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

IN RE PATENT NO. 4,349,120
Serial No. 272,301
November 29, 1988
***1** Issue Date: September 14, 1982

For: PLASTIC BOX HINGE
Filed: June 10, 1981

James E. Denny

Deputy Assistant Commissioner for Patents

ON PETITION

The above-identified patent is before the Commissioner, sua sponte, for further consideration.

An earlier decision, mailed June 7, 1988, denied petitioner's request for reinstatement of the above-identified patent. The basis for that earlier decision was that patentee's lack of knowledge of the requirement to pay the maintenance fee did not constitute unavoidable delay within the meaning of 35 USC 41(c)(1) and 37 CFR 1.378(b).

The Patent and Trademark Office (PTO) has reconsidered the 'lack of knowledge' issue in petitions to accept the delayed payment of maintenance fees. In particular, the PTO has reconsidered its application of this issue during that period of time when the Letters Patent itself did not specify that the patent was subject to maintenance fees, when the PTO did not otherwise provide notice to the patentee that the patent would be subject to maintenance fees, and when the requirement for maintenance fees had not become generally known except to those familiar with PTO practices and procedures. Since the earlier decision was based in large part on the application of the 'lack of knowledge' issue, it is appropriate to reevaluate the petition filed on Sepember 18, 1987 concerning the above-identified patent.

Petitioner has asserted that he was not aware of the requirement to pay maintenance fees. Petitioner was not represented by counsel registered to practice before the PTO. The patent for which petitioner did not pay the maintenance fee issued September 14, 1982, a point in time at which the requirement for the payment of maintenance fees in the United States had not become generally known, except to those who were familiar with patent practice and procedure. Further, the Letters Patent did not alert petitioner to the requirement to pay maintenance fees. In addition, petitioner took prompt action to remedy the oversight as soon as petitioner became aware of it. Under these circumstances, the delay in payment of the maintenance fee is held to be unavoidable.

The decision entered June 7, 1988 is hereby vacated and the petition filed September 18, 1987 is granted.

PTO records show that the maintenance fee and surcharge fee submitted by petitioner have been refunded to Deposit Account No. 03-0075. During a telephone conversation on October 12, 1988, petitioner's attorney, Stanley Cohen authorized debiting his account No. 03-0075 in the amount of $725.00.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This decision and the instant petition will be forwarded to the Maintenance Fee Division for further processing.

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