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27896	7590	10/31/2013	EXAMINER	
EDELL, SHAPIRO & FINNAN, LLC 9801 Washingtonian Blvd. Suite 750 Gaithersburg, MD 20878			MENEFFEE, JAMES A	
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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. 90/013,022.

PATENT NO. 7123208 B2 ET.

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

**ORDER GRANTING REEXAMINATION REQUEST**

A substantial new question of patentability (“SNQ”) affecting claims 1, 7 and 10-12 of U.S. Patent No. 7,123,208 (“the ‘208 patent”) is raised by the reexamination request filed 10/9/2013 (“Request”). It is noted that claims 1, 10, and 11 were disclaimed by a statutory disclaimer filed 9/10/2013.<sup>1</sup> This has not yet been processed, so for the purpose of this determination the examiner will assume those claims are still live claims. If it is determined that they are in fact disclaimed, they will effectively no longer exist and therefore will not be examined in the prosecution stage of this proceeding. Reexamination was not requested of claims 2-6, 8, 9, and 13-117, therefore they will not be reexamined. See MPEP 2243.

***References Cited in Request***

U.S. Patent No. 5,995,064 to Yanagisawa et al. (“Yanagisawa”).

U.S. Patent No. 6,133,879 to Grangeat et al. (“Grangeat”).

U.S. Patent No. 6,300,914 to Yang (“Yang”).

U.S. Patent No. 6,239,765 to Johnson et al. (“Johnson”).

Misra et al., Study of Impedance and Radiation Properties of a Concentric Microstrip Triangular-Ring Antenna and Its Modeling Techniques Using FDTD Method, IEEE Transactions on Antennas and Propagation, Vol. 46, No. 4, Apr. 1998 (“Misra-Chowdhury”).

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

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<sup>1</sup> The claims were also cancelled by amendment in a copending reexamination, but the certificate has not yet issued so that amendment is not yet effective.

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### *Prosecution History*

The '208 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 14-18. 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. Such antennas provide advantages of reduction in size and simultaneous operation in several bands.

During the original prosecution, the '208 patent was allowed in the first action following a preliminary amendment. The claims at issue here depend from independent claim 1, which was numbered claim 39 as allowed. The examiner stated the reasons for allowance as follows:

Claim[] 39 [is] allowable over the art of record because the prior art does not teach the perimeter of the multilevel structure has a different number of sides than the polygons that compose the antenna region, and further wherein a plurality of polygons of the antenna region are generally identifiable as a geometrical element defined by the free perimeter thereof and the projection of ones of the longest exposed perimeters thereof to define the least number of polygons within the region necessary to form the generally distinguishable elements where the polygon perimeters are interconnected, and in combination with the remaining claimed limitations.

Notice of Allowance mailed 7/6/2006, pp. 2-3. References showing an antenna having such features would therefore have been important to a reasonable examiner in considering the patentability of the claims.

The '208 patent is also the subject of a co-pending reexamination proceeding, assigned control number 95/001,389 and examined by the undersigned examiner, in which claims 7 and 12 are under rejection and are awaiting a decision by the Board on patent owner's appeal. That proceeding originated from a request by the current third party requester. Two later requests were filed by different third parties and assigned control numbers 95/000,591 and 95/001,501.

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The three were merged, though eventually the latter two were terminated under 35 U.S.C. 317. 95/001,389 remains pending, and all issues which were deemed to raise an SNQ in the three proceedings are either currently under appeal as claim rejections or have been resolved due to cancellation/statutory disclaimer of claims or findings of patentability which were not appealed.

#### Claim Construction – General

The examiner has construed the claims in the related proceeding, particularly the coined term multilevel structure. See 95/001,389 RAN mailed 12/10/2012 pp. 4-11. The examiner is aware that the patent owner disagrees with this construction, but as the issues have already been fully developed in that proceeding the examiner will maintain the same position unless some new evidence (or a related Board or Federal Circuit decision) persuades him otherwise. It should also be noted that the patent owner's proposed definitions are much narrower than those it proposed to the court (and also those definitions the court ultimately adopted) in the related litigation. See *Fractus, S.A. v. Samsung Elecs. Co.*, Memorandum Order and Opinion 12/17/2010 6:09cv203 (E.D. Tex.).<sup>2</sup> In other words, additional attorney argument is unlikely to change the examiner's mind. One issue which requires further explanation is "fractal" discussed next.

#### Claim Construction – Fractal

In the '1389 proceeding, the examiner determined in the Order that fractal antennas were excluded from the definition of multilevel antennas. See 95/001,389 Order mailed 8/12/2010 pp. 4-5. The examiner later determined that not all fractal antennas were excluded. See 95/001,389

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<sup>2</sup> Any discussion of related litigation herein refers to this case unless stated otherwise.

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