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90/013,023	10/09/2013	7,397,431 B2	59749-00003.431	7843
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EDELL, SHAPIRO & FINNAN, LLC			NGUYEN, LINH M	
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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. 90/013,023.

PATENT NO. 7,397,431 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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Art Unit: 3992

***DECISION ON REQUEST***

A substantial new question of patentability (“SNQ”) affecting claims 1, 12-14 and 30 of United States Patent Number 7,397,431 to Baliarda et al. (hereinafter “the ‘431 patent”), entitled “MULTILEVEL ANTENNA”. The above claims will be reexamined.

Since requester did not request reexamination of claims 2-11, 15-29 and 31-37 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***

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");

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");

U.S. Patent No. 6,239,765 to Johnson *et al.* issued on May 29, 2001 ("Johnson");

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

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Of the above-mentioned references, Misra and Guo references were of record in the co-pending reexamination proceedings having control numbers 95/001,482 (hereinafter "the '1482 proceeding"). Misra has been applied as anticipatory reference and the primary reference in obviousness rejections of the '1482 proceeding. Guo has been applied as the primary reference in an obviousness rejection of the '1482 proceeding.

In the present circumstance, Misra and Guo each was applied in rejections under 35 U.S.C. 103 along with the explanation from Bodnar Decl., at ¶¶49-61, 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):

"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).

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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 '431 patent is drawn to multilevel antennae, which are described as antennae formed by sets of similar geometric elements (polygons or polyhedrons) electromagnetically coupled together so that one may distinguish each of the elements forming the structure, as well as the overall structure. Col. 1 lines 16-20. For example, each of the black triangle elements in Fig. 1 can be distinguished from the others, and the whole structure can be distinguished as well. It is stated that such antennae provide advantages of reduction in size and simultaneous operation in several bands. Col. 1 lines 21-24.

The '431 patent was filed with a preliminary amendment such that claims 40-87 were presented. The examiner issued a restriction requirement grouping the claims into ten inventions, and applicant elected with traverse the invention of claims 40-74 and 78-79. The first action on the merits was an *Ex parte Quayle* action indicating the elected claims as allowable and requiring cancellation of the non-elected claims. No reasons for allowance were given, and the examiner cited a few references as illustrating a similar structure to a multilevel assembly. Applicant complied with the requirement and cancelled the non-elected claims,

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