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OFFICE OF PETITIONS

INNOVATION PARK
1673 WEST PAUL DIRAC DRIVE
TALLAHASSEE FL 32310-3763

In re Patent No. 5,967,521 :
Issued: October 19, 1999 :
Application No. 08/970,855 : ON PETITION
Filed: November 14, 1997 :
Title: Non-Toxic Edible, and :
Biodegradable Skeet and Method :
Of Making The Same :

This is a decision on the petition under 37 CFR 1.378(e), filed May 27, 2009.¹

The petition is DENIED².

BACKGROUND

The patent issued October 19, 1999. The 3.5 year maintenance fee could have been paid from October 19, 2002 to April 18, 2003, or with a surcharge during the period from April 19, 2003 to October 19, 2003. Petitioner did not do so. Accordingly, the patent expired at midnight on October 19, 2003.

A petition under 37 C.F.R. 1.378(b) to accept late payment of the maintenance fee was filed November 3, 2008. A decision dismissing the petition under 37 CFR 1.378(b) was mailed December 22, 2008 and is hereby incorporated by reference.

STATUTES AND REGULATIONS

37 CFR 1.181(f) states that:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under

¹ The required petition fee of \$400.00 has been received.

² This decision may be viewed as a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See, MPEP 1002.02.

this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

In accordance with 37 CFR 1.181(f), petitioner was given two months in which to respond to the decision of December 22, 2008. Petitioner submitted a response on May 27, 2009, some five months after the mail date of the decision. Petitioner's response was submitted three months beyond the end of the response period.

The prior decision dismissing the petition under 37 CFR 1.378(b) to accept the delayed payment of maintenance fee has not been reconsidered. Petitioner should note that there is no provision in the law or rules for the acceptance of the extension of time for the response to a petition decision under 37 CFR 1.378. In accordance with the provisions of 37 CFR 1.181(f) the present petition is untimely. Accordingly, the offer to pay the delayed maintenance fee will not be accepted and this patent will not be reinstated.

Since this patent will not be reinstated, a refund covering the maintenance fee and surcharge fee will be forwarded to petitioner.

This file is being forwarded to files repository.

Telephone inquiries concerning this matter may be directed to the Petitions Attorney Charlema Grant at 571-272-3215.


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