MOHSENZADEH v. LEE, Appeal No. 2014-1499 (Fed. Cir. June 25, 2015). Before Moore, Schall, and Reyna. Appealed from E.D. Va. (Judge Lee).

Background:

Mohsenzadeh filed requests for reconsideration of the zero days patent term adjustment (PTA) calculated by the PTO for patents that issued from two divisional applications filed from the same parent application. He argued that each patent was entitled to the 1,476 days that the PTO delayed in issuing the restriction requirement for the parent application. The PTO denied both requests because PTO rules provide that any PTA that accrues in a parent application will not apply to a patent issuing from a continuing application of the parent application.

Mohsenzadeh filed an action in district court challenging the PTO's denials of his requests for reconsideration. The district court granted the government's motion for summary judgment on two grounds. First, the court held that 35 U.S.C. §154 unambiguously requires that PTA applies to delays that occurred during prosecution of the actual application from which the patent directly issued, not the application from which it derived benefit. Second, the court held that the PTO's interpretation of §154 was "reasonable and entitled to some deference." Mohsenzadeh appealed.

Issue/Holding:

Did the district court err in granting summary judgment to the government? No, affirmed.

Discussion:

The Federal Circuit agreed with the district court, holding that the plain language of §154 shows that Congress did not intend to provide PTA in continuing applications based on delays in the prosecution of parent applications.