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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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901 NEW YORK AVENUE, NW
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EXAMINER

FOSTER, ROLAND G

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3992

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06/25/2013

PAPER

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

The time period for reply, if any, is set in the attached communication.

<b>Transmittal of Communication to Third Party Requester <i>Inter Partes</i> Reexamination</b>	Control No.	Patent Under Reexamination	
	95/001,856	7921211	
	Examiner	Art Unit	
	ROLAND FOSTER	3992	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

HAYNES AND BOONE, LLP  
IP SECTION  
2323 VICTORY AVENUE, SUITE 700  
DALLAS, TX 75219

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination proceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

**All correspondence** relating to this *inter partes* reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

**Right of Appeal Notice  
(37 CFR 1.953)**

Control No.	Patent Under Reexamination
95/001,856	7921211
Examiner	Art Unit
ROLAND FOSTER	3992

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

Responsive to the communication(s) filed by:  
Patent Owner on 02 January, 2013  
Third Party(ies) on 30 January, 2013

Patent owner and/or third party requester(s) may file a notice of appeal with respect to any adverse decision with payment of the fee set forth in 37 CFR 41.20(b)(1) within **one-month or thirty-days (whichever is longer)**. See MPEP 2671. In addition, a party may file a notice of **cross** appeal and pay the 37 CFR 41.20(b)(1) fee **within fourteen days of service** of an opposing party's timely filed notice of appeal. See MPEP 2672.

**All correspondence** relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

If no party timely files a notice of appeal, prosecution on the merits of this reexamination proceeding will be concluded, and the Director of the USPTO will proceed to issue and publish a certificate under 37 CFR 1.997 in accordance with this Office action.

The proposed amendment filed \_\_\_\_\_  will be entered  will not be entered\*

\*Reasons for non-entry are given in the body of this notice.

- 1a.  Claims 1-60 are subject to reexamination.
- 1b.  Claims \_\_\_\_\_ are not subject to reexamination.
2.  Claims \_\_\_\_\_ have been cancelled.
3.  Claims \_\_\_\_\_ are confirmed. [Unamended patent claims].
4.  Claims 11 are patentable. [Amended or new claims].
5.  Claims 1-10, 12-60 are rejected.
6.  Claims \_\_\_\_\_ are objected to.
7.  The drawings filed on \_\_\_\_\_  are acceptable.  are not acceptable.
8.  The drawing correction request filed on \_\_\_\_\_ is  approved.  disapproved.
9.  Acknowledgment is made of the claim for priority under 35 U.S.C. 119 (a)-(d) or (f). The certified copy has:  
 been received.  not been received.  been filed in Application/Control No. \_\_\_\_\_.
10.  Other \_\_\_\_\_

**Attachments**

1.  Notice of References Cited by Examiner, PTO-892
2.  Information Disclosure Citation, PTO/SB/08
3.  \_\_\_\_\_

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## **1. Introduction**

This Office action addresses claims 1-60 of United States Patent No. 7,921,211 B2 (the "Larson" patent), for which reexamination was granted in the Order Granting *Inter Partes* Reexamination (hereafter the "Order"), mailed March 5, 2012, in response to a Request for Inter Partes Reexamination, filed December 16, 2011 (the "Request").

An Action Closing Prosecution ("ACP") mailed October 1, 2012 rejected original claims 1-10 and 12-16 of the Larson patent. Original claim 11 was found patentable.

The patent owner responded by filing arguments and associated evidence on January 2, 2013 (the "Response").

The third party requester responded by filing Comments on the Patent Owner's Response on January 30, 2013 (the "Comments").

### *Evidence Submitted After the ACP*

The patent owner submitted the Supplemental Declaration of Angelos D. Keromytis, Ph.D. on January 2, 2013 (the "Supplemental Declaration"), which was after the mailing date of said ACP. Evidence submitted after an action closing prosecution (§ 1.949) in an *inter partes* reexamination filed under § 1.913 but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title), may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. 37 CFR § 1.116(e). The patent owner did not set forth a showing why the Supplemental Declaration was necessary and

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was not earlier presented. After an ACP in an *inter partes* reexamination, the patent owner may once file comments limited to the issues raised in the Office action closing prosecution. 37 CFR § 1.951(a). Thus, the patent owner may not file additional comments showing why the Supplemental Declaration should be entered. The Supplemental Declaration is not of record in this proceeding. The examiner however has briefly reviewed the Supplemental Declaration, but it does not persuade the examiner to withdraw any rejection.

### *Conclusion*

The examiner has fully considered the arguments and evidence of record provided in both the patent owner's Response and in the third party requester's Comments. Based on consideration of the entire record, the third party requester's arguments and evidence are deemed more persuasive. See the "Response to Arguments" section for further explanation. All prior rejections are maintained. Accordingly, this Office action is made a Right of Appeal Notice, which is a final Office action. See MPEP § 2673.01, .02. See also the "conclusion" section to this Office action.

### *Submissions after the Action Closing Prosecution (ACP)*

Said Response, Comments and Supplemental Declaration were submitted after the ACP. The Supplemental Declaration is not entered for the reasons discussed above. The Response and Comments have been entered.

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