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JUN 30 2009

OFFICE OF PETITIONS

JUL 1 2009

In re Application of :
Paul Westbrook et al. :
Application No. 12/360,102 :
Filed: January 26, 2009 : ON PETITION
Attorney Docket No. 60097-0558 :

This is in response to the request for reconsideration filed June 15, 2009 under 37 CFR 1.47(a)¹.

The petition is **GRANTED**.

The above-identified application was filed on January 26, 2009 without an Oath or Declaration. Accordingly, on February 20, 2009, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration. In response, on March 13, 2009, an oath or declaration executed by all joint inventors except Timothy Davison and a petition under 37 CFR 1.47(a) was filed. The petition argued that joint inventor Davison could not be found or reached after diligent effort or that he refused to join in the application. The petition was dismissed in a decision mailed April 20, 2009 because petitioner had not provided sufficient proof that a copy of the instant application (specification including claims, drawings, if any, and the Declaration) was sent or given to the non-signing inventor², only that "Previous efforts to reach Timothy Davison in parent application Serial No. 10/339,700, for purposes of signing a Supplemental Declaration in support of a Petition to Correct Inventorship Under 1.48(a) were unsuccessful."

In response to the decision dismissing the petition filed March 13, 2009, the request for reconsideration bears proof that a copy of the application was sent to joint inventor

¹ A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;

² MPEP 409.03 (3).

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Davison at his last known address via FEDEX, although undeliverable and that while additional efforts have been employed to locate the joint inventor, those efforts were also unsuccessful. The evidence is therefore sufficient to establish that a complete application was mailed to joint inventor Davison and that diligence as required by the regulation has been exercised.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This matter is being referred to Technology Center 2423 to be examined in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions