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In re Application of :  
DAL PRA' et al. :  
Application No.: 12/161,739 : DECISION  
PCT No.: PCT/IT2006/000037 :  
Int. Filing Date: 23 January 2006 :  
Priority Date: None :  
Attorney's Docket No.: CAM3-PT138 :  
For: CONTROL DEVICE FOR A :  
BICYCLE DERAILLEUR :

This decision is in response to applicants' "COMMUNICATION REGARDING PRIORITY AND 371 INDICATION" filed 12 August 2008, which has properly been treated as a petition under 37 CFR 1.182, and applicants' "REQUEST FOR CORRECTED FILING RECEIPT" filed 17 February 2009. The petition fee of \$400 has been charged to Deposit Account 22-0493.

### **BACKGROUND**

On 23 January 2006, applicants filed international application PCT/IT2006/000037, which designated the United States and did not claim a priority date. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 26 July 2007. The thirty-month period for paying the basic national fee in the United States expired at midnight on 23 July 2008.

On 22 July 2008, applicants filed national stage papers in the United States Designated/Elected Office (DO/EO/US) electronically via EFS-Web. The submission included, *inter alia*, a Transmittal Letter and an Application Data Sheet (ADS).

On 12 August 2008, applicants filed a "COMMUNICATION REGARDING PRIORITY AND 371 INDICATION" filed 12 August 2008, which has properly been treated as a petition under 37 CFR 1.182.

On 17 February 2009, applicants filed a "REQUEST FOR CORRECTED FILING RECEIPT."

### DISCUSSION

The petition under 37 CFR 1.182 in essence requests that the application filed 22 July 2008 be converted from a filing under 35 U.S.C. 371 to a filing under 35 U.S.C. 111(a).

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such. The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

\* \* \*

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

When filing the application electronically, applicant selected in the Graphical User Interface, the radio button "U.S. National Stage under 35 U.S.C. 371" rather than the radio button "Utility (Utility under 35 USC 111(a))". The Transmittal Letter (Form PTO-1390) filed on 22 July 2008 identifies the application as a 371 of international application number PCT/IT2006/000037. The ADS filed 22 July 2008 also identifies the application as a 371 of international application number PCT/IT2006/000037. There were no conflicting instructions in the application papers filed on 22 July 2009. Accordingly, the application was properly treated as a filing under 35 U.S.C. 371.

U.S. Statutes and Regulations do not make specific provision for the requested action and as such the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause (e.g., the loss of patent rights) where no other remedy is available. Here, no showing of cause has been made.

### CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.182 is **DISMISSED** without prejudice.

For the reasons set forth above, the request for corrected filing receipt is **REFUSED**.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal

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Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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