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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/009,457	04/24/2009	5809336	0081-011D3X4	6398

40972 7590 07/23/2009

HENNEMAN & ASSOCIATES, PLC  
70 N. MAIN ST.  
THREE RIVERS, MI 49093

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/23/2009

Please find below and/or attached an Office communication concerning this application or proceeding.



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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

GREG H. GARDELLA  
FISH & RICHARDSON PC  
P.O. BOX 1022  
MINNEAPOLIS, MN 55440-1022

Date:

**RECEIVED**

**JUL 23 2009**

**CENTRAL REEXAMINATION UNIT**

**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. : 90009457  
PATENT NO. : 5809336  
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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(For Requester)

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JUL 23 2009

CENTRAL REEXAMINATION UNIT

*In re Moore et al.*

Reexamination Proceeding

Control No. 90/009,457

Request Deposited: April 24, 2009

For: U.S. Patent No. 5,809,336

:  
: DECISION *SUA SPONTE*  
: VACATING *EX PARTE*  
: REEXAMINATION  
: FILING DATE

The *ex parte* reexamination request papers deposited on April 24, 2009, and assigned Control No. 90/009,457, are before the Office of Patent Legal Administration for consideration of whether to vacate the assigned filing date for failure to comply with the provisions of 37 CFR 1.510.

This decision constitutes notice that, pursuant to 37 CFR 1.510(c), **the filing date** of April 24, 2009, which was assigned to the request papers for the above-captioned *ex parte* reexamination proceeding, is hereby **vacated**, because the papers fail to comply with the filing date requirements for an *ex parte* reexamination proceeding set forth in 37 CFR 1.510, for the reasons set forth below.

See MPEP 2214.

In order to obtain a filing date for the request papers, the requester must, within **thirty (30) days** of the mailing date of this decision, file a response to this decision which remedies the defects set forth in this decision and makes the request papers compliant with the requirements of 37 CFR 1.510.

Art Unit: 3992

### REVIEW OF RELEVANT FACTS

1. U.S. Patent No. 5,809,336 (hereinafter, the '336 patent), issued to *Moore et al.*, on September 15, 1998.
2. On April 24, 2009, a third party requester deposited a request for *ex parte* reexamination of claims 1-10 of the '336 patent. The reexamination proceeding was assigned Control No. 90/009,457 (hereinafter, the '457 proceeding).
3. On May 5, 2009, a "Notice of *Ex Parte* Reexamination Request Filing Date" was mailed for the '457 proceeding. The notice stated the filing date of the request for reexamination to be April 24, 2009.

### DECISION

Pursuant to 37 CFR 1.510(b), any request for *ex parte* reexamination must include:

“(1) A statement pointing out each substantial new question of patentability based on prior patents and printed publications.

“(2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. If appropriate the party requesting reexamination may also point out how claims distinguish over cited prior art.

“(3) A copy of every patent or printed publication relied upon or referred to in paragraph (b)(1) and (2) of this section accompanied by an English language translation of all the necessary and pertinent parts of any non-English language patent or printed publication.

“(4) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper.

“(5) A certification that a copy of the request filed by a person other than the patent owner has been served in its entirety on the patent owner at the address as provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy must be supplied to the Office.”

Upon further review of the request papers, the request is not compliant with 37 CFR 1.510. Specifically, the request is not compliant with 37 CFR 1.510(b)(2), which “[a]n identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.”

Art Unit: 3992

**I. The request is incomplete as to compliance with 37 CFR 1.510(b)(1) for the following reason:**

The request has failed to provide the requisite identification and explanation, in compliance with 37 CFR 1.510(b)(1), of what substantial new questions of patentability (SNQs) are being raised by the cited prior art documents under 37 CFR 1.510(b). The request fails to clearly explain how each asserted SNQ is significantly different from the questions of patentability raised in the previous examination of the patent before the Office. As pointed out in MPEP 2216:

“[i]t is not sufficient that a request for reexamination merely proposes one or more rejections of a patent claim or claims as a basis for reexamination. It must first be demonstrated that a patent or printed publication that is relied upon in a proposed rejection presents a new, non-cumulative technological teaching that was not previously considered and discussed on the record during the prosecution of the application that resulted in the patent for which reexamination is requested, and during the prosecution of any other prior proceeding involving the patent for which reexamination is requested.” [Emphasis added]

Specifically, the request states that the cited prior art raises substantial new questions, but it fails to explicitly identify the new technological teaching for each proposed rejection/application of the art that raises the SNQ.

For example, the request asserts on page 7:

“ As to the Mostek reference, the arguments presented herein are substantially different than those presented in the reexamination request filed by the Public Patent Foundation on January 30, 2007. For example, that earlier request did not argue that the Mostek reference anticipates any claim of the '336 patent.” However page 27 of this prior request asserts “**C. Claims 1-10 are obvious over Mostek, and claims 6-8 and 10 are anticipated by Mostek**, as further evidenced by EDN, IC Master and Hanamura and prior prosecution correspondences, Paper 6 and Paper 12.s. All elements of claims 1-10 would have been obvious to one of ordinary skill in the art in 1989 in light of Mostek. Also, all elements of claims 6-8 and 10 are disclosed either expressly or inherently in Mostek.”

In the order for the prior request filed on January 30, 2007, the examiner stated, on page 6:

“the reference[] of Mostek . . . introduced by the Third Party requester, would likely have been important to a reasonable examiner in deciding whether or not the claims were patentable. The above discussed teachings were not present during the prosecution of the application which became the '336 Patent. Thereby, the references raise a substantial new question . . .”

Art Unit: 3992

In the first Office action of the same prior-filed request, which was merged with two other *ex parte* reexamination proceedings, the examiner stated, on page 16 (emphasis added):

“[t]he orders for reexamination for each of the proceedings [including the order for the proceeding filed on January 30, 2007] each cited further prior art beyond Kato and Ledzius et al as raising substantial new questions of patentability. Each of these other prior art references *have been considered* and remain available as prior art. However, they are not applied in this particular action since they recite teachings which *otherwise already exist* in either Kato or Ledzius et al.”

In other words, the examiner stated that the prior art references, including Mostek, have been considered, but are not applied because they recite teachings which otherwise already exist, i.e., which are *cumulative*, to the prior art of record. Mostek, therefore, is a *cumulative* technological teaching that was *considered and discussed* on the record during the prosecution of a prior proceeding involving the patent for which reexamination is requested. The requester has failed to explain, for example, what new technological teaching, that is specifically found in Mostek, and that was not considered or discussed in the prosecution of the prior proceeding, is currently being raised as the basis for the substantial new question of patentability (SNQ). The requester has also failed to explain how the Mostek reference is presented in a new light, or in a different way, than was presented in the prosecution of the prior proceeding.<sup>1</sup>

In addition, the requester has failed to *specifically* explain what technological teaching in *each* of the other references presently cited in the request, such as, for example, Dozier, Richter, McDermott, Ledzius, Kato, and IC Master, is being relied upon as the basis for the SNQ in each reference combination that is proposed in the request, why each of these teachings is “new”, and why the requester feels that *each* of these teachings is *not cumulative to the teachings of record* in the prosecution of the application that resulted in the patent for which reexamination is requested, *and in the prosecution of any other prior proceeding involving the patent for which reexamination is requested.*

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<sup>1</sup> See also MPEP 2240, subsection II, which provides:

If a second or subsequent request for *ex parte* reexamination is filed (by any party) while a first *ex parte* reexamination is pending, the presence of a substantial new question of patentability depends on the prior art (patents and printed publications) cited by the second or subsequent requester. If the requester includes in the second or subsequent request prior art which raised a substantial new question in the pending reexamination, reexamination should be ordered only if the prior art cited raises a substantial new question of patentability which is different from that raised in the pending reexamination proceeding. If the prior art cited raises the same substantial new question of patentability as that raised in the pending reexamination proceedings, the second or subsequent request should be denied.

Art Unit: 3992

**Accordingly, any corrected request filed in response to this decision must clearly establish, for each proposed rejection identified, what new technical teaching is being provided by the citation of the newly cited references. See MPEP 2242.**

**II. The request is incomplete as to compliance with 37 CFR 1.510(b)(2) for the following reason(s):**

The request has failed to provide the requisite detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested because the request fails to clearly set forth how the prior art publications are applied to the claims for which reexamination is requested.

For example, the request sets forth on page 10: "As described herein, the Mostek reference (*Appendix F*) taken alone or in combination with the Kato reference, raises substantial new questions of patentability for all claims of the '336 patent. The following claim chart demonstrates that all elements in claims 1-10 are *anticipated or rendered obvious* by the Mostek reference." The claim chart, however, does not separate the two proposed rejections. They are 'lumped' together into one chart rendering it unclear how requester sees the cited prior art applied to the claims.

For example, the request specifically proposes that the Mostek reference anticipates claims 1-7, 9, and 10 of the '336 patent. From the above-quoted passage, however, it is unclear, whether claim 8 is also proposed to be rejected under 35 U.S.C. 102(b). It is also unclear which of the claims, specifically, are proposed to be rejected under 35 U.S.C. 103(a), and of those claims that are proposed to be rejected under 35 U.S.C. 103(a), which references are proposed to be applied against which claims. For example, it is unclear whether:

Claim 8 is proposed to be rejected under 35 U.S.C.102(b) as being anticipated by Mostek, or

Claim 1 is proposed to be rejected under 35 U.S.C. 103(a) as being obvious over Mostek, or

Claim 1 is proposed to be rejected under 35 U.S.C. 103(a) as being obvious over Mostek in view of Kato, or

Claim 2 is proposed to be rejected under 35 U.S.C. 103(a) as being obvious over Mostek, or

Claim 2 is proposed to be rejected under 35 U.S.C. 103(a) as being obvious over Mostek in view of Kato,

and so on.

Art Unit: 3992

This is also particularly true of the proposed rejections under 103(a) appearing, for example, on page 38 (“The Dozier reference, in light of the Mostek, Kato, and Ledzius references, renders obvious claims 1-10 of the ‘336 patent”) and on page 65 (“The Richter reference, in light of the McDermott, Ledzius, and Kato references, renders obvious claims 1-10 of the ‘336 patent”).

The request only provides a single explanation for how the art applies to the claims, which lumps together the explanation for all of the proposed rejections. Stated another way, the requester has not provided a detailed explanation of how the references apply to *each* of the claims of ‘336 patent in *each* of the proposed rejections.

As explained in MPEP 2217:

“Requester must present an explanation of how the cited patents or printed publications are applied to all claims which requester considers to merit reexamination. This not only sets forth the requester’s position to the Office, but also to the patent owner (where the patent owner is not the requester).

Thus, for example, once the request has cited documents (patents and printed publications) and proposed combinations of the documents as to patent claims 1-10 (for example), the request must explain how each of the proposed combinations specifically applies to each claim that it is asserted against (i.e., claims 1 – 10), explaining how each document (reference) identified for the combination is used.

Ideally, the required explanation can be provided using an appropriately detailed claim chart that compares, limitation by limitation, each claim for which reexamination is requested with the relevant teachings of each reference cited in the request. See the sample request for reexamination in MPEP § 2214.

For proposed obviousness rejections, requester must provide at least one basis for combining the cited references, and a statement of why the claim(s) under reexamination would have been obvious over the proposed reference combination. Preferably, the requester should quote the pertinent teachings in the reference, referencing each quote by page, column and line number and any relevant figure numbers. The explanation must not lump together the proposed rejections or proposed combinations of references.

Examples of inappropriate language:

- Claim 1 is unpatentable under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. 103 as being obvious over the Smith reference.”

As can be seen the lumping of proposed rejections into a single claim chart does not provide the required explanation of the pertinency and manner of applying the cited prior



Art Unit: 3992

art to every claim for which reexamination is requested. A similar analysis can be made to the claim charts setting forth rejections based upon Dozier or Dozier in combination with additional references and with respect to Richter or Richter in view of additional references.

Additionally, the claim charts appear inconsistent with the proposed rejections in that they discuss prior art that is not identified as a basis for a substantial new question, and that is not cited in the proposed rejections. For example, in the claim chart, appearing on pages 10-35 of the request, for the proposed Mostek reference taken alone or in combination with the Kato reference, on page 14 requester states in the claim chart with respect to claim 1: "As an aside, Requestor notes that this feature was commonplace at the time of filing, as shown by U.S. Patent No. 4,691,124 to Ledzius et al. ("Ledzius"). Ledzius teaches that manufacturing circuits from the "same batch and section of Semiconductor wafer" results in process variations throughout the circuit. (Appendix I, col. 4, lines 11-12). One skilled in the art would have found an apparent reason to combine Ledzius with Mostek, namely to produce Mostek's processor with minimal cost and defects." Thus it is unclear whether the requester is proposing a rejection of claim 1 citing the Ledzius reference. It is also unclear, if such a rejection is to be proposed, whether Ledzius is meant to be cited in combination with Mostek alone, or in combination with Mostek in view of Kato.

Furthermore, under the same proposed ground of rejection on pages 16 - 17 with respect to claim 3, requester states: "One skilled in the art would know that the 3870 family of chips contains variable internal oscillators as described by the IC Master databook (IC Master 1980 (United Technical Publications) (1980)). For example, the IC Master databook states that "If timing is not critical, the F3870 will operate from its internal oscillator with no external components" (*Appendix I, page 2019*) (*emphasis added*). The internal oscillators of the 3870 family chips are disclosed to vary in frequency from 1.7 - 4 MHz when the chips are set to Internal Mode by grounding XTLI and XTL2. (*Appendix J, Fig. 3; Pages 2024 and 2026*). The IC Master databook is listed on the PTO 1449 accompanying the request. Thus it is unclear whether the requester is proposing a rejection of claim 1 citing the IC Master databook. It is also unclear, if such a rejection of claim 3 is meant to be proposed, whether the requester intends to cite the IC Master databook in combination with Mostek alone, or in combination with Mostek in view of Kato.

A similar analysis can be made to the claim charts setting forth rejections based upon Dozier or Dozier in combination with additional references and with respect to Richter or Richter in view of additional references. In other words, references such as Ledzius and IC Master databook are referenced in the claim charts but not set forth in the proposed grounds of rejection.

Art Unit: 3992

For these reasons, the request fails to explicitly and individually set forth each proposed rejection and provide the explanation for each distinct proposed rejection under 35 U.S.C. 103(a). See MPEP 2217 and the sample request in MPEP 2214. Because the explanations for multiple, distinct rejections under 35 U.S.C. 103(a) are lumped together, the explanations provided are not sufficient as to how the references apply to the claim limitations. Accordingly, not all of the multiple proposed obviousness rejections are discussed in detail, as required to clearly set forth the proposed rejections.

Therefore, the request does not provide a clear explanation of how *each* of the references cited in the request papers may apply in *every* proposed rejection under 35 USC 103(a) to the claim in the '336 patent. The explanation **must not** lump together the proposed rejections or proposed combinations of references. See MPEP 2217.

In summary, the requester has not clearly provided a **separate** identification of *each* of the proposed rejections, and detailed, clear explanation for **each** identified ground of rejection of how the references apply to the '336 patent claim listed for the identified ground of rejection. Therefore, the identifications of the proposed rejection and explanations fail to comply with the requirements of 37 CFR 1.510(b)(2).

As a result of the above-mentioned defects, the request is unclear as to what SNQs are being set forth for the claims, as required by 37 CFR 1.510(b)(1). Also, without a complete explanation for each of the possible grounds, the request lacks the required regulatory "detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested."

Since the request has not properly advanced, and explained, a substantial new question with respect to each of the '336 patent claims for which reexamination has been requested, the request fails to comply with the requirements for granting a filing date for a reexamination request. Furthermore, since the request has not properly identified each proposed rejection and provided an explanation for each proposed rejection of how the cited documents apply to the claims of the '336 patent, the request fails to comply with the requirements for granting a filing date for a reexamination request.

**Each substantial new question of patentability (SNQ) must be identified.<sup>2</sup> Each proposed rejection based on the SNQ must be identified separately.<sup>3</sup> For each identified rejection**

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<sup>2</sup> MPEP 2216 points out that: "It is not sufficient that a request for reexamination merely proposes one or more rejections of a patent claim or claims as a basis for reexamination. It must first be demonstrated that a patent or printed publication that is relied upon in a proposed rejection presents a new, non-cumulative technological teaching that was not previously considered and discussed on the record during the prosecution of the application that resulted in the patent for which reexamination is requested, and during the prosecution of any other prior proceeding involving the patent for which reexamination is requested." The legislative history of the reexamination statute also provides that: "Section I provides for a system of administrative reexamination of patents within the patent office. This new procedure will permit any party to petition the patent office to review the efficacy of a patent, subsequent to its issuance, on the basis of new information about preexisting technology which may have escaped review at the

Art Unit: 3992

**based on an SNQ, the request must explain how the cited documents identified for that proposed rejection are applied to meet/teach the patent claim limitations to thus establish the identified proposed rejection.**

If the requester were permitted to omit an explanation of the SNQs raised, an undue burden would be placed on the Office to address each document in the determination on the request, without an explanation of what requester believes to be the SNQ(s). Accordingly, such an omission is prohibited by law.

### **III. Copending Proceedings Cannot Be the Basis for Reexamination.**

The request includes sections which assert that the proposed rejections in the present proceeding are applicable to the claims as added to a copending merged reexamination of the requested patent. See, for example, pages 35, 62, and 63. Such comments in the request are inappropriate. The request must set forth a basis for a substantial new question of patentability (SNQ). An SNQ may only be based on patents and printed publications, not on copending reexamination proceedings.

### **IV. The Correspondence Address for the Patent Owner Has Been Changed**

The certificate of service attached to the April 24, 2009 request indicates that service was made to Larry E. Henneman at **714 W. Michigan Avenue**, Three Rivers, MI 49093. However, this address is not the current correspondence address **in the patent file** for the '336 patent (see the address for the patent owner in the caption of this decision).<sup>4</sup> If a corrected request is filed in response to this decision, the corrected request, as well as a copy of the prior-filed papers, must be served on the patent owner at the current correspondence address under 37 CFR 1.33(c) in the patent record **at the time the corrected request is filed**, or alternatively, if such service cannot be made, requester must provide an explanation of the efforts taken to provide service and why those efforts were not successful, in addition to a second copy of the request.

The patent owner is reminded that any future correspondence address changes should be served on the third party requester.

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time of the initial examination of the patent application." H.R. Rep. No. 96-1307, 96th Cong., 2d Sess. 3 (1980), reprinted in 1980 U.S.C.C.A.N. 6460, 6461, 6462.

<sup>3</sup> "Shot-gun" statements, or lumping of multiple SNQ permutations together is **not permitted**.

<sup>4</sup> Office records reveal that the correspondence address for the customer number of the patent owner was updated in the Office's database, PALM, on May 20, 2009, after the date of service of the request. The request, therefore, was properly served.

Art Unit: 3992

### REQUESTER'S RECOURSE

In view of the April 24, 2009 "Notice of Reexamination Request Filing Date" mailed for the '457 proceeding, the requester is given one opportunity to correct the request, should requester so desire.<sup>5</sup>

I. Requester has the option to respond to this identification of defects in the request papers by applying the appropriate option(s) set forth below:

- 1) Providing an identification for each substantial new question of patentability (SNQ), as required by 37 CFR 1.510(b)(1), and clearly establishing which teachings of the reference(s) cited as the basis for the SNQ are substantially different than those considered in the previous examination of the patent before the Office. In other words, the requester must show, for each SNQ identified, at least one new, non-cumulative technological teaching that is provided by the reference(s) cited as the basis for each SNQ, and that is substantially different than the teachings of the references considered in the previous examination of the patent before the Office. Each substantial new question of patentability or proposed ground of rejection ("SNQ/proposed rejection") must be identified separately. The patent claims applying to each identified SNQ/proposed rejection must be listed.
- 2) Providing an explanation of the manner and pertinence of applying each cited document to the patent claims for which reexamination is requested, as required by 37 CFR 1.510(b)(2). For each identified proposed rejection, the request must explain how the cited documents identified for that proposed rejection are applied to meet/teach the claim limitations for each listed claim, to thus establish the identified proposed rejection. Where references are applied in combination, each combination must be individually identified, and for each separately identified combination of references, the basis for forming that combination must be supplied for each claim to which the identified combination is being applied.
- 3) Explicitly withdrawing any document for which such an explanation is not to be provided for the patent claims, and submitting a new listing confined to the documents

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<sup>5</sup> MPEP 2227, part B.1, states: "After a filing date and control number are assigned to the request papers, the examiner reviews the request to decide whether to grant or deny it. If, in the process of reviewing the request, the examiner notes a non-compliance item not earlier recognized, the examiner will forward a memo to his/her SPRE detailing any such non-compliance item(s)... Upon confirmation of the existence of any such non-compliant item(s), OPLA will issue a decision vacating the assigned reexamination filing date. In OPLA's decision, the requester will be notified of the non-compliant item(s) and given time to correct the non-compliance.... absent extraordinary circumstances, requester will only be given one opportunity to correct the non-compliant item(s) identified in the Decision Vacating Filing Date." [Emphasis Added]

Art Unit: 3992

for which a discussion required by 37 CFR 1.510(b)(1) has been provided via the corrected request papers. For example, if completed forms PTO/SB/08 or PTO-1449 have been submitted, they would be expressly withdrawn by requester, and replaced with the above-identified new listing, which may be a newly provided form or forms. Copies of documents already of record in the proceeding do not need to be resubmitted. As to any of the documents withdrawn, if reexamination is ultimately ordered, the patent owner may, in accordance with MPEP 2280, submit an Information Disclosure Statement (IDS) in compliance with 37 CFR 1.555 "within two months of the date of the order granting reexamination, or as soon thereafter as possible."

4) Explicitly withdrawing the request to reexamine any patent claim for which the requisite explanation of the SNQ and explanation of the proposed rejection, required by 1.510(b) (1)-(2) are not provided, and replacing the presently-submitted listing of the claims for which reexamination is requested with a new listing of claims for which reexamination is requested, the new listing *being confined to those claims for which the discussion required by 37.CFR 1.510(b) (1) is provided.*

5) Withdrawing any proposed combination of references or application of a sole reference for which an explanation required by 1.510(b) (1)-(2) is not provided, by replacing the presently-submitted identification of the substantial new question(s) of patentability (SNQs) and explanation of proposed rejections with *a new identification of the substantial new question(s) of patentability and explanation of the proposed rejections*, the new identification and explanation *being confined to those claims for which the discussion required by 37 CFR 1.510(b) (1)-(2) is provided.*

The requester is reminded that the corrected request (including all supporting documents such as the listing of references, copies of the references, appendices, etc...) must be served on the patent owner at the current correspondence address under 37 CFR 1.33(a) **in the patent record at the time the corrected request is filed**, or alternatively, if such service cannot be made, providing an explanation of the efforts taken to provide service and why those efforts were not successful, and a second copy of the request papers.

**II. In order to obtain a filing date for the request papers, the requester must, within thirty (30) days of the mailing date of this decision, file a response to this decision which makes the request papers filing date compliant.** The response must be supplied as a corrected request.

The response may be mailed to the Central Reexamination Unit (CRU), attn: "Box *Ex Parte* Reexam" at the USPTO address indicated below, or hand carried to the CRU at the address indicated below. A replacement statement and explanation under 37 CFR 1.510(b)(1) and (2) must not be facsimile transmitted. It is strongly suggested that any response be followed up by a telephone call to the Central Reexamination Unit at (571) 272-7705, at soon as possible.

Art Unit: 3992

The requester has one opportunity to make the request papers filing date compliant. If the response to this decision fails to cure the defect(s) identified in this decision or adds a new defect, then processing of the request papers will be terminated, and the request papers will either be discarded or treated as a prior art citation under 37 CFR 1.501, at the Office's option.

**If the request papers are made filing date compliant, the date of the receipt of the response will be the filing date of the reexamination proceeding.**

### CONCLUSION

1. **The filing date** assigned to the request papers for *ex parte* reexamination proceeding Control No. 90/009,457 is hereby **vacated** for failure of the request papers to comply with the filing date requirements for an *ex parte* reexamination proceeding, as set forth in 37 CFR 1.510(b)(1)-(2).
2. In order to obtain a filing date for the request papers, the requester must, within **thirty (30) days** of the mailing date of this decision, file a response to this decision which makes the request papers filing-date compliant, pursuant to the guidelines set forth above.
3. The requester is being provided with only one opportunity to make the request papers filing-date compliant. *If the response to this decision fails to cure the defects identified in this decision, or adds a new defect, processing of the request papers will be terminated*, and the request papers will either be discarded or treated as a prior art citation under 37 CFR 1.501, at the Office's option. If the request papers are made filing date compliant, the date of the receipt of the response will be the filing date of the reexamination proceeding.
4. Jurisdiction over the present *ex parte* reexamination request papers is being retained in the Office of Patent Legal Administration pending response to this decision, or the expiration of time to respond.
5. Any response to this decision should be directed to:  
  
By EFS: Registered users may submit the response via the electronic filing system EFS-Web, at:  
<https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>  
  
By Mail: Mail Stop *Ex Parte* Reexam  
Attn: Central Reexamination Unit  
Commissioner for Patents  
P. O. Box 1450  
Alexandria VA 22313-1450

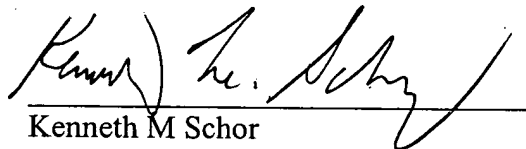
Art Unit: 3992

By hand: Customer Service Window  
Attn: Central Reexamination Unit  
Randolph Building, Lobby Level  
401 Dulany Street  
Alexandria, VA 22314

6. A REPLACEMENT STATEMENT AND EXPLANATION UNDER 37 CFR 1.510(b)(1) and (2) MAY NOT BE FACSIMILE TRANSMITTED.

7. **It is strongly suggested that** any response to this decision be followed up by a telephone call to the Central Reexamination Unit at (571) 272-7705, as soon as possible, to ensure receipt and processing.

8. Telephone inquiries related to this decision should be directed Jessica Harrison, Supervisory Patent Examiner, at (571) 272-4449, or in her absence, to Legal Advisors Cynthia Nessler at (571) 272-7724 or Pinchus M. Laufer at (571) 272-7726.



Kenneth M Schor  
Senior Legal Advisor  
Office of Patent Legal Administration