

EXHIBIT 4



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SEP 23 2010

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, L.L.P. :
1940 DUKE STREET :
ALEXANDRIA VA 22314 :

CENTRAL REEXAMINATION UNIT (For Patent Owner)

NOVAK DRUCE & QUIGG, LLP : (For Third Party Requester)
(NDQ REEXAMINATION GROUP) :
1000 LOUISIANA STREET :
FIFTY-THIRD FLOOR :
HOUSTON, TX 77002 :

In re: Richard Nemes : DECISION
Ex Parte Reexamination Proceeding : GRANTING
Control No. 90/010,856 : PETITION FOR EXTENSION
Deposited on: 09 February 2010 : OF TIME
For: US Patent No. 5,893,120 : [37 CFR §§ 1.550(c) & 1.181]

This is a decision on the 13 September 2010 petition entitled, "Petition Under 37 CFR § 1.550(c)" requesting the response period for response be extended by two (2) months. The petition was timely filed with certificate of service and fee.

The petition is before the Director of the Central Reexamination Unit for consideration.

The petition is granted for the reasons set forth below.

DECISION

The Patent Owner's representative requests the period for response to be extended by two (2) months for responding to the Office action dated 23 July 2010, which sets two (2) months time for filing a response thereto. The petition for extension of time was timely filed on 13 September 2010, together with authorization for the \$200.00 petition fee as required by 37 CFR § 1.550(c) and 37 CFR § 1.17 (g). A certificate of service was not provided with the petition.

The request is hereby granted.

CITATION OF RELEVANT AUTHORITY

37 CFR § 1.550 (c) states:

(c) The time for taking any action by a patent owner in an *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

Addressing the requirement of 37 CFR § 1.550 (c) to make a showing of "sufficient cause" to grant an extension of time request, **MPEP § 2265** states, in pertinent part:

Evaluation of whether sufficient cause has been shown for an extension must be made in the context of providing the patent owner with a fair opportunity to present an argument against any attack on the patent, and the requirement of the statute (35 U.S.C. § 305) that the proceedings be conducted with special dispatch.

Any request for an extension of time in a reexamination proceeding must fully state the reasons therefor. The reasons must include (A) a statement of what action the patent owner has taken to provide a response, to date as of the date the request for extension is submitted, and (B) why, in spite of the action taken thus far, the requested additional time is needed. The statement of (A) must provide a factual accounting of reasonably diligent behavior by all those responsible for preparing a response to the outstanding Office action within the statutory time period. All requests must be submitted in a separate paper which will be forwarded to the CRU

or TC Director for action. A request for an extension of the time period to file a petition from the denial of a request for reexamination can only be entertained by filing a petition under 37 CFR § 1.183 with appropriate fee to waive the time provisions of 37 CFR § 1.515(c). Since the reexamination examination process (for a reexamination request filed under 35 U.S.C. § 302 and 37 CFR 1.510) is intended to be essentially *ex parte*, the party requesting reexamination can anticipate that requests for an extension of time to file a petition under 37 CFR § 1.515(c) will be granted only in extraordinary situations....

ANALYSIS AND FINDINGS

The patent owner petitions to extend the period for response by adding two (2) months to the period for response. The decision to extend the period for response is evaluated based upon a showing of "sufficient cause." There is always the consideration to balance the need for the patent owner to have a fair opportunity to respond to the Office action between the need for special dispatch.

The petition relates the patent owner expert's unavailability due to extreme medical issues. It is noted that petitions for extension of time in excess of one month or second requests for extension of time are granted only in extraordinary situations. On balance, the petition supports the requirement for "sufficient cause" to grant a two (2) month extension of time.

The petition request to extend the response time is hereby granted.

CONCLUSION

1. The patent owner's petition for extension for two (2) months time in which to file a response to the Office action dated 23 July 2010 is hereby **granted**.
2. The period for response is extended by two(2) months.
3. The response is due **23 October 2010**.
4. All correspondence involving this proceeding may be addressed to the following:

By Mail to: Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

By Fax to: (571) 273-9900
Central Reexamination Unit

By Hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By EFS: Registered users of EFS-Web may alternatively submit such correspondence via the electronic filing system EFS-Web, at <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>. EFS-Web offers the benefit of quick submission to the particular area of the Office that needs to act on the correspondence. Also, EFS-Web submissions are “soft scanned” (i.e., electronically uploaded) directly into the official file for the reexamination proceeding, which offers parties the opportunity to review the content of their submissions after the “soft scanning” process is complete.

5. Telephone inquiries with regard to this decision should be directed to Mark Reinhart, at (571) 272-1611, in the absence of Mark Reinhart calls may be directed to Eric Keasel, at (571) 272-4929, or Jessica Harrison, at (571) 272-4449, all are Supervisory Patent Examiners in the Central Reexamination Unit, Art Unit 3992.

/Mark Reinhart/

Mark Reinhart,
Supervisory Patent Examiner,
AU 3992,
Central Reexamination Unit
571-272-1611