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Table with columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO., EXAMINER, ART UNIT, PAPER NUMBER, NOTIFICATION DATE, DELIVERY MODE. Includes application details for Donald K. Smith and examiner MCCORMACK, JASON L.

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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ASMI 1212



1. The present application is being examined under the pre-AIA first to invent provisions.

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/6/2015 has been entered.

#### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-4, 6, 8, 9, 13-20, 26-28, and 31-39 have been considered but are moot because the arguments do not apply to any of the references being used in the current rejection.

#### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the claims at issue are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been

Art Unit: 2881

obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the reference application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO internet Web site contains terminal disclaimer forms which may be used. Please visit <http://www.uspto.gov/forms/>. The filing date of the application will determine what form should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to

<http://www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp>.

5. Claims 1, 4, and 31 are rejected on the ground of nonstatutory double patenting as being unpatentable over claim 34 of copending application No. 14/510959. Although the claims at issue are not identical, they are not patentably distinct from each other

Art Unit: 2881

because it is impossible to practice the invention of copending application No. 14/510959 without infringing on claims 1 and 4 of the immediate application.

This is a provisional nonstatutory double patenting rejection because the patentably indistinct claims have not in fact been patented.

6. Claims 13, 37, and 39 are rejected on the ground of nonstatutory double patenting as being unpatentable over claim 19 of copending application No. 14/510959. Although the claims at issue are not identical, they are not patentably distinct from each other because it is impossible to practice the invention of copending application No. 14/510959 without infringing on claims 13, 37, and 39 of the immediate application.

This is a provisional nonstatutory double patenting rejection because the patentably indistinct claims have not in fact been patented.

7. Claim 26 is rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1 and/or 15 of copending application No. 14/510959. Although the claims at issue are not identical, they are not patentably distinct from each other because it is impossible to practice the invention of copending application No. 14/510959 without infringing on claim 26 of the immediate application.

This is a provisional nonstatutory double patenting rejection because the patentably indistinct claims have not in fact been patented.

8. Claims 32 and 33 are rejected on the ground of nonstatutory double patenting as being unpatentable over claim 33 of copending application No. 14/510959. Although the claims at issue are not identical, they are not patentably distinct from each other

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