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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,250	09/22/2010	6772132	049506/296191	3537

39310 7590 07/15/2011
MBHB/TRADING TECHNOLOGIES
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO, IL 60606

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/15/2011

Please find below and/or attached an Office communication concerning this application or proceeding.



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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET,
SUITE 4000
CHARLOTTE, NC 28280-4000

Date:

MAILED
JUL 15 2011
CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. : 90011250
PATENT NO. : 6772132
ART UNIT : 3993

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified ex parte reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the ex parte reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).



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(For Patent Owner)

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CHARLOTTE, NC 28280-4000

(For Requester)

In re Kemp, II *et alia*
Reexamination Proceeding
Control No. 90/011,250
For: U.S. Patent No. 6,772,132

: DECISION DENYING
: PETITION UNDER
: 37 CFR 1.515(c)

This is a decision on the January 14, 2011 paper entitled "PETITION TO REVIEW REFUSAL TO ORDER REEXAMINATION (37 C.F.R. §1.515(c))". The petition was timely filed. A fee of \$400 was required. The petition is before the Director of the Central Reexamination Unit for decision.

The petition is **DENIED** for the reasons set forth below.

REVIEW OF FACTS

1. U.S. Patent No. 6,772,132 (hereinafter, the '132 patent) issued on August 3, 2004 to Kemp II, *et alia*.
2. On September 22, 2010, a request for *ex parte* reexamination was deposited by a third party requester requesting claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 of the '132 patent be reexamined. This reexamination proceeding was assigned Control No. 90/011,250 (hereinafter, the '11250 reexamination proceeding).

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3. An order denying the request for *ex parte* reexamination was mailed on December 14, 2010.
4. On January 14, 2011, the present petition was filed.

DECISION

I. Review of the Examiner's Order Denying Reexamination

Third party requester ("Petitioner") in the '11250 reexamination proceeding has petitioned seeking relief from the examiner's December 14, 2010 Order denying *ex parte* reexamination.¹

35 U.S.C. § 303(c) provides:

A determination by the Director pursuant to subsection (a) of this section that no substantial new question of patentability has been raised will be final and nonappealable. Upon such a determination, the Director may refund a portion of the reexamination fee required under section 302 of this title.

37 CFR § 1.515(c) provides:

The requester may seek review by a petition to the Director under 37 CFR § 1.181 within one month of the mailing date of the examiner's determination refusing *ex parte* reexamination. Any such petition must comply with 37 CFR § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable."

MPEP § 2248 provides, in pertinent part:

If a petition seeking review of the examiner's determination refusing reexamination is filed, it is forwarded (together with the reexamination file) to the Office of the CRU Director for decision. Where a petition is filed, the CRU Director will review the examiner's determination that a substantial new question of patentability has not been raised. The Director's review will be *de novo*.

¹ The Petitioner petitioned for relief in the form of "(a) reexamination of the '132 patent on the grounds set forth in the Request for Reexamination No. 90/011,250 of September 22, 2010; or (b) have the Examiner reconsider the Request for Reexamination of September 22, 2010 under the appropriate standard; or (c) permit the Requestor to re-file the Request for Reexamination without prejudice and strike the Examiner's Refusal to Order Reexamination of December 14, 2010."

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Each decision by the CRU Director will conclude with the paragraph:

"This decision is final and nonappealable. See 35 U.S.C. 303(c) and 37 CFR 1.515(c). No further communication on this matter will be acknowledged or considered."

II. De Novo Review of the Request for Reexamination - Findings and Analysis

In accordance with the requirements of the reexamination statute and rules, a review of the record has been undertaken prior to the preparation of this decision. A *de novo* determination, taking into account the third party requester's position, as presented in the instant petition, has been made as to whether the December 14, 2010 request for *ex parte* reexamination raises at least one substantial new question of patentability (hereinafter "SNQ"). For the reasons set forth below, the request for reexamination of the '132 patent filed in the '11250 reexamination proceeding has been found not to present any SNQ. Therefore, the examiner's decision to deny reexamination is proper.²

The '132 patent matured from application number 09/590,692 (the '692 application). During prosecution of the '692 application, the examiner allowed claims 22-70, renumbered as 1-49, in a first Notice of Allowance mailed July 31, 2002 stating as the reasons therefore:

The prior art fails to teach a method of placing a trade order, computer readable medium with instructions for placing a trade order, and/or a client system for placing a trade order comprising a dynamic display and a static display. The static display, directed to the commodity price, does not change. In contrast, the values of the bid/ask, reflecting the market depth for the commodity, are dynamically displayed and are aligned with the corresponding static price values. These features in combination with the claim features of claims 22, 29 and/or 35 render the claims allowable.

PCT WO99/23099 is representative of the closest Foreign Patent prior art.

The closest US Patent prior art and Non Patent Literature prior art are of record.

Subsequent to further prosecution of the '692 application, the examiner again allowed claims 22-70 as well as claims 89-95, renumbered as 1-56, in a second Notice of Allowance mailed February 10, 2004 stating as the reasons therefore:

² The Examiner's decision, although arguably wanting for more artful presentation, does not rise to level of "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law" as argued by the Petitioner.

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