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

IN RE APPLICATION OF ALAN DONALD WILSON ET AL.
Serial No. 595,039
June 7, 1988
***1** Filed: July 11, 1975

For: CEMENTS

Fitzpatrick, Cella, Harper & Scinto

James E. Denny

Deputy Assistant Commissioner for Patents

ON PETITION

This is a decision on petitions filed April 26, 1988 and May 2, 1988 under 37 CFR 1.137(a) to revive the above identified application, and under 37 CFR 1.183 to waive the requirements of 37 CFR 1.137(c).

The petitions are granted.

37 CFR 1.137(a) requires that a petition to revive an abandoned application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment.

The record establishes that a petition to revive was promptly filed after applicant became aware of the true abandoned status of this application. Applicant became aware of the true abandoned status of the application on September 26, 1986. On October 20, 1986, applicant filed a petition to revive under 37 CFR 1.137(b). Thereafter, revival of this application has been diligently pursued to the filing of this petition under § 1.137(a). The requirement in § 1.137(a) that a petition to revive must be promptly filed means that a petition to revive under § 1.137(a) or § 1.137(b) must be promptly filed after the applicant becomes aware of the abandonment.

The showing of record establishes that the delay was unavoidable within the meaning of 35 USC 133 and 37 CFR 1.137(a). The attorney's interpretation of 37 CFR 1.8 on September 2, 1977 was not an unreasonable interpretation. Accordingly, the resultant delay in prosecution is considered to be unavoidable.

The record also establishes an extraordinary situation where justice requires waiver of 37 CFR 1.137(c). Accordingly, § 1.137(c) is waived pursuant to § 1.183 so that no terminal disclaimer is necessary to revive this application.

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of the continuing application.

The application file is being forwarded to the Abandoned Files.

8 U.S.P.Q.2d 1375

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