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90/013,024	10/09/2013	7,394,432 B2	59749-00003.432	1387
27896	7590	11/01/2013	EXAMINER	
EDELL, SHAPIRO & FINNAN, LLC 9801 Washingtonian Blvd. Suite 750 Gaithersburg, MD 20878			NGUYEN, LINH M	
			ART UNIT	PAPER NUMBER
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**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. 90/013,024.

PATENT NO. 7,394,432 B2 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)).

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***DECISION ON REQUEST***

A substantial new question of patentability (“SNQ”) affecting claim 6 of United States Patent Number 7,394,432 to Baliarda et al. (hereinafter “the ‘432 patent”), entitled “MULTILEVEL ANTENNA”. Reexamination was additionally requested of claim 1. Claim 1, among others, was disclaimed by a statutory disclaimer filed 10/08/2013. Note that a statutory disclaimer takes effect upon the time of its proper filing, and its effect is that the claims never existed. *Vectra Fitness Inc. v. TNWK Corp.*, 49 USPQ2d 1144, 1146-47 (Fed. Cir. 1998). Accordingly, claim 1 cannot be subject to reexamination and no determination is made as to claim 1.

Since requester did not request reexamination of claims 2-5 and did not assert the existence of a substantial new question of patentability (SNQ) for such claims, such claims will not be reexamined. See MPEP 2243.

***References Cited in the Request***

The Request asserts that the following documents raise SNQs of the ‘432 patent:

U.S. Patent No. 5,995,064 to Yanagisawa *et al.* issued on November 30, 1999  
("Yanagisawa '064")

U.S. Patent No. 6,133,879 to Grangeat *et al.* issued on October 17, 2000 ("Grangeat")

U.S. Patent No. 6,300,914 to Yang issued on October 9, 2001 ("Yang")

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Misra, Ita *et al.*, "Experimental Investigations on the Impedance and Radiation Properties of a Three-Element Concentric Microstrip Antenna," Microwave and Optical Technology Letters, Vol. 11, No. 2, February 5, 1996 ("Misra")

Y.X. Guo, *et al.*, Double U-Slot rectangular patch antenna, Electronic Letters Vol. 34, No. 19 published September 17, 1998 ("Guo").

Declaration of Donald G. Bodnar filed with Request ("Bodnar Decl.").

Of the above-mentioned references, Misra and Guo references were of record in the co-pending reexamination proceedings having control numbers 95/001,483 (hereinafter "the '1483 proceeding"). Misra has been applied as anticipatory reference and the primary reference in obviousness rejections of the '1483 proceeding. Guo has been applied as the primary reference in an obviousness rejection of the '1483 proceeding.

In the present circumstance, Misra and Guo each was applied in rejections under 35 U.S.C. 103 along with the explanation from the Declaration of Dr. Bodnar, at ¶¶50, and at ¶¶77 and 87, respectively. Request has successfully presented these references in a new light.

### ***Applying "Old Art" for a New Request for Reexamination***

As stated above, the references Misra and Guo are considered "old art" for the determination of whether a new substantial question of patentability exists in the instant request for reexamination.

35 U.S.C. 303(a) provides for *ex parte* reexamination (emphasis added):

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Art Unit: 3992

"Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Director will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications .... **The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.**"

The reexamination statute makes it clear that a SNQ can be raised by patents and printed publications "previously cited by or to the Office or considered by the Office."

This provision was added for both *ex parte* and *inter partes* reexamination via the Patent and Trademark Office Authorization Act of 2002 (Act of 2002).

Therefore, for any reexamination ordered on or after November 2, 2002, the effective date of the statutory revision, reliance on previously cited/considered art, i.e., "old art," does not necessarily preclude the existence of a substantial new question of patentability (SNQ) that is based exclusively on that old art. Rather, determinations on whether a SNQ exists in such an instance shall be based upon a fact-specific inquiry done on a case-by-case basis.

### *Prosecution History*

The base patent stems from United States Patent Application No. 11/550,256 (hereinafter "the '256 application").

The '256 application filed on October 17, 2006 is a divisional of Application No. 11/179,257, filed on July 12, 2005, which is a continuation of Application No. 11/102,390, filed on April 8, 2005, now Pat. No. 7,123,208, which is a continuation of Application No. 10/963,080, filed on Oct. 12, 2004, now Pat. No. 7,015,868, which is a continuation of

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