Commissioner of Patents and Trademarks
Patent and Trademark Office (P.T.O.)

IN RE APPLICATION OF SAUL H. ROSENBERG, ET AL.
Serial No. 943,566 (FWC 191,714)
Attorney Docket No. CASE4419US33
March 27, 1990
***1** Filed: December 31, 1986

Edward H. Gorman, Jr.

CHAD-0377/AP6D

Abbot LAboratories

One Abbott Park Road

Abbott Park, IL 60064-2204

James E. Denny

Deputy Assistant Commissioner for Patents

ON PETITION

This is a decision on the petition to revive filed December 4, 1989, which is being treated as a petition under 37 CFR 1.181 and 1.182 to enter a signed declaration into the file and to make a determination that entry of the declaration renders the original application complete such that application No. 07/191,714 has copendency with application No. 06/943,566 in accordance with 37 CFR 1.62.

Application No. 06/943,566 was filed in the Office on December 31, 1986 with a declaration that was not signed by inventor Jay R. Luly. The Office never gave applicant a period of time within which to file a declaration signed by Mr. Luly and to pay the necessary surcharge. 37 CFR 1.53(d). On May 9, 1988, application No. 06/943,566 was expressly abandoned in favor of a continuation application filed under 37 CFR 1.62, application No. 07/191,714 which issued as Patent No. 4,837,204 on June 6, 1989, still without a properly signed declaration.

The petition is granted.

The signed declaration has been entered into the file. This removes any question as to the completeness of application No. 06/943,566. 35 U.S.C. 111 and 37 CFR 1.53(d).

Regarding the copendency of application No. 07/191,714 with application No. 06/943,566, the following is noted. Application No. 06/943,566 did not become abandoned for failure to provide the signed declaration since during the pendency of the application, the Office never notified applicant of the defect. 35 U.S.C. 111 and 37 CFR 1.53(d). The application would only become abandoned if the Office informed applicant of the defect and applicant failed to timely correct

the defect. Therefore, application No. 07/191,714 was copending with application No. 06/943,566.

The fees of $120 for the petition and $120 for the surcharge have been charged to Deposit Account No. 01-0025 as authorized in the petition.

The application file is being forwarded to the Files Repository.

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