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FISH & RICHARDSON P.C. (TC)			EXAMINER	
PO BOX 1022			GWARTNEY, ELIZABETH A	
MINNEAPOLIS, MN 55440-1022				
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FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

In re Application of Impossible Foods Inc.
Patent No.: 10327464
Application No.: 15/912,763
Filing Date: March 06, 2018
Attorney Docket No.: 38767-0015007
For: METHODS AND COMPOSITIONS FOR
AFFECTING THE FLAVOR AND AROMA
PROFILE OF CONSUMABLES

**DECISION ON PETITION
UNDER 37 CFR 1.78(c)
AND 1.78(e)**

This is a decision on the petition under 37 CFR 1.78(c) and (e), filed March 24, 2023, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) and 120 for the benefit of priority to one or more prior-filed provisional and nonprovisional/international applications. As required under the present circumstances, the petition was accompanied by a certificate of correction to add the corresponding benefit claims to the patent.

Under 37 CFR 1.78(c) and (e), a petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) and 120 for the benefit of a prior-filed application must be accompanied by:

- (i) the reference required by 35 U.S.C. 119(e) and 120 and 37 CFR 1.78(a)(3) and 1.78(d)(2) to the prior-filed applications, unless previously submitted;
- (ii) the petition fee set forth in 37 CFR 1.17(m); and
- (iii) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(4) and (d)(3) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

With regard to item (i), a proper reference to the prior-filed applications has not been included in an application data sheet (ADS) as required by 37 CFR 1.78(a)(3) and (d)(2). Note that any revised filed with any renewed petition herein must be updated in compliance with 37 CFR 1.76(c), that is, with underlining for additions and strike-through or brackets for deletions.

In addition, the present petition is seeking to add a benefit claim, through intermediate applications 15/398,479 and 14/797,006, indicating that earlier intermediate application 13/941,211 claims benefit of application number 61/671,069 and is a continuation of international application number PCT/US2012/046560, which in turn claims benefit of 61/572,205. As set forth in MPEP § 211.01(b):

"Sometimes a pending application is one of a series of applications wherein the pending application is not copending with the first filed application but is copending with an intermediate application entitled to the benefit of the filing date of the first application. . . . Appropriate references must be made in each intermediate application in the chain of prior applications."

Here, the record in the prior filed applications is not consistent with the benefit claims applicant seeks to add. Specifically, application number 13/941,211 does not directly claim benefit of 61/671,069; rather, it claims benefit of such provisional application through PCT/US2012/046560. But it is also noted that the benefit claim in application 13/941,211 is not consistent with that contained in application PCT/US2012/046560, because PCT/US2012/046560 does not contain a benefit claim directed to application 61/671,069. Furthermore, intermediate applications 15/398,479 and 14/797,006 do not include corresponding benefit claims directed to applications PCT/US2012/046560, 61/671,069, and 61/572,205, as required (it is noted that applicant has filed a petition seeking to add the benefit claims in application 14/797,006). Before any renewed petition in the present case can be granted, the benefit claims in the intermediate applications must be corrected so as to be consistent with each other and with the proposed benefit claim to be added herein, and, if appropriate, a certificate of correction revised accordingly must be submitted.

In view of the above, item (1) of a grantable petition is not satisfied on the present record.

With regard to item (ii), the petition fee set forth in 37 CFR 1.17(m) has been submitted.

With regard to item (iii), petitioner has submitted the required statement of unintentional delay. However, the Director may require additional information where there is a question whether the delay was unintentional.

The USPTO requires additional information concerning whether a delay in seeking acceptance of a delayed benefit claim was unintentional where the petition to accept such benefit claim was filed more than two years after the date the benefit claim was due. *See Clarification of the Practice for Requiring Additional Information in Petitions Filed in Patent Applications and Patents Based on Unintentional Delay*, 85 FR 12222 (March 2, 2020).

In this instance, a petition under 37 CFR 1.78 was filed more than two years after the date the benefit claim was due. Therefore, petitioner must provide sufficient information of the facts and circumstances surrounding the entire delay to support a conclusion that the entire delay was unintentional. *Id.* at 12223. Details regarding the cause of petitioner's failure to timely file the benefit claim, when the failure to timely file the benefit claim was discovered, and the delay between discovery of the failure to timely file the benefit claim and filing of the petition under 37 CFR 1.78 are of particular relevance. Petitioner should provide relevant dates and identify responsible parties where appropriate.

See MPEP § 711.03(c)(II)(C)-(H) for additional guidance on the information required to establish that the entire delay was unintentional.

The additional information provided in the present petition indicating that the failure to include the benefit claims upon filing was inadvertent and indicating when applicant first became aware of the error is accepted as the additional information required to confirm that the entire delay herein was unintentional.

For the reasons above, the petition under 37 CFR 1.78(c) and (e) is **DISMISSED** without prejudice.

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

/RichardMRoss/

RICHARD M ROSS

Attorney Advisor

International Patent Legal Administration

(571) 272-3296