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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 13/336,018, inventor Niall R. Lynam, attorney DON09 P-1800, examiner AMARI, ALESSANDRO V, art unit 2872, mail date 05/17/2012, and 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.

PTOL 804 (Rev. 04/02)



## DETAILED ACTION

### *Election/Restrictions*

Applicant's election of Invention I (claims 1-6, 19-24 and 28-35) in the reply filed on 21 March 2012 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 16-18, 25-27 and 36-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention, there being no allowable generic or linking claim.

### *Double Patenting*

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 obviousness-type double patenting rejection is appropriate where the conflicting claims 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 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 conflicting 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.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 19-24 and 28-34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 10, 13, 15, 16 and 24 of U.S. Patent No. 8,128,243. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant invention are broader and claim essentially the same subject matter as that of US 8,128,243.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 19-24 and 28-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Lynam et al (hereafter "Lynam") US 2002/0072026.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

In regard to claims 1, 19 and 28, Lynam discloses (see Fig. 2, 3) an exterior rearview mirror assembly for a motor vehicle, said exterior rearview mirror assembly comprising: a bracket (38) fixedly secured to the motor vehicle as described in paragraph [0041]; a mirror casing (40) secured to said bracket, said mirror casing defining a primary opening; a single mirror support (60) movably secured within said mirror casing disposed adjacent said primary opening; a primary mirror (50) fixedly secured to said single mirror support and disposed within said primary opening for providing a view rearward of the motor vehicle through a primary field of view as described in [0046]; a spotting mirror (55) fixedly secured to said single mirror support and disposed adjacent said primary mirror, said spotting mirror defined by a single radius of curvature differing from said primary mirror such that said spotting mirror provides a second field of view rearward of the motor vehicle as described in [0083],

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