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

IN RE PATENT NO. 4,357,624
Serial No. 246,014
September 8, 1987
***1** Filed: March 20, 1981

For: INTERACTIVE VIDEO PRODUCTION SYSTEM
Issue Date: November 2, 1982

Saidman, Sterne, Kessler & Goldstein

James E. Denny

Deputy Assistant Commissioner for Patents

ON PETITION

This is a decision on the petition, filed April 9, 1987, under 37 CFR 1.378(e). The petition requests reconsideration of a prior decision which refused to accept under § 1.378(b) the delayed payment of a maintenance fee for theabove-identified patent.

A petition to accept delayed payment of the maintenance fee under 37 CFR 1.378(b) must be accompanied by (1) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be timely paid, (2) payment of appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(m). The showing must enumerate the steps taken to ensure timely payment of the maintenance fee; 37 CFR 1.378(b)(3).

The record in this case does not establish that either the patentee or the attorney of record took any steps to ensure timely payment of the maintenance fee.

Patentee contends that the failure to pay the maintenance fee was occasioned by the fact that the attorney of record did not inform him of the maintenance fee requirement in this case. It is noted that a maintenance fee reminder was mailed to the attorney of record although it is unclear as to whether or not this attorney actually received the reminder. Patentee acknowledges that his relationship with the attorney of record was terminated because past due attorney fees were not paid. Patentee argues that, despite this termination, he justifiably relied upon that attorney to inform him of anything which would affect the status of the patent. Accordingly, patentee asserts the attorney's failure to inform him of the maintenance fee due for this patent caused patentee's delay in paying the maintenance fee.

Patentee states he was unaware that a maintenance fee was due for this patent. However, patentee acknowledges that in 1981 and 1982 his attorney provided him with material concerning maintenance fees in general. A review of this material would have disclosed the need to pay a maintenance fee in this case.

There is no need in this case to determine the obligation between the attorney and the patentee, as neither the patentee or the attorney took steps to ensure timely payment of the maintenance fee.

The failure of the patentee and the attorney to take reasonable steps to ensure timely payment of maintenance fee as required by 37 CFR 1.378(b)(3) precludes acceptance of the delayed payment of the maintenance fee on the basis of unavoidable delay.

***2** Since the patent will not be reinstated, it is appropriate to refund the maintenance fee and the surcharge fee submitted by petitioner. Petitioner may obtain a refund of these fees by submitting a request, accompanied by a copy of this decision, to the Office of Finance.

As stated in 37 CFR 1.378(e), no further reconsideration or review of this matter will be undertaken.

The request for reconsideration is granted to the extent that the prior decision has been reconsidered but is denied with respect to making any change therein.

THIS IS A FINAL AGENCY DECISION.

5 U.S.P.Q.2d 1222

END OF DOCUMENT