submitting a replacement sheet for the drawing figure (Figure 8) deemed defective in the Notice.

On July 18, 2007, a decision was mailed by the USPTO denying Applicant's petition to make special. The decision outlined the requirements for accelerated examination pursuant to the "Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination" (71 Fed Reg. 36323), and cited the existence of an accurate and properly issued Notice to File Corrected Application Papers" as the justification for denying special examination status to the application.

On July 25, 2007, Applicant submitted the instant Petition under 37 CFR 1.181 requesting reconsideration of the July 18, 2007 denial of the petition to make special.

Applicable Regulations and Notice Sections

37 CFR § 1.84 Standards for drawings.

(b) Photographs .—

(1) Black and white . Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (e.g., immunological, western, Southern, and northern), autoradiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.

(2) Color photographs . Color photographs will be accepted in utility and design patent applications if the conditions for accepting color drawings and black and white photographs have been satisfied. See paragraphs (a)(2) and (b)(1) of this section.

37 CFR § 1.102 Advancement of Examination

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Director to expedite the business of the Office, or upon filing of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a showing which, in the opinion of the Director, will justify so advancing it.

Change to Practice for Petitions in Patent Applications to Make Special and for Accelerated Examination”, 71 Fed. Reg. 36,323 (Jun. 26, 2006)

The relevant portions of the Accelerated Examination Notice are as follows:

Part I. Requirements for Petitions to Make Special under Accelerated Examination:

A new application may be granted accelerated examination status under the following conditions:

(4) The application, at the time of filing, must be complete under 37 CFR 1.51 and in condition for examination.

...

Part VIII: More Information:

...

Conditions for Examination: The application must be in condition for examination at the time of filing. This means the application must include the following:

...

(F) Drawings in compliance with 37 CFR 1.84;

...

The petition to make special will be dismissed if the application omits an item or includes a paper that causes the Office of Initial Patent Examination (OIPE) to mail a notice during the formality review (e.g. a notice of incomplete application, a notice to file missing parts, **a notice to file corrected application papers**, notice of omitted items, or notice of informal application). *The opportunity to perfect a petition (Part II) does not apply to applications that are not in condition for examination of filing.* (71 Fed. Reg. 36,323 at 36,327)

Decision

Petitioner requests reconsideration of the denial of the petition based upon petitioner's assertions that (a) the reason the application for special accelerated examination was denied was that Figure, 8 of the application was deemed ineligible for scanning although the same Figure 8, was accepted and scanned by the USPTO for other previously filed applications, and that (b) Applicant in accordance with USPTO request, promptly submitted a replacement Figure 8. Applicant requests reconsideration of the USPTO denial to have the current application prosecuted as special accelerated examination.

Under this program, the application must be, “at the time of filing” complete under 37 CFR 1.51 and in “condition for examination”. These requirements include submission of drawings fully in compliance with 37 CFR 1.84. As the goal of this program is to advance prosecution of an application to final disposition, as defined by the Office, within 12 months from the date of

filing, all applications must meet the requirements of the policy in order to meet the reduced examination time goals. The existence of a "Notice to File Corrected Application Papers" was the evidentiary basis for concluding the application was not in condition for examination. The issuance of the "Notice to File Corrected Application Papers" was proper¹. Petitioner has responded and corrected the errors. Therefore, Petitioner implicitly acknowledged that the application was not in condition for examination at the time of filing.

Petitioner's argument that such a drawing (Figure 8) "was accepted and scanned by the USPTO for other previous applications" is not persuasive. Attached to this decision is a copy of figure 8 as submitted.² A review of the drawing applicant submitted clearly indicates that Figure 8 is a photograph of an instrument display, and is not of a sufficient quality for reproduction.³ In response to the Notice, Applicant submitted a corrected drawing, in which the photograph was replaced with an illustration. Applicant did not resubmit the original (or provide a paper copy of the original) with argument as to its adequacy. Furthermore, even if similar drawings filed in other applications were not objected to, that would not be persuasive inasmuch as the rules which regulate the filing of any application are fixed. The policy which regulates accelerated examination is well published. Petitioner should assume full application of the policy and rules in every application filed. Further, what transpires in other applications is of no bearing or influence in the instant application.

Petitioner is reminded that the requirements include submission of drawings fully in compliance with 37 CFR 1.84 (as stated above). Each applicant must meet the requirements of the policy.

It is further noted that petitions to make special based upon applicant's health or age, as outlined in MPEP 708.02 III and IV respectively, are available to petitioner should the requirements of those programs be met.

CONCLUSION

For the above-stated reasons, the petition under 37 CFR 1.181 to reconsider a dismissal to make special application No. 11/766,766 is **DENIED**. Therefore, the USPTO will examine the above-identified application in accordance with standard examination procedures.

This decision may be viewed as final agency action. See MPEP 1002.02.

¹ Note that, when such a Notice is mailed by OIPE the application remains in pre-examination status and is not forwarded to the TC for processing. Decisions on petitions for Accelerated Examination do not wait for the application to be forwarded to the TC, in order to promptly apprise the applicant whether such status will be afforded.


² This sheet was printed from the PDF file uploaded by Applicant as received by the Office. The received PDF file is thereafter converted to a TIFF image for inclusion in the IFW. The original PDF format files are stored for a limited time at the Office.

³ See for example, the blurring of the scale information and the speckled quality of the I and Q traces.

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

By mail: Mail Stop
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

Telephone inquiries related to this decision should be directed to Pinchus M. Laufer, Legal Advisor at (571) 272-7726.



Robert A. Clarke, Director
Office of Patent Legal Administration
Office of the Deputy Commissioner for Patent Examination Policy

Enc: 1 Sheet of Figures

Time Patterns of cross-correlated, "related" I and Q signals

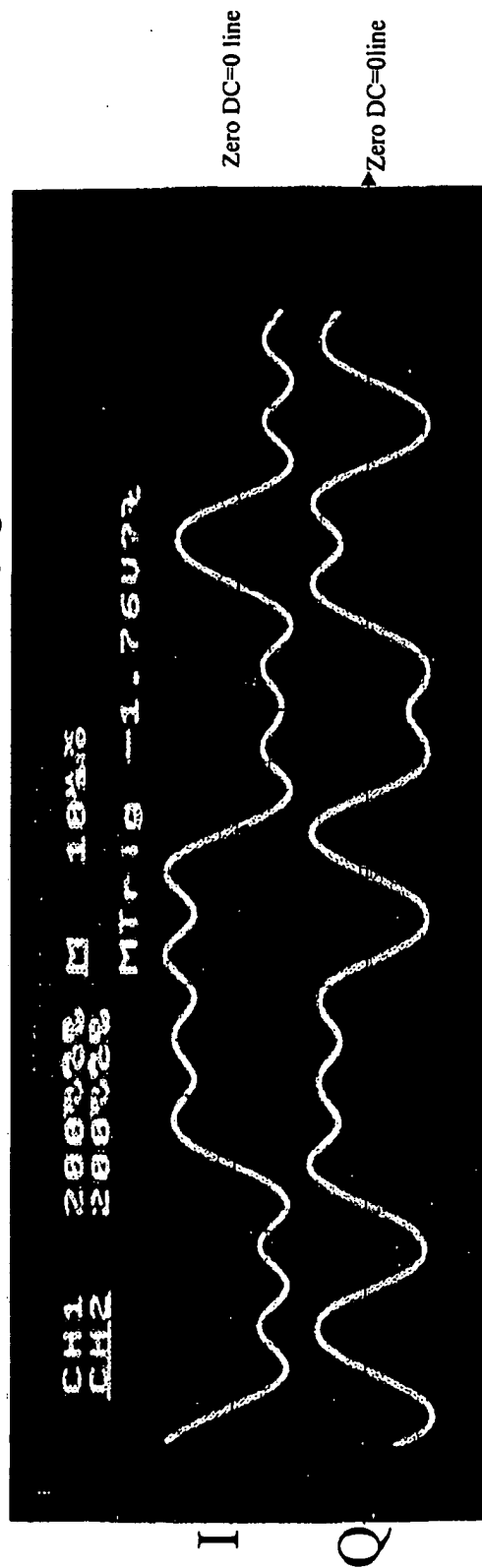


Fig. 8