

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

PFIZER, INC. and)
WYETH HOLDINGS CORPORATION,)

Plaintiffs,)

v.)

Case No. 1:12-cv-1131
(GBL/TRJ)

MICHELLE K. LEE, Acting Under)
Secretary of Commerce for Intellectual)
Property and Acting Director of the United)
States Patent and Trademark Office,)

Defendant.)

**PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT FOR
A DETERMINATION OF NO ABANDONMENT AND TO CORRECT THE
PATENT TERM ADJUSTMENT FOR U.S. PATENT NO. 8,153,768**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiffs Pfizer, Inc. and Wyeth Holdings Corporation file this Motion for Summary Judgment seeking to reverse the United States Patent and Trademark Office’s (“PTO”) determination that U.S. Application No. 10/428,894 (“the ’894 application”), which issued as Patent No. 8,153,768 (“the ’768 patent”), was ever abandoned, and further to correct the patent term adjustment (“PTA”) for the ’768 patent from 404 days to 601 days based on the PTO’s failure to submit a complete Restriction Requirement. Despite a clear statutory and regulatory scheme that provides for a determination of abandonment only when an applicant’s delay exceeds certain prescribed time limits, the PTO erred in its determination that the ’894 application went abandoned. Similarly, the PTO deprived Plaintiffs of 197 days of term for the ’768 patent.

For the reasons set forth in the accompanying memorandum in support of this motion, the PTO misapplied the patent statute and its own regulations, and its determination of abandonment and failure to recognize 197 days of patent term adjustment were arbitrary, capricious, an abuse of discretion, not in accordance with the law, in excess of its statutory jurisdiction, authority, or limitations, short of statutory right, and/or unsupported by substantial evidence. Plaintiffs respectfully request the Court to grant the present motion for summary judgment.

Respectfully submitted,

PFIZER, INC. and
WYETH HOLDINGS CORPORATION
By Counsel

Dated: June 13, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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