## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division

| JORGE A. MAASS,                          | )   |
|--|---|
| Plaintiff,                               | )   |
| ν.                                       | ) Civil Action No. 1:16-cv-0066 ) (TSE/IDD) |
| MICHELLE K. LEE, Under Secretary of      | )   |
| Commerce for Intellectual Property and   | j   |
| Director of the United States Patent and | )   |
| Trademark Office,                        | )   |
|  | )   |
| Defendant.                               | )   |
|  | )   |

## <u>ORDER</u>

Upon consideration of the parties' Joint Motion to Remand, it is hereby

ORDERED that this matter is REMANDED to the United States Patent and Trademark Office ("USPTO") for Defendant to reconsider the patent term adjustment to which United States Patent No. 8,533,097 ("the '097 patent") is entitled. In accordance with this remand, the USPTO will vacate its patent term adjustment determination and, after providing an opportunity for the patentee to present his arguments as to the correct patent term adjustment, including providing all communications with the examiner regarding the supplemental amendment, the USPTO shall make a new determination under 35 U.S.C. § 154(b)(3)(B) and set forth a time period during which the patentee can request reconsideration. The remand shall be strictly limited to two issues: (1) whether the 378 days of applicant delay for Plaintiff's supplemental amendment was properly classified as applicant delay; (2) whether the 193 days of applicant delay that accrued during Plaintiff's requests for continued examination were properly deducted from the award of patent term adjustment. In the event that the patentee seeks reconsideration within the time period provided by the USPTO in the determination, the USPTO's decision on

the patentee's request for reconsideration shall be reviewable in this Court pursuant to 35 U.S.C.

§ 154(b)(4). However, any judicial review will be limited to the two issues on remand.

Date:  $\frac{5/25}{16}$ 

UNITED STATES DISTRICT JUDGE

T. S. Ellis, III

United States District Judge