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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------------|
| 95/001,263 | 11/13/2009 | 7486926 | AFF.0004B6US | 6721 |
| 21906 7590 12/06/2011 TROP, PRUNER & HU, P.C. 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631 | | | EXAMINER LAROSE, COLIN M | |
| | | | ART UNIT 3992 | PAPER NUMBER |
| | | | MAIL DATE 12/06/2011 | DELIVERY MODE 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.



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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

Date:

NOVAK DRUCE & QUIGG, LLC
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1000 LOUISIANA STREET, FIFTY-THIRD FLOOR
HOUSTON, TX 77002

MAILED

DEC 06 2011

CENTRAL REEXAMINATION UNIT

**Transmittal of Communication to Third Party Requester
Inter Partes Reexamination**

REEXAMINATION CONTROL NO. : 95001263

PATENT NO. : 7486926

TECHNOLOGY CENTER : 3999

ART UNIT : 3992

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.

PTOL-2070(Rev.07-04)

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

Control No.

95/001,263

Examiner

COLIN LAROSE

Patent Under Reexamination

7486926

Art Unit

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 16 September, 2011

Third Party(ies) on _____

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 16 September, 2011

☒ will be entered

☐ will not be entered*

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

1a. ☒ Claims 1-37 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 1-37 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. ☐ _____

| | | |
|---|--------------|----------------------------|
| Transmittal of Communication to Third Party Requester Inter Partes Reexamination | Control No. | Patent Under Reexamination |
| | 95/001,263 | 7486926 |
| | Examiner | Art Unit |
| | COLIN LAROSE | 3992 |

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RIGHT OF APPEAL NOTICE

Receipt of Remarks

1. Patent Owner's amendments and remarks dated 9/16/2011, have been entered and made of record. Third Party remarks in response to Patent Owner's submission have not been received.

Response to Arguments

2. Section 120 Priority Issues

(see Patent Owner remarks, pp. 9-16)

Patent Owner argues that "the Office is prohibited from re-considering the priority date issue, which is really a § 112 issue, by both statute and the Federal Circuit case law" (P.O.

Remarks, p. 9). However, the CAFC has recently held that there is no such prohibition. See *In re NTP*, 2010-1277, 1 August 2011, (Slip Op. at 14-15):

Nothing in 35 U.S.C. §§ 301 et seq. entitles a patentee to a claim of right to its earliest priority date. Under § 120, a patent is entitled to the priority date of an earlier filed application if (1) the written description of the earlier filed application discloses the invention claimed in the later filed application sufficient to satisfy the requirements of § 112; (2) the applications have at least one common inventor; (3) the later application is filed before the issuance or abandonment of the earlier filed application; and (4) the later application contains a reference to the earlier filed application. In addition, if the later filed application claims priority through the heredity of a chain of applications, each application in the chain must satisfy § 112. *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1571 (Fed. Cir. 1997).

Thus, when a patentee argues that its claims are entitled to the priority date of an earlier filed application, the examiner must

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