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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,788	10/18/2011	Victor Larson	077580-0146	5823
22852	7590	06/25/2013	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			FOSTER, ROLAND G	
			ART UNIT	PAPER NUMBER
			3992	
			MAIL DATE	DELIVERY MODE
			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.

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

Control No.	Patent Under Reexamination
95/001,788	LARSON ET AL.
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 26 December, 2012
Third Party(ies) on 23 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 _____ are patentable. [Amended or new claims].
- 5. Claims 1-60 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. _____

RIGHT OF APPEAL NOTICE

1. Introduction

This Office action addresses claims 1-60 of United States Patent No. 7,418,504 B2 (the "Larson" patent), for which reexamination was granted in the Order Granting *Inter Partes* Reexamination (hereafter the "Order"), mailed December 29, 2011 in response to a Request for Inter Partes Reexamination, filed October 18, 2011 (the "Request").

An Action Closing Prosecution ("ACP") mailed September 26, 2012 rejected all original claims 1-60 of the Larson patent.

The patent owner responded by filing arguments and associated evidence on December 26, 2012 (the "Response").

The third party requester responded by filing Comments on the Patent Owner's Response on January 23, 2013 (the "Comments").

Evidence Submitted After the ACP

The patent owner submitted the Supplemental Declaration of Angelos D. Keromytis, Ph.D. on December 26, 2012 (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 §

Art Unit: 3992

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 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.

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