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In re Original Application of :
Cohen et al. :
Patent Number: 6,253,504 : DECISION ON REQUEST
Issue Date: 07/03/2001 : FOR RECALCULATION OF
Reexamination Proceeding No. 90/010087 : PATENT TERM ADJUSTMENT
Request Date: 01/08/2008 : IN VIEW OF WYETH
Attorney Docket Number: 013226.0101X1US :

This is in response to the REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH, filed on March 11, 2010. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and is considered in light of the recent court decision in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

At the outset, the REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH* was filed using form PTO/SB/131. Petitioner is reminded that form PTO/SB/131 is only to be used to request recalculation of Patent Term Adjustment based upon the fact pattern described in Wyeth and no other issues will be addressed with this type of request.

Further to this, 37 CFR § 1.702, Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999, only applies to (f) *original applications, except applications for a design patent, filed on or after May 29, 2000, and patents issued on such applications.* (Emphasis supplied).

Accordingly, as the present file for which the request for recalculation of the patent term adjustment is filed is a reexamination proceeding of original U.S. Patent No. 6,253,504, issued July 3, 2001, for Application No. 08/970231, filed November 14, 1997, the request is deemed ineligible for consideration, and the request for recalculation of the patent term adjustment in view of Wyeth is **DENIED**.

The status is clear that a reexamination proceeding is not entitled to patent term adjustment since it is not the original patent. See, 35 U.S.C. § 154(b)(I)(A) “if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office...” (Underlining added). Since the reexamination is a proceeding and not an original application, no adjustment to the patent term will be made.

It is also noted that 37 CFR § 1.702 only applies to (f) original applications, except applications for a design patent, filed on or after May 29, 2000, and patents issued on such applications, and as such does not apply to the original U.S. Patent No. 6,253,504, issued July 3, 2001, which issued from Application No. 08/970231, filed November 14, 1997.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.



Anthony Knight
Director
Office of Petitions