

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re *Inter Partes* Reexamination of:

David W. BARRY *et al.*

Control No.: 95/001,088

Patent in Reexamination: 6,188,988

Group Art Unit: 3992

Filed: March 10, 2000

Examiner: Deandra M. Hughes

For: SYSTEMS, METHODS, AND
COMPUTER PROGRAM
PRODUCTS FOR GUIDING
THE SELECTION OF
THERAPEUTIC TREATMENT
REGIMENS

**PETITION UNDER 37 C.F.R. § 1.183 – REQUEST FOR A WAIVER OF THE
PROHIBITION OF AN EXTENSION OF TIME FOR FILING A RESPONDENT BRIEF
UNDER 37 C.F.R. § 41.66(b) AND A REQUEST FOR AN EXTENSION OF TIME FOR
FILING A RESPONDENT BRIEF**

MAIL STOP *INTER PARTES* REEXAM
ATTN: CENTRAL REEXAMINATION UNIT
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Pursuant to 37 C.F.R. § 1.183, the Patent Owner, Advanced Biological Laboratories, S.A. (hereinafter, “Patent Owner”), hereby petitions the Director of the Central Reexamination Unit to waive the prohibition of an extension of time for filing a respondent brief under 37 C.F.R. § 41.66(b), and requests an extension of time to file the respondent brief until 30 days after a decision is rendered on the two Petitions filed concurrently herewith under 37 C.F.R. § 1.182 requesting (i) dismissal of the pending appeal of the above-identified *inter partes* reexamination, and (ii) in the alternative, refusal of consideration of Requester’s improper arguments.

A first Petition under 37 C.F.R. § 1.182 is filed concurrently herewith in the above-identified *inter partes* reexamination. In the first Petition, Patent Owner seeks relief that is not otherwise provided for under the rules – specifically, the refusal of consideration of the appellant’s brief filed on April 2, 2010 (“Appeal Brief”) by third-party requester Dr. Robert Shafer (“Requester”) as untimely, and dismissal of the pending appeal of the above-identified

inter partes reexamination of U.S. Patent No. 6,188,988 for Requester's failure to file an appellant's brief within the time allowed under 37 C.F.R. § 41.66(a).

A second Petition under 37 C.F.R. § 1.182 is also filed concurrently herewith in the above-identified *inter partes* reexamination. In the second Petition, Patent Owner seeks relief that is not otherwise provided for under the rules – namely, should the first Petition under 37 C.F.R. § 1.182 be dismissed, that Requester's arguments in the Appeal Brief relating to rejections that were not previously proposed by Requester should be refused consideration by the Board of Patent Appeals and Interferences.

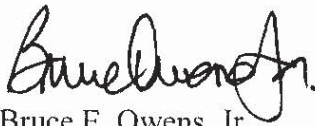
The concurrently filed Petitions under 37 C.F.R. § 1.182, thus, petition the Director to dismiss the present appeal outright, or to restrict the arguments to which Patent Owner is obligated to respond in its respondent's brief. Consequently, the granting of either Petition will have a substantial and material effect on the necessity for and/or the content of Patent Owner's respondent's brief. In particular, the granting of the first Petition under 37 C.F.R. § 1.182 would entirely obviate the need for Patent Owner to file a respondent's brief, while the granting of the second Petition under 37 C.F.R. § 1.182 would eliminate the necessity for Patent Owner to respond to several arguments advanced by Requester in the Appeal Brief. Should Patent Owner's time for filing a respondent's brief not be extended, however, Patent Owner may be forced to prepare and file a respondent's brief at considerable time and expense before the Petitions are decided, only to have the respondent's brief rendered moot or significant portions thereof rendered irrelevant by a subsequent granting of one of the Petitions. Patent Owner respectfully requests that the Director avoid this situation by granting the present Petition.

Accordingly, Patent Owner seeks relief under 37 C.F.R. § 1.183 by (i) requesting waiver of the prohibition of an extension of time for filing a respondent's brief under 37 C.F.R. § 41.66(b), and (ii) requesting an extension of the time to file the respondent's brief until 30 days after a decision on the two Petitions filed concurrently under 37 C.F.R. § 1.182.

The Director is hereby authorized to charge the undersigned's Deposit Account No. 50-0220 for the amount of \$400 in accordance with 37 C.F.R. §§ 1.183 and 1.17(f). If any other fee is due, please charge such fee occasioned by this Petition to the undersigned's Deposit Account No. 50-0220.

April 12, 2010

Respectfully submitted,



Bruce E. Owens, Jr.

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CERTIFICATE OF SERVICE

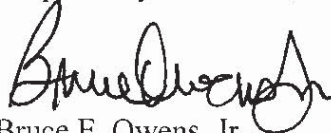
I hereby certify that on April 12, 2010, I served a true and correct copy of the foregoing **PETITION UNDER 37 C.F.R. § 1.183 – REQUEST FOR A WAIVER OF THE PROHIBITION OF AN EXTENSION OF TIME FOR FILING A RESPONDENT BRIEF UNDER 37 C.F.R. § 41.66(b) AND A REQUEST FOR AN EXTENSION OF TIME FOR FILING A RESPONDENT BRIEF** via U.S. First Class Mail to the *Ex Parte* Requester and the *Inter Partes* Requester as follows:

Ex Parte Requester Charles Allen, Esq.
Goodman, Allen, & Filetti PLLC
4501 Highwoods Parkway, Suite 210
Glen Allen, VA 23060

Inter Partes Requester Jonathan D. Loeb
Dechert LLP
2440 W. El Camino Real, 7th Floor
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April 12, 2010

Respectfully submitted,



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