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NOTICE OF ALLOWANCE AND FEE(S) DUE

22907 7590 02/24/2004

 BANNER & WITCOFF
 1001 G STREET N W
 SUITE 1100
 WASHINGTON, DC 20001

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT

PAPER NUMBER

3711

23

DATE MAILED: 02/24/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	05/10/2002	George Michael Mockry	530.005PA	8653

TITLE OF INVENTION: METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$300	\$965	05/24/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

 Applicant claims SMALL ENTITY status.
 See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (703) 746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

22907 7590 02/24/2004

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SUITE 1100
WASHINGTON, DC 20001

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
 I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	05/10/2002	George Michael Mockry	530.005PA	8653

TITLE OF INVENTION: METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$300	\$965	05/24/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHAMBERS, MICHAEL S	3711	473-468000

<p>1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).</p> <p><input type="checkbox"/> Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.</p> <p><input type="checkbox"/> "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.</p>	<p>2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.</p> <p>1 _____</p> <p>2 _____</p> <p>3 _____</p>
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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE _____ (B) RESIDENCE: (CITY and STATE OR COUNTRY) _____

Please check the appropriate assignee category or categories (will not be printed on the patent); individual corporation or other private group entity government

<p>4a. The following fee(s) are enclosed:</p> <p><input type="checkbox"/> Issue Fee</p> <p><input type="checkbox"/> Publication Fee</p> <p><input type="checkbox"/> Advance Order - # of Copies _____</p>	<p>4b. Payment of Fee(s):</p> <p><input type="checkbox"/> A check in the amount of the fee(s) is enclosed.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input type="checkbox"/> The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).</p>
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Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

<p>(Authorized Signature)</p> <p>NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.</p> <p>This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.</p> <p>Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.</p>	<p>(Date)</p>
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TRANSMIT THIS FORM WITH FEE(S)



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Alexandria, Virginia 22313-1450
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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Values: 09/878,860, 05/10/2002, George Michael Mockry, 530.005PA, 8653

22907 7590 02/24/2004
BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 02/24/2004

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability	Application No.	Applicant(s)	
	09/878,860	MOCKRY ET AL.	
	Examiner	Art Unit	
	Michael Chambers	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- 1. This communication is responsive to 2/18/04 fax.
- 2. The allowed claim(s) is/are 23-29.
- 3. The drawings filed on _____ are accepted by the Examiner.
- 4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some* c) None of the:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

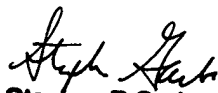
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

- 5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 - 6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
- 7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- 1. Notice of References Cited (PTO-892)
- 2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3. Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
- 4. Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5. Notice of Informal Patent Application (PTO-152)
- 6. Interview Summary (PTO-413), Paper No./Mail Date _____
- 7. Examiner's Amendment/Comment
- 8. Examiner's Statement of Reasons for Allowance
- 9. Other _____.


Stephen P. Garbe
Primary Examiner

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with J. Skerpon on February 18, 2004.

The application has been amended as follows:

✓ Claims 11-22 have been canceled in their entirety.

Reasons for Allowance

The prior art does not show or suggest a method of method of replaying a baseball game which includes obtaining subscribers for viewing an edited version of the game and in which the edited version of substantially the entire game is condensed to show the final pitch thrown to every batter at bat, any game action resulting from said final pitch, successful and unsuccessful attempts of the runners on base to advance, and unsuccessful attempts of the runners on base to advance resulting in an out. A secondary consideration is the copying and utilization of this method by others in the field. The examiner has not been able to discover any method of use similar to the instant invention prior to the priority date of this application.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on 8:30-5:00.

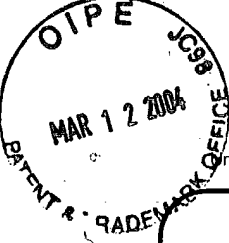
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Chambers
Examiner
Art Unit 3711

February 19, 2004


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<h2>TRANSMITTAL FORM</h2> <p><i>(to be used for all correspondence after initial filing)</i></p>	Application Number	09/878,860
	Filing Date	May 10, 2002
	First Named Inventor	George Michael MOCKRY et al.
	Art Unit	3711
	Examiner Name	M. Chambers
Total Number of Pages in This Submission	Attorney Docket Number	006385.00001

ENCLOSURES <i>(check all that apply)</i>		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers <i>(for an Application)</i> <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) ____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group <i>(Appeal Notice, Brief, Reply Brief)</i> <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) <i>(please identify below):</i> <p style="text-align: center;">Postcard</p>
Remarks		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p style="font-size: 1.2em; margin: 0;">RECEIVED</p> <p style="margin: 0;">MAR 16 2004</p> <p style="margin: 0;">TECHNOLOGY CENTER R3700</p> </div>

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Joseph M. Skerpon (Reg. No. 29,864)
Signature	
Date	March 12, 2004

CERTIFICATE OF MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Typed or printed name		
Signature	Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	
	)	Group Art Unit: 3711
George Michael MOCKRY et al.)	
	)	Examiner: M. Chambers
Serial No.: 09/878,860)	
)	
Filed: May 10, 2002	)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

REQUEST FOR RECONSIDERATION AND ENTRY OF FINAL AGENCY ACTION IN CONNECTION WITH PETITION FOR CORRECTED FILING DATE

RECEIVED
MAR 16 2004
TECHNOLOGY CENTER R3700

Office of Petitions:
Attention John J. Gillon, Jr.
Commissioner of Patents
Washington, D.C. 20231

Sir:

This is a request for reconsideration of a decision (Paper No. 21 – dated November 21, 2003) dismissing applicants’ renewed petition requesting that the subject application be accorded a filing date of June 9, 2001.

In the even that the decision is adhered to, applicants also request that the decision be made final so that applicants can seek redress by way of civil action in a court of proper jurisdiction.

Prompt consideration of this request also is requested. The subject application has been allowed and the deadline for paying the issue fee in this application is May 24, 2004.

Applicants' undersigned representative requests that any fee that may be required pursuant to 37 C.F.R. §1.17(h) or otherwise in order to consider this request for reconsideration be charged to our Deposit Account No. 19-0733. To the extent applicants may later be entitled to a refund of any fee so-charged, it should be credited to our Deposit Account No. 19-0733.

The underlying petition was filed under 37 C.F.R. 1.181(a)(2) and pursuant to 37 C.F.R. 1.53(e)(2). In that petition, applicants sought a determination of their entitlement to a filing date of June 9, 2001, the date that the inventors fully complied with 37 C.F.R. 1.53(b) by filing in accordance with 37 C.F.R. 1.10, a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75.

REASON FOR RECONSIDERATION/POINTS OVERLOOKED

In the decision, one critical fact in the sequence of events was completely overlooked, as was applicants' primary argument in support of their entitlement to the June 9, 2001 filing date for their application. Indeed, a statement in the decision indicated that the Renewed Petition "addresses no new issues." We submit that this statement is patently incorrect. The earlier petitions did not address the significance of the Official Filing Receipt of December 2001 and of the relevant portions of MPEP §503 relating to the issuance of a Filing Receipt.

KEY FACTS NOT MENTIONED IN THE DECISION:

Following June 9, 2001, the date on which the "application was deposited," an official Filing receipt was issued by the United States Patent and Trademark Office dated December 20, 2001. That Filing Receipt identified the application number 09/878,860 and accorded that application a filing date of June 9, 2001. (MD2¶11-Exhibit 6).¹ That Filing Receipt also identified the Group Art Unit of the application as 3711, acknowledged the claim to benefit of the previously filed Provisional Application 60/211,208 and granted a foreign filing license to

¹ Citations in this request for reconsideration are to documents appended to the original Renewed Petition filed September 9, 2003. Reference to MD1¶1 refers to paragraph 1 of the first declaration of George Mockry filed with the first petition (a copy of that declaration was submitted as Attachment A to the Renewed Petition and has been annotated with paragraph numbers). Citation to MD2¶1 refers to paragraph 1 of the second declaration of George Mockry first filed with the Renewed Petition as Attachment B. The referenced Exhibits refer to the Exhibits attached to the second Mockry declaration and the Renewed Petition itself.

the application as of December 20, 2001. (MD2 – Exhibit 6). It was not until almost three months later, on March 15, 2002, that the Office of Initial Patent Examination (OIPE) then mailed a Notice of Incomplete Nonprovisional Application to the inventors. (Exhibit D).

KEY ARGUMENT TOTALLY IGNORED

MPEP §503 makes the issuance of a filing receipt by the USPTO *prima facie* evidence of compliance with Rule 53(b).

MPEP §503 states unequivocally:

OIPE mails a filing receipt to the attorney or agent, if any, otherwise to the applicant, for each application **which meets the minimum requirements to receive a filing date.** (Emphasis added)

The filing receipt represents the **official assignment by the USPTO of a specific application number and confirmation number to a particular application.** See 37 CFR 1.54(b). (Emphasis added)

...as between inconsistent filing receipts and postcard receipts, **the application number on the filing receipt is controlling.**

The filing receipt will be mailed at the time a determination is made that the application meets the minimum requirements to receive a filing date. (Emphasis added)

Here, a filing receipt was mailed to applicants in December 2001, long prior to the date the Office issued the Notice of Incomplete Application in March 2002. Based on the USPTO's own rules, the complete application, thus was received and processed by OIPE. It was not until after that date that the USPTO apparently lost the application.

Thus, as of December 20, 2001, the USPTO confirmed that Mockry had filed papers that

met the minimum requirements for the application to receive a filing date – that is a written description and at least one claim were provided. In the absence of satisfying those requirements, the filing receipt never should have issued. It was not until sometime after confirming the proper filing of the application that the USPTO apparently lost applicants' written specification.

Unless the USPTO is going to assume that it did not comply with a pair of its own regulations (including both the issuance of the filing receipt and the handling of the return postcard) and thus ignore the long accepted principal of administrative regularity, the facts of this case demand the conclusion that a written description was received and processed by the USPTO following the filing of the application on June 9, 2001.

As demonstrated by the previously filed Mockry declarations and the Renewed Petition, that application was identical to Mockrys' earlier filed Provisional application. It was only after the issuance of the December 2001 filing receipt that the USPTO somehow misplaced that application. When viewed together, that December 2001 filing receipt, which acknowledges the claim to priority to the earlier provisional application by both serial number and filing date, together with the postcard receipt and the Mockry declarations, present a coherent and persuasive picture confirming that the original two page provisional application constituted the written description filed on June 9, 2001.

We submit that the USPTO should be bound by its own rules and must accept its own actions and provide the subject application with the original June 9, 2001 filing date.

ADDITIONAL POINTS

The decision seems to attach great significance to the fact that the post card also did not identify the priority information (Provisional Application filing number or filing date). Aside from the fact that the PTO's rules do not require that information on the post card, papers accompanying the post card, which the PTO does not deny receiving, DID contain that information. Indeed, the issuance of the Official Filing Receipt in December 2001 is but further irrefutable evidence on that point. We submit that when the complete picture of actions by both applicant and the Office is considered, the unmistakable conclusion is that the inventors fully

complied with 37 C.F.R. 1.53(b) by filing, in accordance with 37 C.F.R. 1.10, a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75.

Second, the decision ignores the provisions of MPEP §503, requiring that once the Patent Office received the application papers:

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

In this case, Mockry received the return postcard with NOT A SINGLE ITEM indicated as missing. The only logical conclusion is that all of the listed items were received and processed by the OIPE.

CONCLUSION

When the record and action of the USPTO are viewed as a whole, one is left with the unmistakable conclusion that the USPTO accepted the June 9, 2001 filing of the original provisional application, which applicant has testified he filed, as the specification of the subsequent nonprovisional application and generally acted consistent with that acceptance, save for the wrongful issuance of the Notice of Incomplete application.

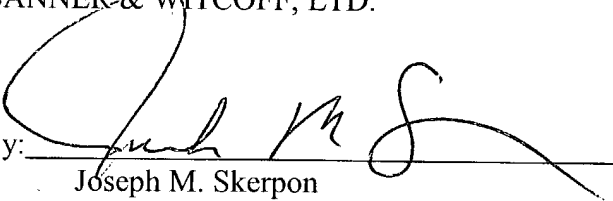
Applicants simply ask that common sense not be left out of the reconsideration of the petition and any review of their actions and the supporting documentation.

Applicants thus request reconsideration of their request that the subject application be accorded a filing date of June 9, 2001, the date that the inventors fully complied with 37 C.F.R. 1.53(b) by filing in accordance with 37 C.F.R. 1.10, a specification (in this case an identical copy of their earlier provisional application) as prescribed by 35 U.S.C. 112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75. Again, in the event that the request

relief is declined, applicants request that the petition be deined as FINAL AGENCY ACTION, allowing them a right to seek *mandamus* writ in the proper court.

Respectfully submitted,

BANNER & WITCOFF, LTD.

By: 

Joseph M. Skerpon
Registration No. 29,864

Date: March 12, 2004

1001 G Street, N.W.
Washington, D.C. 20001-4597
(202) 824-3000
JMS/

PAIDC # 24

QUERY CONTROL FORM		RTIS USE ONLY	
Application No. <u>09/878,860</u>	Prepared by <u>NH</u>	Tracking Number <u>05914646</u>	
Examiner-GAU <u>Vidovich-3711</u>	Date <u>3-23-4</u>	Week Date <u>03/08/04</u>	
	No. of queries <u>1</u>		<u>(E)</u>

JACKET

a. Serial No.	f. Foreign Priority	k. Print Claim(s)	<u>p. PTO-1449</u>
b. Applicant(s)	g. Disclaimer	l. Print Fig.	q. PTOL-85b
c. Continuing Data	h. Microfiche Appendix	m. Searched Column	r. Abstract
d. PCT	i. Title	n. PTO-270/328	s. Sheets/Figs
e. Domestic Priority	j. Claims Allowed	o. PTO-892	t. Other

SPECIFICATION

a. Page Missing

b. Text Continuity

c. Holes through Data

d. Other Missing Text

e. Illegible Text

f. Duplicate Text

g. Brief Description

h. Sequence Listing

i. Appendix

j. Amendments

k. Other

CLAIMS

a. Claim(s) Missing

b. Improper Dependency

c. Duplicate Numbers

d. Incorrect Numbering

e. Index Disagrees

f. Punctuation

g. Amendments

h. Bracketing

i. Missing Text

j. Duplicate Text

k. Other

MESSAGE

PTO-1449: Please either initial or line through citations. ✓

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13

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RESPONSE

DONE - 4/6/04

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BANNER & WITCOFF, LTD.
INTELLECTUAL PROPERTY LAW

FACSIMILE TRANSMITTAL SHEET

TO: Examiner John J. Gillon, Jr.	FROM: Joseph Skerpon c/o Beverly Orlebar, Assistant to Joseph Skerpon
--	--

COMPANY: USPTO OFFICE OF PETITIONS	DATE: May 21, 2004
---	------------------------------

FAX NO.: 703-305-4257	TOTAL NO. OF PAGES: (including cover sheet) 9
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OUR REFERENCE (C/M) NO. 6385.00001

RE: U.S. Application No. 09/878,860

If you do not receive all page(s) or have any problems receiving this transmission, please call:

NAME: Beverly Orlebar	PHONE: 202-824-3125
---------------------------------	-------------------------------

COMMENTS:

Dear Mr. Gillon,

As requested in our telephone conversation on May 21, 2004, attached is the Entry of Final Agency Action with the stamp receipt postcard indicating it was filed in the USPTO on March 12, 2004. Mr. Skerpon will be in the office on Monday, May 24, 2004.

Sincerely,
Beverly Orlebar
Assistant to Joseph M. Skerpon

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	
	)	Group Art Unit: 3711
George Michael MOCKRY et al.)	
	)	Examiner: M. Chambers
Serial No.: 09/878,860)	
)	
)	
Filed: May 10, 2002	)	Attorney Docket No.: 006385.00001

For: METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH

**REQUEST FOR RECONSIDERATION
AND
ENTRY OF FINAL AGENCY ACTION
IN CONNECTION WITH PETITION
FOR CORRECTED FILING DATE**

Office of Petitions:
Attention John J. Gillon, Jr.
Commissioner of Patents
Washington, D.C. 20231

Sir:

This is a request for reconsideration of a decision (Paper No. 21 – dated November 21, 2003) dismissing applicants’ renewed petition requesting that the subject application be accorded a filing date of June 9, 2001.

In the event that the decision is adhered to, applicants also request that the decision be made final so that applicants can seek redress by way of civil action in a court of proper jurisdiction.

Prompt consideration of this request also is requested. The subject application has been allowed and the deadline for paying the issue fee in this application is May 24, 2004.

Atty. Docket No. 006385.00001

Applicants' undersigned representative requests that any fee that may be required pursuant to 37 C.F.R. §§1.17(h) or otherwise in order to consider this request for reconsideration be charged to our Deposit Account No. 19-0733. To the extent applicants may later be entitled to a refund of any fee so-charged, it should be credited to our Deposit Account No. 19-0733.

The underlying petition was filed under 37 C.F.R. 1.181(a)(2) and pursuant to 37 C.F.R. 1.53(e)(2). In that petition, applicants sought a determination of their entitlement to a filing date of June 9, 2001, the date that the inventors fully complied with 37 C.F.R. 1.53(b) by filing in accordance with 37 C.F.R. 1.10, a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75.

REASON FOR RECONSIDERATION/POINTS OVERLOOKED

In the decision, one critical fact in the sequence of events was completely overlooked, as was applicants' primary argument in support of their entitlement to the June 9, 2001 filing date for their application. Indeed, a statement in the decision indicated that the Renewed Petition "addresses no new issues." We submit that this statement is patently incorrect. The earlier petitions did not address the significance of the Official Filing Receipt of December 2001 and of the relevant portions of MPEP §503 relating to the issuance of a Filing Receipt.

KEY FACTS NOT MENTIONED IN THE DECISION:

Following June 9, 2001, the date on which the "application was deposited," an official Filing receipt was issued by the United States Patent and Trademark Office dated December 20, 2001. That Filing Receipt identified the application number 09/878,860 and accorded that application a filing date of June 9, 2001. (MD2¶11-Exhibit 6).¹ That Filing Receipt also identified the Group Art Unit of the application as 3711, acknowledged the claim to benefit of the previously filed Provisional Application 60/211,208 and granted a foreign filing license to

¹ Citations in this request for reconsideration are to documents appended to the original Renewed Petition filed September 9, 2003. Reference to MD1¶1 refers to paragraph 1 of the first declaration of George Mockry filed with the first petition (a copy of that declaration was submitted as Attachment A to the Renewed Petition and has been annotated with paragraph numbers). Citation to MD2¶1 refers to paragraph 1 of the second declaration of George Mockry first filed with the Renewed Petition as Attachment B. The referenced Exhibits refer to the Exhibits attached to the second Mockry declaration and the Renewed Petition itself.

Atty. Docket No. 006385.00001

the application as of December 20, 2001. (MD2 – Exhibit 6). It was not until almost three months later, on March 15, 2002, that the Office of Initial Patent Examination (OIPE) then mailed a Notice of Incomplete Nonprovisional Application to the inventors. (Exhibit D).

KEY ARGUMENT TOTALLY IGNORED

MPEP §503 makes the issuance of a filing receipt by the USPTO *prima facie* evidence of compliance with Rule 53(b).

MPEP §503 states unequivocally:

OIPE mails a filing receipt to the attorney or agent, if any, otherwise to the applicant, for each application **which meets the minimum requirements to receive a filing date.** (Emphasis added)

The filing receipt represents the **official assignment by the USPTO of a specific application number and confirmation number to a particular application.** See 37 CFR 1.54(b). (Emphasis added)

...as between inconsistent filing receipts and postcard receipts, **the application number on the filing receipt is controlling.**

The filing receipt will be mailed at the time a determination is made that the application meets the minimum requirements to receive a filing date. (Emphasis added)

Here, a filing receipt was mailed to applicants in December 2001, long prior to the date the Office issued the Notice of Incomplete Application in March 2002. Based on the USPTO's own rules, the complete application, thus was received and processed by OIPE. It was not until after that date that the USPTO apparently lost the application.

Thus, as of December 20, 2001, the USPTO confirmed that Mockry had filed papers that

Atty. Docket No. 006385.00001

met the minimum requirements for the application to receive a filing date – that is a written description and at least one claim were provided. In the absence of satisfying those requirements, the filing receipt never should have issued. It was not until sometime after confirming the proper filing of the application that the USPTO apparently lost applicants' written specification.

Unless the USPTO is going to assume that it did not comply with a pair of its own regulations (including both the issuance of the filing receipt and the handling of the return postcard) and thus ignore the long accepted principal of administrative regularity, the facts of this case demand the conclusion that a written description was received and processed by the USPTO following the filing of the application on June 9, 2001.

As demonstrated by the previously filed Mockry declarations and the Renewed Petition, that application was identical to Mockrys' earlier filed ~~Pr~~ovisional application. It was only after the issuance of the December 2001 filing receipt that the USPTO somehow misplaced that application. When viewed together, that December 2001 filing receipt, which acknowledges the claim to priority to the earlier provisonal application by both serial number and filing date, together with the postcard receipt and the Mockry declarations, present a coherent and persuasive picture confirming that the original two page provisional application constituted the written description filed on June 9, 2001.

We submit that the USPTO should be bound by its own rules and must accept its own actions and provide the subject application with the original June 9, 2001 filing date.

ADDITIONAL POINTS

The decision seems to attach great significance to the fact that the post card also did not identify the priority information (Provisional Application filing number or filing date). Aside from the fact that the PTO's rules do not require that information on the post card, papers accompanying the post card, which the PTO does not deny receiving, DID contain that information. Indeed, the issuance of the Official Filing Receipt in December 2001 is but further irrefutable evidence on that point. We submit that when the complete picture of actions by both applicant and the Office is considered, the unmistakable conclusion is that the inventors fully

Atty. Docket No. 006385.00001

complied with 37 C.F.R. 1.53(b) by filing, in accordance with 37 C.F.R. 1.10, a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75.

Second, the decision ignores the provisions of MPEP §503, requiring that once the Patent Office received the application papers:

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

In this case, Mockry received the return postcard with NOT A SINGLE ITEM indicated as missing. The only logical conclusion is that all of the listed items were received and processed by the OIPE.

CONCLUSION

When the record and action of the USPTO are viewed as a whole, one is left with the unmistakable conclusion that the USPTO accepted the June 9, 2001 filing of the original provisional application, which applicant has testified he filed, as the specification of the subsequent nonprovisional application and generally acted consistent with that acceptance, save for the wrongful issuance of the Notice of Incomplete application.

Applicants simply ask that common sense not be left out of the reconsideration of the petition and any review of their actions and the supporting documentation.

Applicants thus request reconsideration of their request that the subject application be accorded a filing date of June 9, 2001, the date that the inventors fully complied with 37 C.F.R. 1.53(b) by filing in accordance with 37 C.F.R. 1.10, a specification (in this case an identical copy of their earlier provisional application) as prescribed by 35 U.S.C. 112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75. Again, in the event that the request

Atty. Docket No. 006385.00001

relief is declined, applicants request that the petition be deemed as FINAL AGENCY ACTION, allowing them a right to seek *mandamus* writ in the proper court.

Respectfully submitted,

BANNER & WITCOFF, LTD.

By: 

Joseph M. Skerpon
Registration No. 29,864

Date: March 12, 2004

1001 G Street, N.W.
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(202) 824-3000
JMS/

PTO/SB/21 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

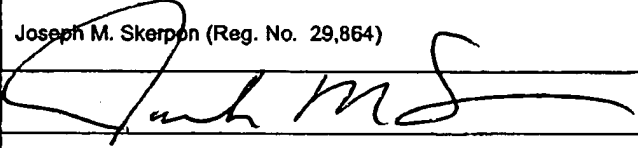
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/878,860
	Filing Date	May 10, 2002
	First Named Inventor	George Michael MOCKRY et al.
	Art Unit	3711
	Examiner Name	M. Chambers
Total Number of Pages in This Submission	Attorney Docket Number	006385.00001

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <p style="text-align: center;">Postcard</p>
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

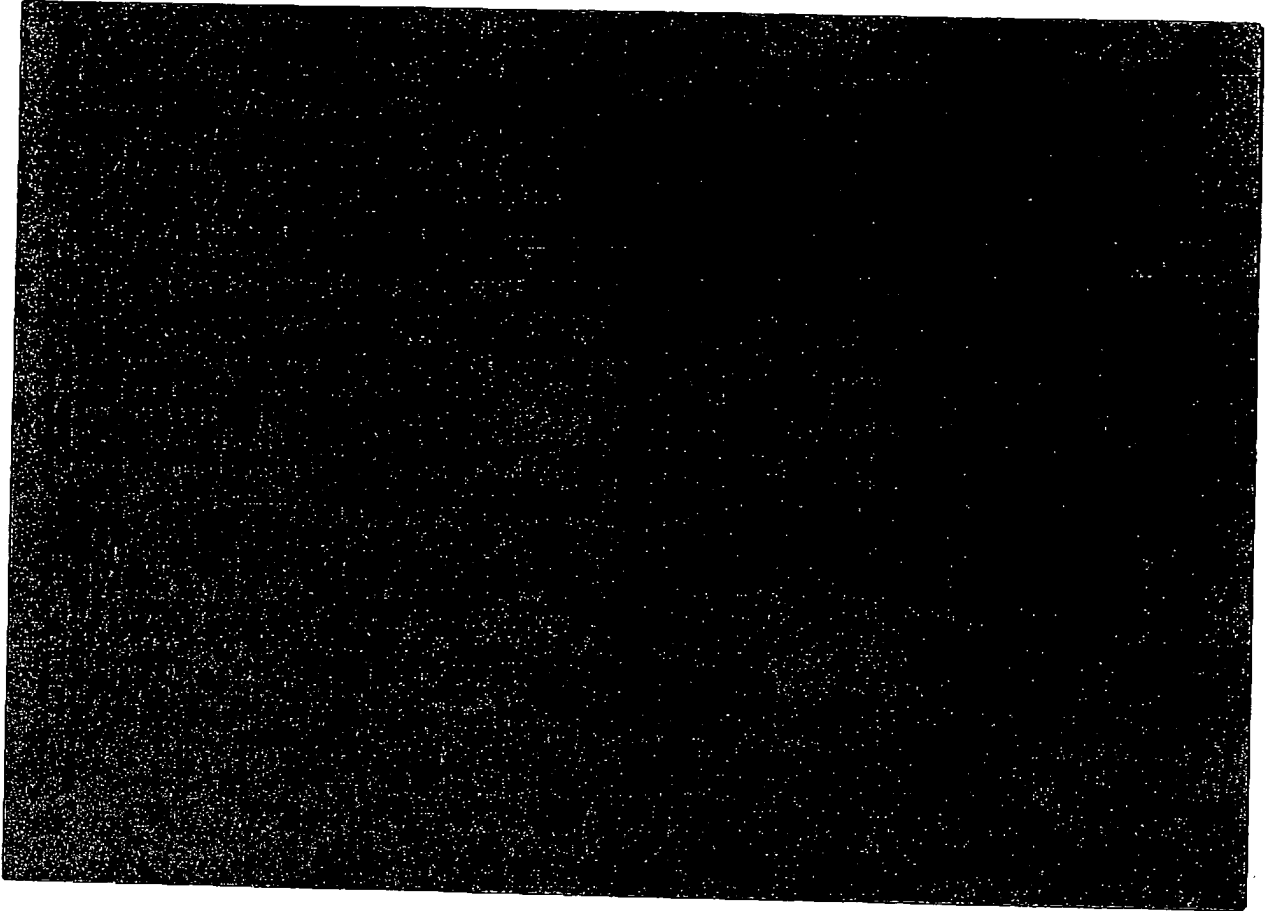
Firm or Individual name	Joseph M. Skerpon (Reg. No. 29,864)
Signature	
Date	March 12, 2004

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
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Signature		Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	Confirmation No. 8653
)	
George Michael MOCKRY et al.	)	Group Art Unit: 3711
)	
Serial No.: 09/878,860	)	Examiner: M. Chambers
)	
	)	Customer No. 22907
)	
Filed: May 10, 2002	)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

RULE 312 AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please enter the following amendment under Rule 312 before accepting payment of the issue fee, which accompanies this submission. Please charge our Deposit Account No. 19-0733 for any fees necessary for entry and consideration of this amendment.

Amendments to the claims are reflected in the listing of claims that begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

This listing of claims replaces all prior versions and listings, of claims in the application

Claims 1-22 (cancelled)

Claim 23 (Previously Presented). A method of replaying or rebroadcasting a baseball game, or a portion thereof, for which a video recording of the baseball game, or a portion thereof, was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video of substantially only (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) obtaining subscribers for viewing the edited recording and (c) playing or broadcasting the edited recording for viewing by the subscribers.

Claim 24 (Previously Presented). A method of providing a subscription for viewing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording by deleting substantially all game action other than (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final

pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (3) obtaining subscribers for viewing the edited recording and (4) playing or broadcasting the edited recording as a condensed recorded game for viewing by the subscribers, whereby only outcome determinative game action is displayed.

Claim 25 (Previously Presented). The method of claim 23 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 26. (Previously Presented) The method of claim 23 wherein said edited recording comprises only a portion of a nine-inning baseball game.

Claim 27. (Previously Presented) The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 28. (Previously Presented) The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 29. (Previously Presented) The method of claim 23 wherein the edited recording contains audio explaining any substitution of players.

Claim 30 (NEW). The method of claim 24 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 31. (NEW) The method of claim 24 wherein said edited recording comprises only a portion of a nine-inning baseball game.

Claim 32. (NEW) The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 33. (NEW) The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 34. (NEW) The method of claim 24 wherein the edited recording contains audio explaining any substitution of players.

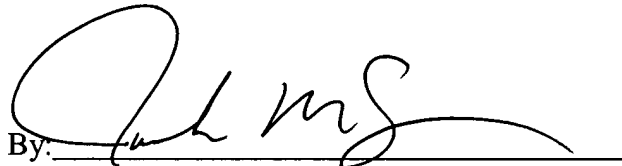
REMARKS

The pending claims (Previously presented and now-allowed claims 23-29) are directed to a novel method of presenting a baseball game for viewing (and re-viewing).

Applicants request entry of DEPENDENT claims 30-34. These NEW claims are dependent on allowed claim 24 and parallel the allowed dependent claims 25-29 which are dependent on allowed claim 23. The claims are supported by the original application and do not add any new matter.

Sine each of these amendments is supported by the specification, adds no new matter to the application, does not change the claimed invention and does not alter the nature of the allowed application, Applicants respectfully submit that the amendment should be entered in accordance with Rule 312. Entry of the amendment under Rule 312 now is requested.

Respectfully submitted,

By: 

Joseph M. Skerpon
Registration No. 29,864

May 24, 2004

BANNER & WITCOFF, LTD.
1001 G Street, N.W.
Eleventh Floor
Washington, D.C. 20001-4597
(202) 824-3000

706724-1

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
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I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	05/10/2002	George Michael Mockry	530.005PA	8653

TITLE OF INVENTION: METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$300	\$965	05/24/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHAMBERS, MICHAEL S	3711	473-468000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).
 Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
 "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

- Banner & Witcoff, Ltd.
-
-

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); individual corporation or other private group entity government

4a. The following fee(s) are enclosed:

- Issue Fee
- Publication Fee
- Advance Order - # of Copies 3

4b. Payment of Fee(s):

- A check in the amount of the fee(s) is enclosed.
- Payment by credit card. Form PTO-2038 is attached.
- The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 19-0733 (enclose an extra copy of this form).

Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature) Joseph M. Skerborn (Date) 5/42/2004
 Joseph M. Skerborn, Reg. No. 29,864

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This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.

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 03 FC:8001 9.00 DA

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	Confirmation No. 8653
)	
George Michael MOCKRY et al.)	
	)	Group Art Unit: 3711
Serial No.: 09/878,860)	
	)	Examiner: M. Chambers
)	
Filed: May 10, 2002	)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

PETITION FOR DELAYED ISSUANCE OF PATENT

MAIL STOP PETITION

Office of Petitions:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a petition requesting that the issuance of the subject application be delayed pending resolution of a previously filed petition (and any related judicial proceedings). The earlier-filed petition asks that the subject application be accorded a filing date of June 9, 2001, thus entitling applicants to the benefit of an earlier filed provisional application filed on June 13, 2000, instead of a filing date of May 10, 2002, as now appears on the records of the USPTO.

The petition is filed alternatively under 37 C.F.R. 1.182 or 37 C.F.R. 1.181(a)(3) pursuant to 37 C.F.R. 1.103(a). Applicants' undersigned representative requests that the fee required pursuant to 37 C.F.R. §1.17(h) or otherwise, in order to consider this petition, be charged to our Deposit Account No. 19-0733. To the extent applicants may later be entitled to a refund of any fee so-charged, it should be credited to our Deposit Account No. 19-0733.

I. STATEMENT OF FACTS

1. On February 24, 2004 a Notice of Allowance was mailed in the subject application. The issue fee is due for payment on May 24, 2004.
2. On March 12, 2004, applicants filed a Request for Reconsideration and Entry of Final Agency Action in Connection with Petition for Correct Filing Date. The request seeks reconsideration of a decision (Paper No. 21, dated November 21, 2003) dismissing applicants renewed petition requesting that the subject application be accorded a filing date of June 9, 2001.
3. A decision on the Request has yet to be rendered. It is the undersigned's understanding that the Request was to be taken up for consideration beginning the week of May 17, 2004, but it is unknown when a decision will be rendered on the Request.
4. If an adverse decision is rendered, Applicants' present intent is to pursue judicial relief, e.g. a writ of *mandamus* in the appropriate court.
5. Other than the payment of the issue fee, which accompanies the filing of the Petition, no reply or other action is outstanding in this application.

II. REQUESTED RELIEF

In order to avoid having the patent issue with a filing date that has to be later adjusted, a circumstance that also will impact on applicants' entitlement to benefit of an earlier provisional application, applicants request that the issuance of a patent on the subject application be delayed.

Applicants' request is for an indefinite delay of issuance under Rule 182 or in the alternative a first suspension of action of six months under Rule 103, with leave to pursue additional suspension should the matter not be resolved in that time frame. While an indefinite delay pending final resolution of the pending petition and any subsequent judicial action would be preferred, at a minimum a delay of at least six months pursuant to a suspension under Rule 103 should at least be entered.

III. JUST CAUSE FOR DELAY OR SUSPENSION

Applicants in their earlier-pending petition have requested that the filing date accorded the subject application be corrected from May 10, 2002 to a filing date of June 9, 2001. If the filing date is corrected, either pursuant to the pending petition or in a subsequent judicial action, then applicants would be entitled to the benefit of their earlier provisional application, No. 60/211,208 filed on June 13, 2000. This benefit is currently unavailable based on the assignment of the May 2002 filing date to the subject application.

Correction of the filing date thus would necessitate an amendment to the specification to reflect applicants' entitlement to the benefit of that earlier provisional. In order to ensure that the patent issues with the proper filing date and proper benefit information, issuance of the patent should be delayed pending the final resolution of that issue. Otherwise, the grant patent may contain erroneous information and the procedure for correcting that information post-grant may be complex. It is not clear whether it could be done by Certificate of Correction, or whether a Reissue application would have to be pursued. Either way, both applicants and the public would have been disadvantaged by an original issuance with incorrect information.

Since this application is entitled only to a term running 20 years from the earliest effective filing date of the subject application, the public is not prejudiced by the delay or suspension sought by this petition.

The grant of this petition is respectfully requested.

Respectfully submitted,

BANNER & WITCOFF, LTD.

By:



Joseph M. Skerpon
Registration No. 29,864

Date: May 24, 2004

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Paper No. 26

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COPY MAILED

JUN 07 2004

OFFICE OF PETITIONS

In re Application of :
Mockry, et al. :
Application No.09/878,860 : ON PETITION
Filed: 10 May, 2002 :
Attorney Docket No. 006385.00001 :

This is a decision on a renewed petition (styled: "Request for Reconsideration and Final Agency Action I Connection with Petition for Corrected Filing Date") filed on 12 March, 2004 (but not delivered to this office until this writing). Such a petition normally would be treated as a petition under 37 C.F.R. §1.53--which requests that the application be accorded a filing date of 9 June, 2001, rather than the presently accorded filing date of 10 May, 2002, however, by direction the decision references 37 C.F.R. §1.181.

BACKGROUND, STATUTES, REGULATIONS

The application was deposited as a nonprovisional application on 9 June, 2001, by the then-*pro se* applicants George Mockery and co-inventor Greg M. Mockery (hereinafter Messrs. George and Greg Mockery or Applicants).

On 15 March, 2002, the Office mailed a "Notice of Incomplete Nonprovisional Application" and indicated that a filing date was not granted for the application because "the specification does not include a written description of the invention."

On 10 May, 2002, Messrs. George and Greg Mockery submitted: a petition (with fee) for a filing date; a copy of the Provisional Application No. 60/211,208 filed on 13 June, 2000; a copy of

their receipt card (see: MPEP §503¹) from the deposit (the record reflects that the date stamp

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

If a self-addressed postcard is submitted with a patent application, that postcard will be provided with both the receipt date and application number prior to returning it to the addressee. The application number identified on such a postcard receipt is merely the preliminary assignment of an application number to the application, and should not be relied upon (e.g., with respect to foreign filings) as necessarily representing the application number assigned to such application. See 37 C.F.R. §1.53(b).

The identifying data on the postcard should include:

- (A) applicant's name(s);
- (B) title of invention;
- (C) number of pages of specification, claims (for nonprovisional applications), and sheets of drawing;
- (D) whether oath or declaration is included;
- (E) a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and/or provisional application cover sheet); and
- (F) amount and manner of paying the fee.

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

OIPE mails a filing receipt to the attorney or agent, if any, otherwise to the applicant, for each application filed which meets the minimum requirements to receive a filing date. The filing receipt includes the application number, filing date, a confirmation number, a suggested class in the U.S. Patent Classification System (see MPEP §902.01), and the number of an art unit where the application is likely to be examined. The filing receipt also includes other information about the application as applicable, such as continuing data, national stage data, foreign priority data, foreign filing license data, entity status information, and the date the Office anticipates publishing the application under 35 U.S.C. §122(b). The filing receipt represents the official assignment by the USPTO of a specific application number and confirmation number to a particular application. See 37 C.F.R. §1.54(b). The application number officially assigned to an application on the filing receipt may differ from the application number identified on a postcard receipt submitted with such application, and, as between inconsistent filing receipts and postcard receipts, the application number on the filing receipt is controlling.

A nonprovisional application, other than a CPA filed under 37 C.F.R. §1.53(d), is entitled to a filing date as of the date of receipt of the specification, including claims, and any required drawing. See 37 C.F.R. §1.53(b). The filing receipt will be mailed at the time a determination is made that the application meets the minimum requirements to receive a filing date. The oath or declaration and filing fee may be filed later than the remaining application papers, but if so, they must be accompanied by the required surcharge. See 37 C.F.R. §1.53(f). If the oath or declaration, and/or filing fee, and appropriate surcharge are not timely filed, the application will be abandoned.

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure

6/9/019 is crossed out and a date stamp of 5/10/02 is substituted); a supporting declaration of George Mockery² contending that he assembled a copy of the provisional application, declarations for himself and his co-inventor Greg M. Mockery, a page of claims, a check in the amount of \$355.00 and a self-addressed stamped receipt card, and submitted the package via US Postal Service Express Mail on 9 June, 2001.

The petition contended that their date-stamped receipt card³ supported their plea for relief.

The 10 May petition was dismissed on 14 August, 2002.

A renewed petition filed on 7 October, 2002, argued that: the applicants, acting *pro se*, assembled and submitted the materials consisting of a copy of the provisional application; on deposit the Office did not alter the post card content listing, thus indicating that the Office received the complete application; and then on 20 December, 2001, the Office issued a filing receipt and a foreign filing license and set a projected publication date of 28 March 2002; and it was not until 15 March, 2002, that for the first time the Office determined that the application was incomplete.

The 7 October, 2002, petition was dismissed on 18 November, 2002.

In seeking further reconsideration in this matter, a petition filed by present Counsel (Petitioner)

that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO.

² The declaration of George Mockery states, in pertinent part:

During the first week of June, 2001, Greg M. Mockery and I decided to file a regular non-provisional application based on our then-pending provisional application, Ser. No. 60/211,208, filed June 13, 2000. I assembled all the papers, including Declarations signed respectively by myself and Greg M. Mockery; a specification, which was in the form of a complete copy of the above-mentioned provisional application Ser No. 60/211, 202 (sic); a page of Claims; a cashier's check from Citizen State Bank of Cortez for \$355.00; and a self-addressed stamped post card that listed each item being submitted. I then placed these materials into an envelope addressed to the Commissioner of Patents with sufficient postage for Express Mail. This envelope was deposited with the United States Postal Service on June 9, 2001.

A few days later I received back the return receipt post card, which now carried indicia showing the filing date (06/09/01) and the application serial number (09/878[,]860). The exhibit attached hereto is a true copy of the said return receipt post card. The post card has not been altered in any way since I received it.

Signed /s/ George Mockery
Dated this 15th day of April, 2002

³ The entire contents of the postcard are as follows:

NEW APPLICATION TRANSMITTAL (SMALL ENTITY)
4 ORIGINAL COPIES OF PROVISIONAL
PAGE "CLAIMS"
CASHIERS CHECK FOR \$355.00
2 DECLARATION FORMS
SELF ADDRESSED POST CARD (FOR RECEIPT PURPOSES)

on 9 September, 2003, contended that the Applicants' "postcard does itemize each of the component parts that were submitted."

The 9 September, 2003, petition was dismissed on 21 November, 2003.

Petitioner contends in the most recent petition of 12 March, 2004, that: the Office ignored Applicants' arguments of 7 October, 2003, with regard to the filing receipt mailed by the Office on 20 December, 2001; the filing receipt, rather than Applicants' receipt card, controls as to defining which items were received by the Office on the deposit date of 9 June, 2001; the Office's practice, stated at MPEP §506, imposed an "affirmative duty on the Office of Initial Patent Examination (OIPE) to give the applicant notice of any defects in the filing of a nonprovisional application, and to issue a PTO-1123 Notice of Incomplete Application."

Pertinent statutes include 35 U.S.C. §21,⁴ §111⁵ and §112⁶

⁴ 35 U.S.C. §21 states in pertinent part:

(a) The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruption or emergencies designated by the Director.

⁵ 35 U.S.C. §111 states in pertinent part:

(a) In general.

(1) Written Application. An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) Contents. Such application shall include--

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title;

(C) an oath by the applicant as prescribed by section 115 of this title

(3) Fee and oath. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) Failure to submit. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

⁶ 35 U.S.C. §112 states in pertinent part:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention. (Emphasis supplied.)

Pertinent regulations include 37 C.F.R. §1.53(b)⁷ and §1.71.⁸

CONCLUSION

The most recent renewed petition again requests that the application be accorded a filing date of 9 June, 2001, rather than the presently accorded filing date of 10 May, 2002. Petitioner argues that the Office has failed to consider the argument that MPEP §503 is controlling in this matter.

By express direction to state that the postcard receipt constitutes sufficient evidence of receipt of the provisional application, the petition is **granted**.

The filing date of the application will be 9 June, 2001, and the fee (\$130.00) will be refunded via Treasury check to former Counsel who submitted the original payment.

The application is being forwarded to Publications Branch to be processed into a patent with a filing date of 9 June, 2001, using the copy of the application deposited on 10 May, 2002.

Telephone inquiries concerning this decision may be directed to the Office of Petitions at (703)305-9282.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions

⁷ 37 C.F.R. §1.53(b) states in pertinent part:

Application filing requirements--Nonprovisional application. The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. §112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75, and any drawing required by §1.81(a) are filed in the Patent and Trademark Office.

⁸ 37 C.F.R. §1.71 states in pertinent part:

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.



JGJr. 05-0x

Paper No. 26

BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON DC 20001

In re Application of	:	
Mockry, et al.	:	
Application No.09/878,860	:	ON PETITION
Filed: 10 May, 2002	:	
Attorney Docket No. 006385.00001	:	

This is a decision on a renewed petition (styled: "Request for Reconsideration and Final Agency Action I Connection with Petition for Corrected Filing Date") filed on 12 March, 2004 (but not delivered to this office until this writing)--treated as a petition under 37 C.F.R. §1.53--which requests that the application be accorded a filing date of 9 June, 2001, rather than the presently accorded filing date of 10 May, 2002.

The petition is **DENIED**.¹

BACKGROUND

The application was deposited as a nonprovisional application on 9 June, 2001, by the then-*pro se* applicants George Mockery and co-inventor Greg M. Mockery (hereinafter Messrs. George and Greg Mockery or Applicants).

On 15 March, 2002, the Office mailed a "Notice of Incomplete Nonprovisional Application" and indicated that a filing date was not granted for the application because "the specification does not include a written description of the invention."

¹This 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. The provisions of 37 CFR 1.181(f) do not apply to this decision.

On 10 May, 2002, Messrs. George and Greg Mockery submitted:

- a petition (with fee) for a filing date;
- a copy of the Provisional Application No. 60/211,208 filed on 13 June, 2000;
- a copy of their receipt card from the deposit (the record reflects that the date stamp 6/9/019 is crossed out and a date stamp of 5/10/02 is substituted);
- a supporting declaration of George Mockery² contending that he assembled a copy of the provisional application, declarations for himself and his co-inventor Greg M. Mockery, a page of claims, a check in the amount of \$355.00 and a self-addressed stamped receipt card, and submitted the package via US Postal Service Express Mail on 9 June, 2001.

The petition contended that their date-stamped receipt card supported their plea for relief.

The contents of the postcard are as follows:

NEW APPLICATION TRANSMITTAL (SMALL ENTITY)
4 ORIGINAL COPIES OF PROVISIONAL
PAGE "CLAIMS"
CASHIERS CHECK FOR \$355.00
2 DECLARATION FORMS
SELF ADDRESSED POST CARD (FOR RECEIPT PURPOSES)

Notably, the post card fails to state not only the number of pages in the provisional application, but any identifying information about the application such as the application number and filing date (in this case 60/211,208 and 13 June, 2000, respectively).

² The declaration of George Mockery states, in pertinent part:

During the first week of June, 2001, Greg M. Mockery and I decided to file a regular non-provisional application based on our then-pending provisional application, Ser. No. 60/211,208, filed June 13, 2000. I assembled all the papers, including Declarations signed respectively by myself and Greg M. Mockery; a specification, which was in the form of a complete copy of the above-mentioned provisional application Ser No. 60/211, 202 (sic); a page of Claims; a cashier's check from Citizen State Bank of Cortez for \$355.00; and a self-addressed stamped post card that listed each item being submitted. I then placed these materials into an envelope addressed to the Commissioner of Patents with sufficient postage for Express Mail. This envelope was deposited with the United States Postal Service on June 9, 2001.

A few days later I received back the return receipt post card, which now carried indicia showing the filing date (06/09/01) and the application serial number (09/878[,]860). The exhibit attached hereto is a true copy of the said return receipt post card. The post card has not been altered in any way since I received it.

Signed /s/ George Mockery
Dated this 15th day of April, 2002

The 10 May petition was dismissed on 14 August, 2002, in a decision which first noted:

* * *

Unfortunately, Petitioner's postcard receipt does not identify the number of pages filed in the specification, but only notes that "4 original copies of provisional" were filed. Thus applicant's postcard receipt fails to demonstrate that a written description of the invention was present upon filing the instant application[;]

* * *

then referenced for the applicants the provisions of MPEP §503, and concluded:

* * *

If a written description of the invention (pages 1 and 2 of the specification) was not present on the June 9, 2001, filing date, it cannot be considered as part of the original disclosure of the application. Petitioner has failed to satisfactorily demonstrate that a written description of the invention was present in the Office on June 9, 2001. Therefore, the application cannot be accorded the June 9, 2001, filing date with a written description of the invention as a part of the original disclosure. The issue of new matter is one appropriately addressed by the primary examiner during prosecution of the application after the filing date of the application has been determined.³

* * *

A renewed petition filed on 7 October, 2002, argued that:

- the applicants, acting *pro se*, assembled and submitted the materials consisting of a copy of the provisional application
- on deposit the Office did not alter the post card content listing, thus indicating that the Office received the complete application; and then
- on 20 December, 2001, the Office issued a filing receipt and a foreign filing license and set a projected publication date of 28 March 2002; and
- it was not until 15 March, 2002, that for the first time the Office determined that the application was incomplete.

In dismissing the 7 October petition on 18 November, 2002, the decision stated:

³ Decision on Petition of 14 August, 2002, at page 2.

* * *

While Petitioners can report * * * what they recall doing more than 17 months prior to this writing and submit what purports to be a copy of a certified copy of their provisional application * * *, Petitioners' receipt card does not detail the content more specifically than "copies of provisional"--there is no indication as to what provisional is being referenced, the number of pages included, or the elements contained therein (See: MPEP §503).

* * *

In seeking further reconsideration in this matter, a petition filed by present Counsel (Petitioner) on 9 September, 2003, contended that the Applicants' "postcard does itemize each of the component parts that were submitted."

And continued:

* * *

Comparing the itemized list of the postcard to the MPEP instructions, one sees that each of the component parts are (sic) separately listed, viz., the claims are specified (item 3), the declaration is specified (item 5), the filing fee is specified (item 4) and contrary to the previous decisions the specification ins specified (item 2) "4 Original Copies of Provisional." What else could this item constitute? Applicant was submitting a patent application.

* * *

In dismissing the 9 September petition, the 21 November, 2003, decision stated:

* * *

It is the duty of applicants herein to evidence in clear, unmistakable, non-equivocating language what an "item constitutes," and they do not satisfy that requirement with their inquiry as to "what else"--what other possibility--they could be or could have been referring.

Applicants failed to identify in their postcard receipt their provisional application by number and filing date. They did not specify the number of pages contained. They failed to set forth what provisional it was they were submitting to stand as their specification.

Thus, they failed to identify their written description, which is a requirement of a non-provisional application and without which an application cannot obtain a filing date.

They do not now carry their burden of proof by inquiring as to what else it could have been.

* * *

Thus, the 9 September, 2003, petition was dismissed on 21 November, 2003, for failure once again to support the allegation that Applicants deposited with the Office of the entire application—including the written description—on 9 June, 2001.

Petitioner contends in the most recent petition of 12 March, 2004, that:

- the Office ignored Applicants' arguments of 7 October, 2003, with regard to the filing receipt mailed by the Office on 20 December, 2001;
- the filing receipt, rather than Applicants' receipt card, controls as to defining which items were received by the Office on the deposit date of 9 June, 2001;
- the Office's practice, stated at MPEP §506, imposed an "affirmative duty on the Office of Initial Patent Examination (OIPE) to give the applicant notice of any defects in the filing of a nonprovisional application, and to issue a PTO-1123 Notice of Incomplete Application."

It is clear from the facts recited above that, contrary to Petitioner's suggestion, the Office indeed issued a Notice of Incomplete Application on 15 March, 2002. While this may not have been as quick a response to the deposit by Messrs. George and Greg Mockery as the Office seek to provide, Petitioner apparently and conveniently ignores the interruptions and delays in many government functions that resulted in the several months following September 2001.

Now the remaining two of Petitioner's contentions are addressed below.

STATUTES AND REGULATION

35 U.S.C. §21 states in pertinent part:

* * *

(a) The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruption or emergencies designated by the Director.

* * *

35 U.S.C. §111 states in pertinent part:

* * *

(a) In general.

(1) Written Application. An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.

(2) Contents. Such application shall include--

(A) a specification as prescribed by section 112 of this title;

(B) a drawing as prescribed by section 113 of this title;

(C) an oath by the applicant as prescribed by section 115 of this title

(3) Fee and oath. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

(4) Failure to submit. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the fee and oath was unavoidable or unintentional. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office. (Emphasis supplied.)

* * *

35 U.S.C. §112 states in pertinent part:

* * *

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention. (Emphasis supplied.)

* * *

37 C.F.R. §1.53(b) states in pertinent part:

* * *

Application filing requirements--Nonprovisional application. The filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. §112 containing a description pursuant to §1.71 and at

least one claim pursuant to §1.75, and any drawing required by §1.81(a) are filed in the Patent and Trademark Office.

* * *

37 C.F.R. §1.71 states in pertinent part:

* * *

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth. (Emphasis supplied.)

* * *

OPINION

The most recent renewed petition again requests that the application be accorded a filing date of 9 June, 2001, rather than the presently accorded filing date of 10 May, 2002.

Petitioner argues that the Office has failed to consider the argument that MPEP §503⁴ is

⁴ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

If a self-addressed postcard is submitted with a patent application, that postcard will be provided with both the receipt date and application number prior to returning it to the addressee. The application number identified on such a postcard receipt is merely the preliminary assignment of an application number to the application, and should not be relied upon (e.g., with respect to foreign filings) as necessarily representing the application number assigned to such application. See 37 C.F.R. §1.53(b).

The identifying data on the postcard should include:

- (A) applicant's name(s);
- (B) title of invention;
- (C) number of pages of specification, claims (for nonprovisional applications), and sheets of drawing;
- (D) whether oath or declaration is included;
- (E) a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and/or provisional application cover sheet); and
- (F) amount and manner of paying the fee.

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

OIPE mails a filing receipt to the attorney or agent, if any, otherwise to the applicant, for each application filed which meets the minimum

controlling in this matter. Specifically, Petitioner states:

* * *

MPEP §503 makes the issuance of a filing receipt by the USPTO *prima facie* evidence of compliance with Rule 53(b). [Quotation of the provision omitted.]

* * *

Here, a filing receipt was mailed to applicants in December 2001, long prior to the date the Office issued the Notice o (sic) Incomplete Application in March 2002. Based on the USPTO's own rules, the complete application, thus was received and processed by OIPE. It was not until after that date that the USPTO apparently lost the application. (Emphasis supplied.)

* * *

requirements to receive a filing date. The filing receipt includes the application number, filing date, a confirmation number, a suggested class in the U.S. Patent Classification System (see MPEP §902.01), and the number of an art unit where the application is likely to be examined. The filing receipt also includes other information about the application as applicable, such as continuing data, national stage data, foreign priority data, foreign filing license data, entity status information, and the date the Office anticipates publishing the application under 35 U.S.C. §122(b). The filing receipt represents the official assignment by the USPTO of a specific application number and confirmation number to a particular application. See 37 C.F.R. §1.54(b). The application number officially assigned to an application on the filing receipt may differ from the application number identified on a postcard receipt submitted with such application, and, as between inconsistent filing receipts and postcard receipts, the application number on the filing receipt is controlling.

* * *

A nonprovisional application, other than a CPA filed under 37 C.F.R. §1.53(d), is entitled to a filing date as of the date of receipt of the specification, including claims, and any required drawing. See 37 C.F.R. §1.53(b). The filing receipt will be mailed at the time a determination is made that the application meets the minimum requirements to receive a filing date. The oath or declaration and filing fee may be filed later than the remaining application papers, but if so, they must be accompanied by the required surcharge. See 37 C.F.R. §1.53(f). If the oath or declaration, and/or filing fee, and appropriate surcharge are not timely filed, the application will be abandoned.

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO.

From the outset, Petitioner here fails to distinguish as between United States statutes, Office Rules of Practice (or regulations), and Office policy.

The MPEP itself clarifies the matter at its *Introduction*,⁵ which states:

* * *

Statutes

Pursuant to the provision of the Constitution, Congress has over the years passed a number of statutes under which the U.S. Patent and Trademark Office is organized and our patent system is established. The provisions of the statutes can in no way be changed or waived by the U.S. Patent and Trademark Office.

* * *

By an Act of Congress approved July 19, 1952, which came into effect on January 1, 1953, the patent laws were revised and codified into substantially its present form. The patent law is Title 35 of the United States Code which governs all cases in the U.S. Patent and Trademark Office.

* * *

Rules

One of the sections of the patent statute, namely, 35 U.S.C. 2, authorizes the Commissioner of Patents and Trademarks, subject to the policy direction of the Secretary of Commerce, to establish regulations, not inconsistent with law, for the conduct of proceedings in the U.S. Patent and Trademark Office.

These regulations or rules and amendments thereto are published in the *Federal Register* and in the *Official Gazette*. In the *Federal Register* and in the Code of Federal Regulations the rules pertaining to patents are in Parts 1, 3, 4, 5, and 10 of Title 37, Patents, Trademarks, and Copyrights.

* * *

Publications Available from Superintendent of Documents

* * *

Manual of Patent Examining Procedure. [MPEP] A loose-leaf manual which serves primarily as a detailed reference work on patent examining practice and procedure for the U.S. Patent and Trademark Office's Examining Corps including statutes, rules, treaties, etc. Subscription service includes basic manual, revisions, and change notices.

* * *

Thus, the MPEP is "a reference work on practice and procedure"—a commentary or guidance—and does not constitute, as Petitioner has chosen to mis-characterize it as "the USPTO's own rules."

Moreover, a review of the commentary at MPEP §503 demonstrates that it Office expressly considers the receipt card—and not the filing receipt—*prima facie* evidence of compliance with the rules of practice (37 C.F.R.).

⁵ MPEP, *Introduction*, pages 1-2.

Further, Petitioner confuses what the MPEP states . . . and what it does not.

Petitioner quotes MPEP §503:

* * *

The filing receipt represents the official assignment by the USPTO of a specific application number and confirmation number to a particular application. * * *
[A]s between inconsistent filing receipts and postcard receipts, the application number on the filing receipt is controlling. (Emphasis, Petitioner.)

* * *

Thus, Petitioner seeks to bootstrap his argument—to wit: because the filing receipt controls over the receipt card as to the application number assigned by the Office, the filing receipt also controls over the receipt card as to what documents came in the Office door on the date of deposit.

That is not the case.

The MPEP commentary expressly states that the Office considers the filing receipt controlling as to the application number assigned by the Office—not as to the determination of the papers deposited by the applicants with the Office.

The MPEP is express as to the matter of what papers the Office does and does not acknowledge as received on the date of deposit:

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application

being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard “a complete application” or “patent application” will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items. (Emphasis supplied.)

* * *

Therefore, when all of Petitioner’s diversionary contentions are peeled away, Petitioner’s entire argument is contained in the following excerpts which he quotes from MPEP §503:

* * *

OIPE mails a filing receipt to the attorney or agent, if any, otherwise to the applicant, for each application filed which meets the minimum requirements to receive a filing date.

* * *

[A nonprovisional application, other than a CPA filed under 37 C.F.R. §1.53(d), is entitled to a filing date as of the date of receipt of the specification, including claims, and any required drawing. See 37 C.F.R. §1.53(b).]⁶ The filing receipt will be mailed at the time a determination is made that the application meets the minimum requirements to receive a filing date. The oath or declaration and filing fee may be filed later than the remaining application papers, but if so, they must be accompanied by the required surcharge. See 37 C.F.R. §1.53(f). (Emphasis, the Petitioner.)

* * *

Petitioner ignores the statement addressing corrections to a filing receipt printed on Office filing receipts:

* * *

If you receive a “Notice of Missing Parts” for this application, please submit any corrections to this Filing Receipt with our reply to the Notice. When the USPTO

⁶ Petitioner fails to set forth this sentence.

processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if applicable).

* * *

The Office clearly and expressly states that changes may be expected in the content of a filing receipt.

There is no such statement or expectation as to a receipt card.

Finally, the application contents can be no more than what the applicants set forth and the Office acknowledged on the receipt card on the very day of deposit:

NEW APPLICATION TRANSMITTAL (SMALL ENTITY)
4 ORIGINAL COPIES OF PROVISIONAL
PAGE "CLAIMS"
CASHIERS CHECK FOR \$355.00
2 DECLARATION FORMS
SELF ADDRESSED POST CARD (FOR RECEIPT PURPOSES)

That listing, which provides neither number nor filing date of the provisional application alleged to be part of the contents nor the number of pages contained in that application, does not comply with the specificity that the Office indicates at MPEP §503 would be required for Petitioner to obtain for the Applicants the filing date of 9 June, 2001.

Thus, Petitioner's arguments have been carefully considered, but are not persuasive.

Under 35 U.S.C. §111, the filing date of an application is defined as the date the specification and drawings are received in the U.S. Patent and Trademark Office.

Under 35 U.S.C. §112, a statutory requirement is that "the specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention."

The Office is not unmindful that the applicants may have elected to assemble their application themselves rather than have the process undertaken by a registered practitioner in their efforts to conserve resources. But, having done so, the applicants bear the responsibility of that election.

Waiver of the rules is not warranted when a party makes an avoidable mistake in filing papers.⁷

⁷ Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994).

Clerical inadvertence or error leading to a loss of right is not a ground for requesting waiver of the regulations.⁸

DECISION

In summary, by statute the filing date of a nonprovisional application is the date on which a specification—including the written description of the invention—and a drawing are received in the USPTO.

Because the record does not reflect that the entire application—including the written description of the invention—was deposited in the USPTO until 10 May, 2002, the application papers are not entitled to a filing date of 9 June, 2001.

Accordingly, granting the requested relief would be contrary to the patent statute.

The petition is **denied**.

The filing date of the application remains 10 May, 2002.

Because this petition was not occasioned by the Office, the fee will not be refunded.

The application is being forwarded to Publications Branch to be processed into a patent with the existing filing date of 10 May, 2002.

Telephone inquiries concerning this decision may be directed to John J. Gillon, Jr., Attorney, at (703)305-9199.

Charles Pearson
Director, Office of Petitions

⁸ See: In Re Kabushiki Kaisha Hitachi Seisakusho, 39 USPQ2d 1319, 1320 (Comm'r Pat. 1994).

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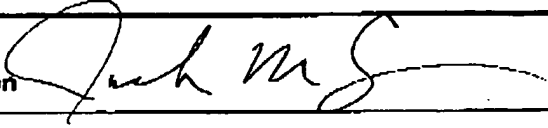
JUN 25 2004



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FACSIMILE TRANSMITTAL SHEET

TO: Office of Petitions	FROM: Joseph Skerpon 
COMPANY: USPTO	DATE: June 25, 2004
FAX NO.: (703) 308-6916	TOTAL NO. OF PAGES: (including cover sheet) 5
YOUR REFERENCE NO.: App. Serial No.: 09/878,860	OUR REFERENCE (C/M) NO.: 006385.00001

RE: Petition to Withdraw Application from Issuance

If you do not receive all page(s) or have any problems receiving this transmission, please call:

NAME: Beverley Orlebar Joseph Skerpon	PHONE: 202-824-3125 202 824-3112
--	---

COMMENTS:

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JUN 25 2004

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	Confirmation No. 8653
)	
George Michael MOCKRY et al.	)	Group Art Unit: 3711
)	
Serial No.: 09/878,860	)	Examiner: M. Chambers
)	
Filed: May 10, 2002	)	Customer No. 22907
)	
	)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

**URGENT PETITION TO
WITHDRAW CASE FROM ISSUE
TO PERMIT ENTRY OF
SECOND RULE 312 AMENDMENT**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby Petition under Rules 1.313 and 1.181 and 1.183 to withdraw the subject application from issuance so that the following amendment can be entered belatedly under Rule 312. The issue fee was submitted May 24, 2004, but the filing date accorded to the application was changed, by grant of a petition, on June 7, 2004, subsequent to the payment of the issue fee. The grant of that petition now enables applicants to claim the benefit of their Provisional Application and to amend the specification to present that claim for benefit, which they request by this Petition and Amendment.

Please charge our Deposit Account No. 19-0733 for any fees necessary for entry and consideration of this petition and amendment.

Amendments to the Specification begin on page 2 of this paper.

Remarks supporting the petition and amendment begin on page 3 of this paper.

--1--

Serial No.: 09/878,860

Atty. Docket No. 006385.00001

Amendments to the Specification:

Please replace the first paragraph in the application (paragraph [0001]) with the following rewritten paragraph:

--This application ~~presents a invention first described in~~ claims the benefit under 35 U.S.C. 119 of previously filed Provisional application 60/211,208 filed June 13, 2000.--

Serial No.: 09/878,860

Atty. Docket No. 006385.00001

REMARKS/ARGUMENTS

Through this petition and amendment applicants seek to have the subject application withdrawn from issue so that the specification can be updated (amended) to claim the benefit of applicants' earlier provisional application.

Supporting Facts:

Applicants were originally (though erroneously as confirmed by the recent grant of a petition) accorded a fillig date of May 10, 2002 for the subject application.

That date was more than a year after their earlier filed provisional application (June 13, 2000), thus making its benefit unavailable to applicants under 35 U.S.C. 119 up though the payment of the issue fee on May 24, 2004.

Nonetheless, as reflected by applicants' original Declaration (found for example at Tab 4 of the Renewed Petition for Corrected Filing Date submitted in September 2003) and in the original Official Filing Receipt issued by the USPTO (found for example at Tab C of the Renewed Petition for Corrected Filing Date submitted in September 2003), applicants always intended to claim (and attempted to claim) and the Patent Office understood that intent to claim the benefit of their original provisional application.

In other words the claim for priority was timely made and accepted. Only because they were long denied (albeit erroneously) the original filing date of their utility application, they were unable to present that claim for benefit of priority in the pending specification (the erroneously accorded date of the utility application was more than one year after the original provisional application date).

On June 7, 2004, after applicants had paid the issue fee on May 24, 2004, the Office of Petitions finally granted the petition and thus granted applicants their original utility filing date of June 9, 2001.

Having now been accorded that filing date, which is within a year of their initial provisional application filing date of June 13, 2000, applicants are also entitled to the benefit of their provisional application.

Serial No.: 09/878,860

Atty. Docket No. 006385.00001

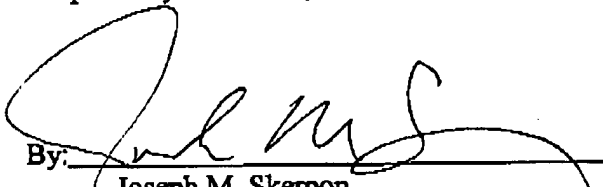
Applicants thus petition to withdraw the case from issue so that the specification can be amended to reflect that benefit. That amendment should be entered.

We understand that the application is in the publications branch for processing for issuance. Thus, an early indication of the grant of this petition and entry of this amendment is respectfully requested. Even if the published application can not be corrected to reflect this amendment prior to printing, an indication of the entry of this amendment will allow applicants to correct the specification via a Certificate of Correction following issuance.

Since the requested amendment is supported by the facts, adds no new matter to the application, does not change the claimed invention and does not alter the nature of the allowed application, Applicants respectfully submit that the petition should be granted and the requested amendment should be entered. Entry of the amendment under Rule 312, by petition following withdrawal from issue, now is requested.

If there are any questions or a need for additional information, please contact the undersigned at his direct dial 202 824-3112

Respectfully submitted,

By: 
Joseph M. Skerpon
Registration No. 29,864

June 25, 2004

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Washington, D.C. 20001-4597
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JUL 16 2004

OFFICE OF PETITIONS

In re Application of
Mockry, et al.
Application No.09/878,860
Filed: 10 May, 2002
Attorney Docket No. 006385.00001

:
:
: ON PETITION
:
:

This is a decision on a petition (styled: "Petition for Delayed Issuance of Patent) filed on 24 May, 2004, and considered under 37 C.F.R. §1.314.

The petition is **DISMISSED as moot.**

BACKGROUND

Then-*pro se* applicants George Mockery and co-inventor Greg M. Mockery (hereinafter Messrs. George and Greg Mockery or Applicants) deposited this application on 9 June, 2001.

At the outset, the application failed to receive a filing date of 9 June, 2001, but thereafter received a later date and was examined before being allowed on 24 February, 2004.

Meanwhile, several petitions to obtain a 9 June, 2001, filing date were filed and dismissed in the effort to obtain a filing date for the application. As to the petition filed on 12 March, 2004, the grant of a filing date was directed to be and was so granted on 7 June, 2004.

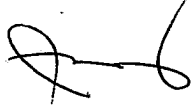
The instant petition was filed in the interim, and sought to delay issue until the 12 March, 2004, petition was decided.

Clearly, that event has occurred.

The issue is moot, and the petition is **dismissed**.

The application is released to Publications Branch to be processed into a patent.

Telephone inquiries concerning this decision may be directed to the Office of Petitions at (703)305-9282.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	05/10/2002	George Michael Mockry	530.005PA	8653

22907 7590 08/11/2004

BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 08/11/2004

28


Please find below and/or attached an Office communication concerning this application or proceeding.

6

Response to Rule 312 Communication	Application No. 09/878,860	Applicant(s) MOCKRY ET AL.	
	Examiner Mike Chambers	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. The amendment filed on 25 June 2004 under 37 CFR 1.312 has been considered, and has been:
- a) entered.
 - b) entered as directed to matters of form not affecting the scope of the invention.
 - c) disapproved because the amendment was filed after the payment of the issue fee.
Any amendment filed after the date the issue fee is paid must be accompanied by a petition under 37 CFR 1.313(c)(1) and the required fee to withdraw the application from issue.
 - d) disapproved. See explanation below.
 - e) entered in part. See explanation below.


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



UNITED STATES PATENT AND TRADEMARK OFFICE

15

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	05/10/2002	George Michael Mockry	530.005PA	8653

22907 7590 12/14/2004
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WASHINGTON, DC 20001

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 12/14/2004

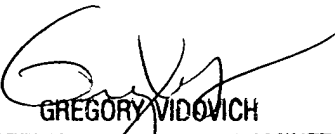
29

Please find below and/or attached an Office communication concerning this application or proceeding.

Response to Rule 312 Communication	Application No. 09/878,860	Applicant(s) MOCKRY ET AL.	
	Examiner Mike Chambers	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. The amendment filed on 25 June 2004 under 37 CFR 1.312 has been considered, and has been:
- a) entered.
 - b) entered as directed to matters of form not affecting the scope of the invention.
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 - d) disapproved. See explanation below.
 - e) entered in part. See explanation below.


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

This listing of claims replaces all prior versions and listings, of claims in the application

Claims 1-22 (cancelled)

UN 10 MSC 8/11/04
 Claim 23 (Previously Presented). A method of replaying or rebroadcasting a baseball game, or a portion thereof, for which a video recording of the baseball game, or a portion thereof, was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video of substantially only (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) obtaining subscribers for viewing the edited recording and (c) playing or broadcasting the edited recording for viewing by the subscribers.

Claim 24 (Previously Presented). A method of providing a subscription for viewing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording by deleting substantially all game action other than (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final



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30

MAR 14 2005

In re Application of	:	
George M. Mockry	:	NOTICE OF WITHDRAWAL
Serial No. 09/878,860	:	FROM ISSUE
Filed: May 10, 2002	:	UNDER 37 CFR 1.313(b)
For: METHOD OF RECORDING AND	:	
PLAYING BASEBALL GAME SHOWING:	:	
EACH BATTER'S LAST PITCH	:	

The above-identified application is hereby withdrawn from issue after payment of the issue fee due to unpatentability of one or more claims. See 37 CFR 1.313(b)(3).

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to Greg Vidovich, SPE, Art Unit 3711 at (571) 272-4415. The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

E. R. Kazerske, Director
Technology Center 3700

Freudenberg & Associates
P.O. Box 841
Durango, CO 81302



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,860	06/09/2001	George Michael Mockry	530.005PA	8653

22907 7590 04/01/2005

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SUITE 1100
WASHINGTON, DC 20001

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/878,860	Applicant(s) MOCKRY ET AL.	
	Examiner Mike Chambers	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 July 2004.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 23-34 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 23-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

Re-open Prosecution

Applicant is advised that the Notice of Allowance mailed 2/24/04 is vacated.

Prosecution on the merits of this application is reopened on claims 23-34 are considered unpatentable for the reasons indicated below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-34 are rejected under 35 U.S.C. 103(a) as obvious over SeasonTicket in view of Rangan et al. SeasonTicket discloses recording personalized sport video highlight shows (page 2 2nd paragraph). The duration and subject matter recorded is a matter of design choice to the viewer. The specification provides no unexpected results in recording the action plays of the game. The content of an edited video contains no patentable novelty. It would have been obvious to one of ordinary skill in the art at the time of the invention to have edited and recorded the video to reflect what the viewer wished to record based on personal preferences. This requires no patentable skill. The method claimed would naturally be used when the video was produced and played. Although SeasonTicket makes reference to the fact that video highlights were pre-selected by the user, which one may infer the user was a subscriber, it is not clear (Note the second reference for season ticket, notes in the 6th paragraph that the video highlights were pre-selected by the user

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which would indicate there was a subscription service). Rangan et al discloses the use of subscribers is well known in the art (5:50-64,23:32-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to include obtaining subscribers in order to increase the profitability of the business.

As to claim 24: See claim 23 rejection. The decisions to record each appearance at bat for every player, the final pitch thrown to each player and successful and unsuccessful attempts by the base runners are design choices based on editing decisions by the editor. The specification provides no unexpected results in recording the action plays of the game. It would have been obvious to one of ordinary skill in the art at the time of the invention to have edited the video to reflect what the editor wished to record based on personal preferences. The method claimed would naturally be used when the video was produced and played.

As to claim 25: No criticality is seen in the duration of the edited recording. The duration of the edited recording is a matter of design choice. The specification provides no unexpected results in using a edited recording of 15 minutes. It would have been obvious to one of ordinary skill in the art to have selected an appropriate length of time for the video to run based on cost and design considerations. The method claimed would naturally be used when the video was produced and played.

As to claim 26: No criticality is seen in the portion of the game recorded. The portion of the game recorded is a matter of design choice. The specification provides no unexpected results for recording a portion of a nine-inning baseball game. It would have been obvious to one of ordinary skill in the art to have selected an appropriate portion of

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the game to record and show based on cost and design considerations. The method claimed would naturally be used when the video was produced and played.

As to claim 27: Seasanticket discloses broadcasting over the internet (page1 3rd paragraph). See also Rangan et al as applied above.

As to claim 28: The method claimed would occur naturally when the video tape was played. It would have been obvious to one of ordinary skill in the art to have included the method of playing the video tape since this is one of the logical reasons for producing the video. The method claimed would naturally be used when the video was produced and played. There is no patentable novelty in broadcasting a video. The means for display is a matter of design choice. The specification provides no unanticipated results from the various means of display chosen.

As to claim 29: Seasanticket discloses audio commentary (page2 3rd paragraph). No criticality is seen in the audio containing an explanation of any substitution of players. It would have been obvious to one of ordinary skill in the art to have included appropriate commentary in order to keep the viewer updated with accurate information and avoid viewer confusion. The method claimed would naturally be used when the video was produced and played.

As to claim 30: See claim 25 rejection.

As to claim 31: See claim 26 rejection.

As to claim 32: See claim 27 rejection.

As to claim 33: See claim 28 rejection.

As to claim 34: See claim 29 rejection.

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Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 23-34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-15 of copending Application No. 10/858470 in view of Rangan et al Rangan et al discloses the use of subscribers is well known in the art (5:50-64,23:32-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to included obtaining subscribers in order to increase the profitability of the business.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

The method claimed in this application merely takes a well known procedure (editing tapes) and applies the end result of the editing process to a subscription

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service. Although it may be argued that there should also be a 101 rejection since it is questionable whether or not the claimed invention falls in the technological arts, the decision at this point in time is to reject the claims on the art cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Chambers
Examiner
Art Unit 3711

February 27, 2005


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Notice of References Cited

Application/Control No. 09/878,860	Applicant(s)/Patent Under Reexamination MOCKRY ET AL.	
Examiner Mike Chambers	Art Unit 3711	Page 1 of 2

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,493,872	12-2002	Rangan et al.	725/32
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	Web Page, Videoccasions: Do It for the Kids: School and Sports Video, 1998,1999,2000 copyright, Downloaded from web-1/11/05, www.videoccasions-nw.com/voschool.html,4 pages
	V	Web Page, FosterVideo Millennium Pro Sports Video 2000, Downloaded from web-1/11/05, www.fostervideo.com/millennium-Pro-Sports-Video-2000.html, 2 pages□□□□
	W	Web Page, Now Playing: Movies on The Net, 1/2000, Downloaded from web-1/11/05, www.ecommerce-guide.com/news/trends/print.php/289961,2 pages
	X	Web Page, SeasonTicket, 4/2000, Downloaded from web-2/8/05, www.findarticles.com,2 pages□□□□

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Notice of References Cited

Application/Control No. 09/878,860		Applicant(s)/Patent Under Reexamination MOCKRY ET AL.	
Examiner Mike Chambers		Art Unit 3711	Page 2 of 2

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	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)			
	U	Web Page, SeasonTicket, 8/2000, Downloaded from web-2/8/05, www.gambling-associates.com, 1 page□□			
	V	Web Page, Customized video highlights, 8/24/2000, Downloaded from web-8/26/03, http://www.mlsnet.com/content/00/mls0824seasonticket.html, 2 pages□□			
	W				
	X				

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).) Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

3711
ERW



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:	)	Confirmation No. 8653
)	
George Michael MOCKRY et al.	)	Group Art Unit: 3711
)	
Serial No.: 09/878,860	)	Examiner: M. Chambers
)	
Filed: May 10, 2002	)	Customer No. 22907
)	
	)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

AMENDMENT A AND RESPONSE UNDER 37 C.F.R. § 1.111

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed April 1, 2005, please enter the following amendments and remarks into the file of the above-captioned patent application.

It is believed that no fee is required for the entry and consideration of this amendment. However, if any fee is due, please debit our Deposit Account No. 19-0733, for whatever fee is required.

A **LISTING OF CLAIMS** reflects claim amendments and begins on page 2 of this paper.

A **REMARKS** section begins on page 7 of this paper.

This listing of claims replaces all prior versions and listings, of claims in the application

Claims 1-22 (cancelled)

Claim 23 (Currently amended). A method of replaying or rebroadcasting a baseball game, ~~or a portion thereof~~, for which a video recording of the baseball game, ~~or a portion thereof~~, was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video ~~of substantially only~~ consisting essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) obtaining subscribers for viewing the edited recording and (c) playing or broadcasting the edited recording for viewing by the subscribers.

Claim 24 (Currently amended). A method of providing a subscription for viewing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording by deleting substantially all game action other than (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting

in an out not associated with the game action resulting from the final pitch; (3) obtaining subscribers for viewing the edited recording and (4) playing or broadcasting the edited recording as a condensed recorded game for viewing by the subscribers, ~~whereby only outcome determinative game action is displayed.~~

Claim 25 (Previously Presented) The method of claim 23 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 26. (Previously Presented) The method of claim 23 wherein said edited recording comprises only a portion of a nine-inning baseball game.

Claim 27. (Previously Presented) The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 28. (Previously Presented) The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 29. (Previously Presented) The method of claim 23 wherein the edited recording contains audio explaining any substitution of players.

Claim 30 (Previously Presented) The method of claim 24 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 31. (Previously Presented) The method of claim 24 wherein said edited recording comprises only a portion of a nine-inning baseball game.

Claim 32. (Previously Presented) The method of claim 24 wherein said step of playing or

broadcasting the edited recording for viewing is conducted over the Internet.

Claim 33. (Previously Presented) The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 34. (Previously Presented) The method of claim 24 wherein the edited recording contains audio explaining any substitution of players.

Claim 35 (NEW). A method of obtaining revenue by replaying or rebroadcasting a condensed baseball game, for which a video recording of the baseball game was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video consisting essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) offering the edited recording to potential subscribers for viewing and (c) playing or broadcasting the edited recording for viewing by the subscribers for monetary consideration.

Claim 36. (NEW) The method of claim 35 wherein said step of playing or broadcasting the

edited recording for viewing is conducted over the Internet.

Claim 37. (NEW) The method of claim 35 wherein the edited recording contains audio explaining any substitution of players.

Claim 38 (NEW). A method of obtaining revenue from editing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording which consists essentially of (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (3) offering the edited recording to potential subscribers for viewing and (4) playing or broadcasting the edited recording for viewing by the subscribers for monetary consideration.

Claim 39. (NEW) The method of claim 38 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Serial No.: 09/878,860

Atty. Docket No. 006385.00001

Claim 40. (NEW) The method of claim 38 wherein the edited recording contains audio explaining any substitution of players.

REMARKS

Claims 23-40 are pending; claims 1-22 having previously been cancelled. New claims 35-40 have been added to link in a more direct manner the invention of condensing a baseball game as defined by the originally examined claims to a business method in which revenue is received in exchange for the right to view the condensed game. Support for these claims can be found, *inter alia*, in the first full paragraph of page 2 in the original application and in paragraph [007] of the substitute specification. While presented as independent claims, to a certain extent, these new claims can be considered derivative of the previously pending claims which recited obtaining subscribers for viewing the edited recording and should properly be examined with the pending claims.

No new matter has been added by these amendments.

This amendment is accompanied by an Express Abandonment of applicants' child application Serial No. 10/858,470.

The pending claims are directed to a novel method of presenting a baseball game in a condensed fashion for viewing (and re-viewing) and for generating additional revenue. The claims are supported by the original application and do not add any new matter.

Those skilled in the relevant art are well-versed in the conduct of a typical baseball game and with that understanding of a skilled worker, the pending claims are clear and definite. The claims have been amended (claims 23 and 24) and the new claims presented (claims 35 and 38) in a way such that they are directed specifically to a method in which a baseball game (*e.g.*, an analog or digital recording thereof) is edited, such as on an inning-, or half-inning-by inning

basis, or following the completion of the complete game, to remove “substantially” all aspects of the pre-recorded game that do not directly impact the outcome of the game, *i.e.*, save for the outcome-determinative action associated with each batter that comes to the plate and a minor amount of additional content (such as between inning banter by the announcers, occasional crowd shots, or certain foul balls that may have fan interest). In this way, essentially all the action of an entire baseball game that is reflected in the box score for each participant in the game is consolidated or condensed into about 10-20 minutes of video.

The newly added claims find support in the specification (Amended) for the added limitation of obtaining subscribers for viewing the broadcast of the edited recording, for example, in paragraph [0007]. New claims 35 through 40 parallel original claims 23, 24, 27, 29, 32 and 33 but include the added step of offering the edited recording to subscribers in exchange for compensation.

Please recall that a Rule 131 declaration by the inventors was previously filed in this application. In this Declaration, the inventors swore behind a Major League Baseball (MLB) Press Release dated March 27, 2001, which announced an agreement between MLB Advanced Media and RealNetworks (this was done prior to the granting of applicants’ petition for a filing date which ultimately entitled them to benefit of a June 13, 2000 provisional filing date). As documented in the declaration, prior to that time the inventors had disclosed their invention to a representative of MLB.

At the outset, applicants request that the Examiner confirm that the Second Rule 312 Amendment filed on or about June 25, 2004 which amended the Specification to assert benefit under 35 USC 119 of previously filed Provisional Application 60/211,208 has been entered. If not, applicants request that the undersigned representative be notified so that a Supplemental Amendment can be filed for that purpose.

The current Office Action issued following the withdrawal of a prior Notice of Allowance issued over a year ago, *i.e.*, on February 24, 2004.

Claims 23-34 have been rejected under 35 U.S.C. 103(a) as being unpatentable over SeasonTicket in view of Rangan et al, U.S. 6,493,872. This rejection is respectfully traversed.

The comments made in the Office Action, presumably made in support of the rejection, evidence a complete lack of an understanding of the claimed invention. The claimed invention, as defined by each of the independent claims, is a method. That method may require as one of its steps the preparation of an edited recording, but the edited recording itself is not claimed. Thus, the assertion in the Office Action that “the content of an edited video contains no patentable novelty” is irrelevant and inappropriate. Applicants do not understand the purpose for that comment in the Office Action. The claims do not embrace an edited video.

The Office Action also contends, in referring to the primary cited reference, that “SeasonTicket discloses recording personalized sport video highlight shows (page2 2nd paragraph). The duration and subject matter recorded is a matter of design choice to the viewer.”

It appears that the Office Action reads more into this service than actually may have been involved. Applicants request that the Examiner explain in detail the basis for his interpretation

of this reference. If that interpretation is based on facts within his personal knowledge (or the knowledge of someone else in the Office), applicants request the issuance of an affidavit under 37 CFR 1.104(d)(2). Applicants do not believe the “viewer” had any input into the original content of the highlights themselves (as it appears the Office Action assumes).

Applicants’ understanding of the service embraced by the cited reference is that a subscriber first defines an area of interest (it may be a single sport, it may be a set of teams from a single town, it may be several teams of different sports and different towns). Having defined that area of interest, SEASONTICKET then sends only those highlights, of the full set of highlights that it has access to, that fall within the defined area of interest for that subscriber. For example, a subscriber who expresses an interest only in the Boston Red Sox’s (baseball) and the Oakland Raiders (football) would only be sent the highlights, of all the highlights otherwise available through SEASONTICKET, for only those two teams. Highlights of other teams and other sports that might otherwise be available for viewing through SEASONTICKET would not be sent to that particular subscriber. Nothing is said in the reference document about the content of the highlight itself.

Such a service and the method of its implementation neither discloses, nor suggests the method defined by the pending claims.

The Office Action also asserts that “the specification provides no unexpected results in recording the action plays of the game.” This comment illustrates the Office Action’s attempt to shift the burden of demonstrating patentability to applicants. It is the burden of the Patent and Trademark Office (PTO) to present a *prima facie* case of obviousness of the invention defined by

applicants' claims, it is not applicants' burden to show the "criticality" or "unexpected results" of the invention, unless and until the PTO *prima facie* shows that the invention (method) would have been obvious to a person of ordinary skill in the art. As demonstrated below, the rejection does NOT present a *prima facie* case of obviousness.

The Office Action argues that deciding what portion of a pre-recorded video to select (or edit) is simply a design choice ("editing decision"). But, the exercise of a design choice is at the heart of any invention that involves a new way of using established technology. Such an approach to assessing patentability ignores the proper method for determining the issue of non-obviousness established by the U.S. Supreme Court in *Graham v. Deere*. In the present case, the claimed method involves a pre-selection of the content of the edited recording that breathes patentability into the invention – the attempt in the Office Action to denigrate that novel and nonobvious selection of content as simply a matter of design choice is based completely on an improper hindsight evaluation of the claimed invention.

The proper question, when addressing the issue of patentability, is whether it would have been obvious to a skilled worker to use the known technology in the manner embraced by the pending method claims. The fact that the invention is one of an infinite numbers of "choices" that confronts a worker of ordinary skill, when using such established technology to edit a video recording, is of no moment. It is only when illuminated by the improper light of hindsight that the present invention would in any way be considered by a skilled worker.

The invention is NOT directed to simply making a "highlight" tape of a baseball game, as for example one might see on ESPN's SportCenter. Rather, the invention is directed to a

particular pre-selected method of editing a pre-recorded baseball game to show essentially all of and essentially only all of the outcome-determinative pitches to each batter; while substantially eliminating all non-outcome-determinative action from the edited recording. In this way the edited video shows substantially only the outcome of each at bat in the game, such as the strike-out pitch, the base hit, the home run, the hit batter, the ground out, the fly out, the double play ball, etc. Obviously, such a record is not merely a highlight reel. The concept of making a highlight tape does not suggest making such a pre-selected, edited record of an entire baseball game in the manner defined by the pending claims.

Thus, when one assesses the differences between the cited prior art and the subject matter defined by the pending claims, as required by *Graham v. Deere*, one sees that the actual content of the potential recordings is substantially different. A set of highlights, as practiced by the prior art, captures only a few to possibly a dozen events in the course of a game, and generally represents a subjective assessment of those aspects of the game that a viewer might find particularly interesting. The present invention, in contrast, establishes an objective, pre-selection of the game action to be included, selecting essentially all of the game action that contributes to the box score of the game. There is nothing in the prior art cited by the Examiner that in any way suggests that one could predicate a new business method, *i.e.*, produce a new product, that would be in demand, *i.e.*, have intrinsic value, independent of common highlight videos by capturing the action of a baseball game in this manner, *i.e.*, by distilling the recording of a baseball game down to essentially only those actions that contribute directly to the outcome of the contest, such as the result that occurs following the last pitch thrown to each batter for

each turn at the plate, or the tagging out or safe advancement of a base runner as may occur in a pick-off play or if the runner is caught stealing. Based on applicants' teachings, anyone with even a rudimentary knowledge of the game of baseball can envision what aspects of the pre-recorded game to exclude and what to retain in the editing process to accomplish the stated result – there is nothing subjective in carrying out the claimed method.

However, before the disclosure of applicants' teachings, there is not one shred of evidence that those of ordinary skill would have envisioned conducting such a method and preparing such a product. Of course, one can, within the spirit of this invention, include a minor amount of extraneous recorded information in the edited version according to the present invention, *e.g.*, a video clip of a young fan watching the game, or a video clip of a coach or manager giving signals or changing the pitcher, so as to accent the summary presentation provided by this invention. Thus, the use of such words as “essentially” and “substantially,” which the Federal Circuit has repeatedly acknowledged are terms implying approximation not exactness, to modify certain aspects of the claimed method, prevents one from slavishly limiting the literal scope of the method to the essential actions. The objective of the invention is to present a complete summary of the action that is recorded in the original game, as reflected in the box score for each participant in the game, so that the action is consolidated into about 10-20 minutes of video.

Indeed, if the claimed method was simply an obvious design choice, why then did Major League Baseball call it “revolutionary” when it first introduced its offering of “Condensed Games.” “Major League Baseball (MLB) today announced the debut of a revolutionary new

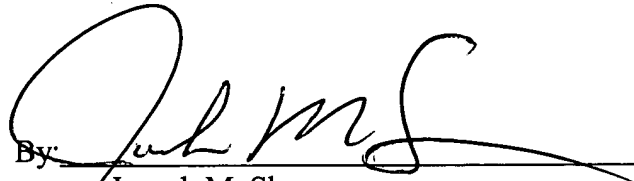
baseball video service.” (Press Release of March 5, 2002 – Additional copy enclosed for convenience but previously submitted with August 27, 2003 Information Disclosure Statement). MLB’s own glowing characterization of this method of doing business stands as a powerful testament of the non-obviousness of the claimed method. This objective indication of the non-obviousness of the method must be considered when evaluating the patentability of the claimed method. The adoption by MLB of this business method, decades after pre-recording of baseball games was begun and years after the technology of providing such a product/service over the internet was available, stands as an uncontested tribute to the ingenuity and inventiveness of the claimed method. We submit that such third party commentary unequivocally demonstrates the patentability of the subject matter defined by the pending claims.

The citation of the secondary reference Rangan, US 6,493,872 is particularly inappropriate and does not address any of the glaring shortcomings of the primary reference. Rangan describes technology for synchronizing audio and video data streams from different points of origin. Nothing regarding a baseball-related product is mentioned.

Claims 23-24 also were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 41-15 of their co-pending application Serial No. 10/858,470 in view of Rangan. Applicants are expressly abandoning that co-pending application. This rejection is no longer appropriate.

On the basis of the foregoing, prompt consideration and an allowance of all claims in the subject application are respectfully requested.

Respectfully submitted,

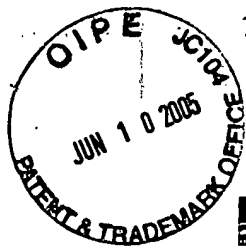
By: 

Joseph M. Skerpon
Registration No. 29,864

June 10, 2005

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3/5/2002 10:30 am ET

MLB Advanced Media adds new "star" to video lineup in 2002

Arturo Amador

Revolutionary condensed game video joins popular returning starters from last season

MLB Advanced Media press release

- o Watch the Condensed Game demo: three innings of Game 3 of the 2001 World Series

NEW YORK, NY, March 5, 2002 – MLB Advanced Media, LP (MLBAM), the interactive media and Internet company of Major League Baseball (MLB), today announced the debut of a revolutionary new baseball video service to its starting lineup for the 2002 season, *MLB.com Condensed Games*.

MLB.com Condensed Games ("Not Just Baseball Fastball") joins a host of exclusive audio and video services that made their debut last season. Fans will be able to watch every hit, run & out in a game (about 85 pitches) resulting in an action-packed 30K video stream of a complete ballgame that runs approximately 20 minutes. *Condensed Games* will be available to fans about 90 minutes after the completion of every game. MLB.com's multimedia content is played exclusively through RealNetwork's RealOne player and will be demonstrated at a press conference hosted by Real Networks to introduce The Gold Release of RealOne in Los Angeles later today.

"We are very pleased to continue to break new ground in the development of exclusive audio and video services," said Bob Bowman, CEO of MLBAM. "While the best ways to watch a ballgame continue to be at the ballpark or on television, *MLB.com Condensed Games* offers geographically or time-displaced fans an alternate way to enjoy baseball."

Today's announcement represents the creation of another first-of-its-kind baseball subscription service from MLBAM. *Condensed Games* joins a number of returning starters to MLB.com's subscription service lineup. The official website of MLB now offers a number of exclusive audio and video services which made their debut last season, including *MLB.com Gameday Audio* – live & archived audio webcasts of all MLB games both home and away, and foreign language feeds when available; *MLB.com Custom Cuts* – a customizable, on-demand, video highlight service, enabling fans to create their own highlight reels of their favorite players; and *Baseball's Best*, a growing library of broadband video of the greatest games in baseball history soon to be expanded with original radio calls of classic games from the 1930's through the present.

The price of the new *Condensed Game* service will be announced shortly. A demo of the new service will be available on the MLB.com site following the conclusion of the Real Networks press conference in Los Angeles later today.

http://mlb.mlb.com/NASApp/mlb/mlb/homepage/mlb_homepage.jsp

- Q & A with Royals owner David Glass
- White Sox working to end baserunning blunders
- Mets' Chen going the extra mile
- Adrian Brown eager to take center stage
- Lieberthal happy to be back in action
- Saturday's Cactus League results
- Saturday's Grapefruit League results
- Four suspended, three fined from Angels, Padres
- Pokey and Junior dissolve controversy
- Henderson, El Duque have words

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Kip Wells: Spring Training diary

Mark Redman: Spring Training diary

Schlegel: Nine more questions for spring

Carlos' Corner: It's good to clear your head'

Molony: McClendon brings in The Cobra
Carlos' Corner: 'You have to have a short memory'

In his own words: Jon Lieber

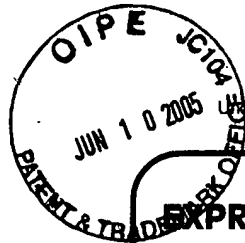
Reggie Sanders: This Giants team is awesome

Vina: Good to get back out there

Molony: Astros trying to solve 3B problem

Select a team

3/17/02



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Application Number	10/858,470
Filing Date	June 2, 2004
First Named Inventor	George Michael MOCKRY
Art Unit	3711
Examiner Name	M. Chambers
Attorney Docket Number	006385.00002

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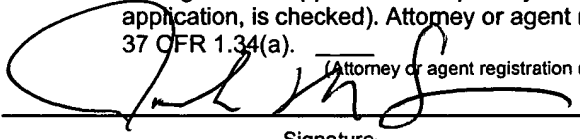
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- assignee of record of the entire interest. See 37 CFR 3.71
Statement under 37CFR 3.73(b) is enclosed.
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- attorney or agent acting under 37 CFR 1.34(a) (may act only if box 2 above, stating that the application is expressly abandoned in favor of a continuing application, is checked). Attorney or agent registration number if acting under 37 CFR 1.34(a).

COPY



Signature

June 10, 2005

Date

Joseph M. Skerpon

202 824 3112

Typed or Printed Name

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Note: Signatures of all the inventors or assignees of record of the entire interest or their representatives(s) are required. Submit multiple forms if more than one signature is required, see below.

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PATENT APPLICATION FEE DETERMINATION RECORD

Effective October 1, 2000

Application or Docket Number

09878860

CLAIMS AS FILED - PART I

SMALL ENTITY TYPE OR OTHER THAN SMALL ENTITY

	(Column 1)	(Column 2)
TOTAL CLAIMS	3	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	3 minus 20 =	0
INDEPENDENT CLAIMS	3 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT	<input type="checkbox"/>	

RATE	FEE	OR	RATE	FEE
BASIC FEE	355.00	OR	BASIC FEE	710.00
X\$ 9=		OR	X\$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL	355	OR	TOTAL	

* If the difference in column 1 is less than zero, enter "0" in column 2

CLAIMS AS AMENDED - PART II

SMALL ENTITY OR OTHER THAN SMALL ENTITY

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	7 Minus 20 =	0
	Independent	7 Minus 3 =	4
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

RATE	ADDITIONAL FEE	OR	RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	12 Minus 20 =	0
	Independent	2 Minus 3 =	0
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

RATE	ADDITIONAL FEE	OR	RATE	ADDITIONAL FEE
X\$ 9=		OR	X\$18=	
X40=		OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

6/10/05

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT C	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
	Total	18 Minus 20 =	0
	Independent	4 Minus 3 =	1
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

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X40=	100	OR	X80=	
+135=		OR	+270=	
TOTAL ADDIT. FEE		OR	TOTAL ADDIT. FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
 ** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20."
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 The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

3711
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	Confirmation No. 8653
George Michael MOCKRY et al.	)	Group Art Unit: 3711
	)	Examiner: M. Chambers
Serial No.: 09/878,860	)	Customer No. 22907
Filed: May 10, 2002	)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

AMENDMENT A AND RESPONSE UNDER 37 C.F.R. § 1.111

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed April 1, 2005, please enter the following amendments and remarks into the file of the above-captioned patent application.

It is believed that no fee is required for the entry and consideration of this amendment. However, if any fee is due, please debit our Deposit Account No. 19-0733, for whatever fee is required.

A LISTING OF CLAIMS reflects claim amendments and begins on page 2 of this paper.

A REMARKS section begins on page 7 of this paper.

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ou can customize your own web-based sports highlight show. Very easy to do too.

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> www.seasonticket.com

> ou can customize your own web-based sports highlight show. Very easy to do too.

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Virtual Soccer Magazine

Magic and Pride ready for Regionals in Indianapolis

Chicago clubs and coaches are playing for big stakes down in Hoosier-land

Sunday -- June 18, 2000



Ko Thanadabouth

Mike Matkovich



Eight local teams will travel to Indianapolis late next week for the beginning of the US Soccer Midwest Regionals. The 14-state tournament will crown the best teams in the Midwest and may eventually crown the national youth champions in the U-16 thru U-19 age and gender divisions. This is, without a question, the highest level of youth soccer in the country and will attract hundreds and hundreds of college scouts, coaches, and professional scouts to view the top players from many of the top clubs in the nation.

The Chicago Magic SC is sending four of its top boys squads (U-14, U-15, U-17, and U-19s, while the Windy City Pride SC is sending three of its top girls' teams (U-14, U-15, U-16, and U-18s). Each of these teams were crowned as the Illinois State Cup champions with the exception of the Windy City Pride U-19 girls who were the runner-up, but were invited as a wild card entry from Illinois to complete the U-19 regional brackets.

Formal ceremonies of the 14-state competition begin on Friday and the actual competition begins next Saturday, June 24th. The winners of the grueling regional competition move on to the national finals held July 23-30 in Orlando, Florida with the winners of the three other regional competitions.

The Chicago Magic/Sockers U-17 boys are the defending national champions (last year as U-16s), but they are expected to have some very stiff competition from the state champions from Missouri, Michigan, and Ohio. The Chicago Magic teams have won four regional titles in the past five years to go along with their 47 state championship titles during the past decade.



Sarah Lane

Kim Setlak

MLS WEB-NEWS: Major League Soccer and SEASONTICKET.com announced today a comprehensive, multiyear partnership that makes SEASONTICKET.com an MLS corporate partner and strategic partner of ML Snet.com. The agreement allows fans around the world to view customized video highlight shows featuring their favorite MLS teams over the Internet via www.MLSnet.com, www.seasonticket.com and all 12 MLS team websites.



Using its patent-pending Onecasting(tm) technology, SEASONTICKET.com will bring its video interface to the home page of MLS, enabling fans with high-speed Internet access to create a customized profile based on the league's 12 teams. Each time viewers return to the site, they will receive personalized video highlight shows from the teams they have pre-selected as well as access to searchable archives containing video from past MLS games.

Additionally, highlights from MLS games can now be added to fans' complete personalized profiles on the SEASONTICKET.com home page.

"SEASONTICKET.com merges the best of sports with the latest broadband technology, providing online fans with an on-demand, video-centric experience unavailable anywhere else on the Web," said Carl Weinstein, SEASONTICKET.com president and chief executive officer. "Our partnership with Major League Soccer further expands our content offering and allows soccer fans around the globe to follow their favorite leagues and teams."

SEASONTICKET.com is the first new media company to deliver on-demand, personalized sports video highlight shows over the Internet. Leveraging its patent-pending broadband Onecasting* process and technology, SEASONTICKET.com delivers online sports highlight shows that feature commentary, full-motion video and high-quality audio spotlighting only the viewer's favorite sports, leagues and teams. The multimedia experience is combined with up-to-date news, scores and statistics.

Headquartered in Seattle, SEASONTICKET.com features video highlights from Major League Baseball, National Hockey League, Arena Football League, Continental Basketball Association and Major League Lacrosse. SEASONTICKET.com is backed by Seattle-based venture capital firm Maveron LLC, which led the

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These search terms have been highlighted: **web based sports highlight**

Seattle Union Record

A Web site and newspaper created by the members of the Pacific Northwest Newspaper Guild



Nov. 21, 2000 —
Jan. 10, 2001

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Business

2000-12-16

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shockwave.com acquires Seattle's AtomFilms, will cut staff

By **Monica Soto**
Seattle Union Record

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San Francisco-based Internet entertainment company shockwave.com said Friday that it will acquire Seattle-based AtomFilms in a stock-for-stock deal, and will cut a third of the new company's staff.

[Archives](#)

[Seattle/ Northwest](#)

Financial terms were not disclosed, but AtomFilms' shareholders will own 30 percent of the combined company when the deal is closed next quarter. Webpublisher Macromedia, which owns a majority of shockwave.com, will be the largest shareholder, owning less than half of the new venture.

[Sports](#)

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Rob Burgess, chairman and chief executive of Macromedia and chairman of shockwave.com, said roughly a third of the new company's 300 employees will lose their jobs as part of the merger.

[Opinion](#)

The new company, which has yet to be named, will be located in San Francisco. Burgess said the merger will allow it to reach profitability sometime next year.

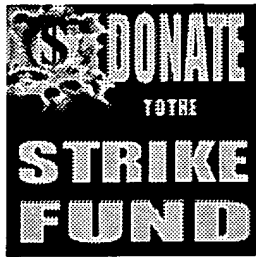
[Anatomy of a strike](#)

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"What's great about this merger is there is no overlap," said Mika Salmi, AtomFilms' founder, who will serve as chief executive officer of the new venture. "We are perfect complements to each other, which is the right reason to do this."

[Staff list](#)

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Guild

The merger comes as the Internet entertainment industry struggles to find a way to make money delivering content on the Web. DreamWorks and Imagine Entertainment closed their joint venture, Pop.com, before the Web site ever opened, and the well-hyped Digital Entertainment Network closed its doors, too.

Locally, the once-promising OneCast Media, which operated the **sports-highlight** Web site Seasonticket.com, shut down after it could not obtain additional funding. Starbucks founder Howard Schultz sat on the company's board.

Both companies said the merger will increase traffic, while lowering marketing and content costs. Roughly 30 million registered viewers access shockwave.com's games, music, film and creativity applications, while Atom brings with it short films, animation, syndication partnerships and distribution agreements in the United States and abroad.

Michael Comish, who will oversee international operations for the combined company, said AtomFilms has survived because it hasn't based its business model on the adoption of high-speed broadband Internet access (which offers smoother, more-TV-like video images).

Many **Web-based** entertainment companies believed Internet users would pay for content once high-speed Internet access became the standard. That adoption, however, has been slower than expected.

Rather, AtomFilms makes most of its money from licensing and syndication agreements with online and offline companies. Roughly 100 companies pay Atom for the right to air its films on airline flights, on TV stations in the United States and Europe, on wireless devices, such as Palm Pilots and cellular phones, and on other Web sites. Roughly 34 percent of AtomFilms' revenue come from advertising.

"One has to be very focused on continuing to evolve your business model to make sure it's the best in the industry," Comish said. "That's what this merger does."

Macromedia's shares climbed \$6.75 Friday on receipt of the news, closing at \$72.

When she's not on strike, Monica Soto is a technology reporter at The Seattle Times.

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