

PATENT COOPERATION TREATY

ADVANCE EMAIL

From the: RECEIVING OFFICE

PCT

NOTIFICATION OF DECISION ON REQUEST TO RESTORE RIGHT OF PRIORITY (PCT Rule 26bis.3(h)(iii))

To:

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Date of mailing (day/month/year) 22 December 2010 (22.12.2010)		Applicant's or agent's file reference <b>50082/038WO2</b>	
REPLY DUE See below		Applicant's or agent's file reference <b>50082/038WO2</b>	
International application No. PCT/IB2010/002701	International filing date/Date of first receipt of papers (day/month/year) 21 October 2010 (21.10.2010)	Priority date (day/month/year) 16 September 2009 (16.09.2009)	
Applicant VIRON THERAPEUTICS INC.			

Upon the request of the applicant:

- included in Form PCT/RO/101 at the time of filing of this international application, or
- received on

to restore the right of priority in respect of the following priority claim(s) 16 September 2009, 61/242,799, US this receiving Office has decided:

- to restore** the right of priority, based on the finding by this receiving Office that the criterion for restoration applied by it is **satisfied**, namely that the failure to file the international application within the priority period:
  - occurred in spite of due care required by the circumstances having been taken.
  - was unintentional.
  - The reasons are set out in the Annex to this form.
- to refuse** the request to restore the right of priority, following issuance of the Notification of Intended Refusal of Request to Restore Right of Priority (Form PCT/RO/158) dated for the following reason(s):
  1.  the request to restore the right of priority was not received within the applicable time limit under Rule 26bis.3(e).
  2.  the statement of reasons for the failure to file the international application within the priority period is missing or insufficient (Rule 26bis.3(b)(ii)).
  3.  a declaration in support of the statement of reasons for the failure to file the international application within the priority period is missing or insufficient (Rule 26bis.3(f)).
  4.  evidence in support of the statement of reasons for the failure to file the international application within the priority period is missing or insufficient (Rule 26bis.3(f)).
  5.  lack of or late payment of the fee for restoration (Rule 26bis.3(d)).
  6.  lack of a priority claim in respect of an earlier application in the international application as required under Rule 26bis.3(c).
  7.  any other reason(s) for refusal as set out in the Annex to this form.

A copy of this Notification is being sent to the International Bureau.

Name and mailing address of the receiving Office: The International Bureau of WIPO PCT Receiving Office Section 34, chemin des Colombettes, 1211 Geneva 20, Switzerland Facsimile No. +41 22 910 06 10 (RPT)	Authorized officer No.  Chatel Cecile  E-mail ro.ib@wipo.int Telephone No. +4122 338 8316
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This receiving Office has made the above decision(s) for the following reason(s):

This receiving Office agrees to restore the right of priority in relation to US 61/242,799 filed on 16 September 2009 (16/09/2009) on the basis of the due care criterion under Rule 26*bis*.3(a)(i), for the reasons stated below.

(a) Due Care

Generally, in the view of this receiving Office, the criterion of “due care” required by Rule 26*bis*.3(a)(i) can only be met if the applicant shows he has taken all measures a prudent applicant would have taken. Where the applicant is represented by an agent, both the applicant and the agent should have exercised “due care” in order to satisfy this criterion.

In order to satisfy the criterion of due care, an applicant or an agent has to show that he acted with all due care required by the circumstances.

In the present case, the applicant successfully established in the statement of reasons, provided on 4 November 2010, that despite a reliable docketing and prosecution system set up in the applicant’s IP department to adequately prosecute patent filings and monitor critical time limits, this international application was not timely filed as a result of an error made by the applicant’s IP in-house intellectual property manager.

The applicant further explained in detail the filing procedure and how important deadlines are monitored by the staff member referred to above, but despite these efforts to carefully monitor all time limits, this international application was not timely filed because the applicant’s staff responsible for filing, prosecuting patent filings and monitoring deadlines associated therewith made a docketing error when prosecuting the US application to which the present international application claims priority.

In the view of this receiving Office, although, in principle, it might be reasonably expected from any company to set up some supervision and back-up systems, at the same time it cannot be reasonably expected that small and medium enterprises set up different levels of prosecution and supervision which cannot be reasonably implemented in small companies like that of this applicant. This receiving Office is satisfied with the demonstration made by the applicant that the filing and prosecuting system set up seems to be efficient and reliable and does correspond to the standards in the field which can be reasonably expected from a small company. Moreover, this receiving Office is also satisfied that the actions undertaken by this applicant, once the failure was discovered, also demonstrates some good practice in the matter.

Consequently, this receiving Office is satisfied from the statement submitted by the applicant that under the particular circumstances, the failure to timely file this PCT filing can be construed as an isolated event in the generally satisfactory conduct of business of this applicant.

(b) Unintentionality

Since restoration of the right of priority has been granted on the basis of the due care criterion, the criterion of unintentionality (Rule 26*bis*.3(a)(ii)) needs not be further examined and is deemed having been met.

