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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