

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re <i>Inter Partes</i> Reexamination of:	)	
	:	Examiner: Diamond, Alan D
IVOR BULL ET AL.	)	
	:	Group Art Unit: 3991
Patent No. 7,601,662	)	
	:	Confirmation No.: 2755
Issued: October 13, 2009	)	
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Control No. 95/001,453	)	
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Reexam Filed: September 28, 2010	)	
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For: COPPER CHA ZEOLITE CATALYSTS	)	January 18, 2012

**Mail Stop *Inter Partes* Reexam**  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**Third Party Comments After Patent Owner’s Response After ACP  
 Under 37 C.F.R. § 1.951**

Madam:

The following is the Requester’s response to “Patent Owner’s Amendment and Response Under 37 C.F.R. § 1.951(a)” as well as the attachments thereto filed on December 19, 2011, and to the Action Closing Prosecution (ACP) dated November 18, 2011.

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## **I. Introduction**

The Patent Owner attempts to amend the claims in response to the Action Closing Prosecution (ACP) in a manner that creates a myriad of new issues. Therefore, the amendments proposed in Patent Owner's Amendment and Response Under 37 C.F.R §1.95(a) (hereinafter "Response to ACP") should be denied entry.

Both the pending claims and the newly presented claims (if entered) fail to meet the requirements of 35 U.S.C. §103 and §112, first and second paragraphs for the reasons previously stated and set forth herein. In addition, the newly presented claims contravene the requirements of 35 U.S.C. §314 as they present claims having claim elements that are broader than granted in the original U.S. Patent No. 7,601,622 patent (hereinafter "the '662 patent").

The prior art relied upon by the Examiner provides for a strong showing of obviousness. For example, it is clear that Dr. Zones taught the world prior to the priority filing date of the '662 patent an aluminosilicate zeolite having a CHA crystal having a SAR of 22 or 30 could be loaded with copper to reduce oxides of nitrogen. It is also clear that Ishihara provides a technique for loading copper and recognizes the benefit of fully exchanging a zeolite having a CHA crystal structure to maximize the conversion of oxides of nitrogen. Clearly, Zones provides a person of ordinary skill with a reasonable expectation of success by virtue of actually claiming the process. The Zones process may be used with any reductant, including ammonia, and certainly the Patent Owner does not imply they are the first to use ammonia as a reductant. The findings of Ishihara buttress the conclusion of reasonable expectation of success. The Patent Owner's assertions that a person of ordinary skill would not have had a reasonable expectation of success because of the unpredictability in the art are flawed. The assertions are predicated on an inapplicable standard of certainty. The applicable standard, however, is reasonable expectation of success. *Pharmastem Therapeutics, Inc. v. Viacell, Inc.*, 492 F.3d 1342, 1364 (Fed. Cir. 2007) (although a reasonable expectation of success is needed to support a case of obviousness, absolute predictability is not required).

The Patent Owner continues to assert that the "stunning" and "remarkable" properties of their claimed catalyst are evidence of patentability. As noted in Requester's Third Party Comments After Patent Owner's Response Under 37 C.F.R. § 1.947 filed on July 27, 2011 and ratified on September 15, 2011 (hereinafter "Requester's First Response") and made clear in the ACP, there is no question that objective evidence of nonobviousness must be commensurate in

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