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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,302	07/21/2014	6,542,076 B1		2538

7590 02/12/2015  
RAYMOND A. JOAO ESQ.  
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EXAMINER
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REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3992

MAIL DATE	DELIVERY MODE
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02/12/2015

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)

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**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/013,302.

PATENT NO. 6,542,076 B1 E.

ART UNIT 3992.

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)).

<b>Office Action in Ex Parte Reexamination</b>	<b>Control No.</b> 90/013,302	<b>Patent Under Reexamination</b> 6,542,076 B1 E	
	<b>Examiner</b> Karin Reichle	<b>Art Unit</b> 3992	<b>AIA (First Inventor to File) Status</b> No

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

- a.  Responsive to the communication(s) filed on 11/24/2014 .  
 A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_\_.
- b.  This action is made FINAL.
- c.  A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c)**. If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 3. <input type="checkbox"/> Interview Summary, PTO-474. |
| 2. <input checked="" type="checkbox"/> Information Disclosure Statement, PTO/SB/08. | 4. <input type="checkbox"/> _____.                      |

**Part II SUMMARY OF ACTION**

- 1a.  Claims 3 are subject to reexamination.
- 1b.  Claims 1,2 and 4-218 are not subject to reexamination.
2.  Claims \_\_\_\_\_ have been canceled in the present reexamination proceeding.
3.  Claims \_\_\_\_\_ are patentable and/or confirmed.
4.  Claims 3 are rejected.
5.  Claims \_\_\_\_\_ are objected to.
6.  The drawings, filed on \_\_\_\_\_ are acceptable.
7.  The proposed drawing correction, filed on \_\_\_\_\_ has been (7a)  approved (7b)  disapproved.
8.  Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some\* c)  None of the certified copies have  
1  been received.  
2  not been received.  
3  been filed in Application No. \_\_\_\_\_ .  
4  been filed in reexamination Control No. \_\_\_\_\_ .  
5  been received by the International Bureau in PCT application No. \_\_\_\_\_ .
- \* See the attached detailed Office action for a list of the certified copies not received.
9.  Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10.  Other: \_\_\_\_\_

## DETAILED ACTION

### *Introduction*

1. This Office Action addresses the *ex parte* reexamination of claim 3 of U.S. Patent No. 6,542,076 (hereinafter also referred to as '076) issued to Joao for which a Substantial New Question of Patentability has been deemed to exist. The status of the claims is as follows:

Claim 3 is rejected.

### *Patents, Non-Patent Literature, Other Evidence*

#### *Patents*

-U.S. Patent 5,070,320 to Ramono, filed June 12, 1989 and issued December 3, 1991 (hereinafter also referred to as '320 or Ramono '320).

-U.S. Patent 5,113,427 to Ryoichi et al, filed August 24, 1990 and issued May 12, 1992 (hereinafter also referred to as '427 or Ryoichi '427).

-U.S. Patent 5,276,728 to Pagliaroli et al, filed November 6, 1991 and issued January 4, 1994 (hereinafter also referred to as '728 or Pagliaroli '728).

-U.S. Patent 5,081,667 to Drori et al, filed March 20, 1990 and issued January 14, 1992 (hereinafter also referred to as '667 or Drori '667).

-U.S. Patent 5,103,221 to Memmola, filed December 5, 1989 and issued April 7, 1992 (hereinafter also referred to as '221 or Memmola '221).

### *Claim Rejections*

#### Claim Interpretation/Analysis:

As set forth in the 9/8/2014 Order and on page 14 of the Request, the '076 patent has expired. Therefore, see again page 9 of the Request as well as MPEP 2258, “[i]n a reexamination proceeding involving claims of an expired patent, claim construction pursuant to the principle set forth by the court in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (words of a claim ‘are generally given their ordinary and customary meaning’ as understood by a person of ordinary skill in the art in question at the time of the invention) should be applied since the expired claim are not subject to amendment. See *Ex parte Papst-Motoren*, 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986).

Furthermore, “means-plus function” language of a claim if meeting the 3-prong analysis set forth in MPEP 2181, I, “shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof”, see MPEP 2181, II. As also set forth in 2181, II, “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language”, i.e. sets forth the structure, materials, or acts corresponding to a means- (or step-) plus-function.

Specifically:

...examiners will apply 35 U.S.C. 112(f) or pre-AIA 35 U.S.C. 112, sixth paragraph to a claim limitation if it meets the following 3-prong analysis:

(A) the claim limitation uses the term “means” or “step” or a term used as a substitute for “means” that is a generic placeholder (also called a nonce term or a non-structural term having no specific structural meaning) for performing the claimed function;

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