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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/401,829	02/21/2012	Nathan C. Moskowitz	3003/0107PUS5	1458
87409	7590	07/16/2013		
Dresch IP Law, PLLC P.O. Box 650903 Potomac Falls, VA 20165			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
			NOTIFICATION DATE 07/16/2013	DELIVERY MODE ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@dreschiplaw.com
jdresch@dreschiplaw.com
john_dresch@hotmail.com

Office Action Summary	Application No. 13/401,829	Applicant(s) MOSKOWITZ ET AL.	
	Examiner PEDRO PHILOGENE	Art Unit 3733	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2012.
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-87 is/are pending in the application.
5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-87 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) ☐ All b) ☐ Some c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Interim copies:

- a) ☐ All b) ☐ Some c) ☐ None of the: Interim copies of the priority documents have been received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 3) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 4) ☐ Other: ____. |

Claim Objections

Claims 21, 59 are objected to because of the following informalities: it is not clear whether or not the portion in parenthesis is part of the claims. Appropriate correction is required.

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 1-87 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 7,972,363. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is clear that all the elements of claims of the application are to be found in claims of the patent. The difference between claims of the application and claims of the patent lies in the fact that the patent claims include many more elements and are thus much more specific. Thus the invention of claims of the patent is in effect a “species” of the “generic” invention of claims of the application. It has been held that the generic invention is “anticipated” by the “species”. See in Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims of the application are anticipated by claims of the patent, they are not patentably distinct.

Claims 1-87 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 41-117 of copending Application No. 13/103,994. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is clear that all the elements of claims of the application are to be found in claims of the patent. The difference between claims of the application and claims of the patent lies in the fact that the patent

claims include many more elements and are thus much more specific. Thus the invention of claims of the patent is in effect a “species” of the “generic” invention of claims of the application. It has been held that the generic invention is “anticipated” by the “species”. See in Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims of the application are anticipated by claims of the patent, they are not patentably distinct.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-87 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-88 of copending Application No. 13/418, 335. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is clear that all the elements of claims of the application are to be found in claims of the patent. The difference between claims of the application and claims of the patent lies in the fact that the patent claims include many more elements and are thus much more specific. Thus the invention of claims of the patent is in effect a “species” of the “generic” invention of claims of the application. It has been held that the generic invention is “anticipated” by the “species”. See in Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims of the application are anticipated by claims of the patent, they are not patentably distinct.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-87 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-88 of

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copending Application No. 13/418, 323. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is clear that all the elements of claims of the application are to be found in claims of the patent. The difference between claims of the application and claims of the patent lies in the fact that the patent claims include many more elements and are thus much more specific. Thus the invention of claims of the patent is in effect a “species” of the “generic” invention of claims of the application. It has been held that the generic invention is “anticipated” by the “species”. See in *Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims of the application are anticipated by claims of the patent, they are not patentably distinct.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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 1-3, 10-30, 33-57, 75-86 are rejected under 35 U.S.C. 102(e) as being anticipated by Jones et al. (2009/0105830).

With respect to claims 1, 85, Jones et al disclose a universal intervertebral combination bone fusion spacer and self-drilling screw apparatus for insertion into a

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disc space between a first vertebral body and a second vertebral body and fusion of the first vertebral body to the second vertebral body via biological bone fusion, as best seen in FIGS.12-14, the apparatus comprising: and intervertebral cage(10) including: a first integral screw guide (34) having a first predetermined angle; as best seen in FIGS.12-14; and a second integral screw guide (34) having a second predetermined angle; a first screw member (16) disposed in the first integral screw guide at the first predetermined angle and at least partially within the intervertebral cage; a second screw member (16) disposed in the second integral screw guide at the second predetermined angle and at least partially within the intervertebral cage; and a screw locking mechanism (18) that secures at least one of the first screw member and the second screw member in one of the first internal screw guide and the second internal screw guide, wherein each of the first internal screw guide and the second internal screw guide is angled to orient the first screw member and the second screw member bi-directionally in opposite directions; as best seen in FIGS.12-14; and wherein at least one of the threaded body of the first screw member, the screw head of the first screw member, the threaded body of the second screw member, and the screw head of the second screw member engages the screw locking mechanism; as best seen in FIGS.12-14.

With respect to claims 2-3, 10-30, 33-57, 76-84, Jones et al disclose all the limitations, as set forth in para[0026-0047] and as best seen in FIGS.1-14.

With respect to claim 85, Jones et al disclose an integral intervertebral cage spacer (10) and bi-directional fixating/fusion transvertebral body screw apparatus comprising an intervertebral cage (10) including a plurality of internal angled screw

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guides (34); a plurality of screw members (16) having a screw head and a threaded body disposed within the plurality of internal angled screw guides of the intervertebral cage; and screw locking means (18) for securing at least one of the plurality of screw members in the plurality of internal angled screw guides.

With respect to the method claim 86, the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-9, 31, 32, 58-74, 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (2009/0105830) in view of Waugh et al. (2008/0249575).

With respect to these claims it is noted that Jones at all discloses all the limitations, as set forth above, except for the locking mechanism disposed between the intervertebral cage and at least one of an underside of the screw head and a tool mating features including a slot and indentation formed adjacent to an edge of the cage and third and fourth screws and screw guides and a wall having four quadrants delineated by a first and second axes at right angle with respect to each other; as claimed by applicant. However, in similar art, Waugh et al provide the evidences of the use of a cage including the locking mechanism disposed between the intervertebral cage and at least one of an underside of the screw head and a tool mating features including a slot

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and indentation formed adjacent to an edge of the cage and third and fourth screws and screw guides and a wall having four quadrants delineated by a first and second axes at right angle with respect to each other to inhibit back-out of the anchor and the cage.

Therefore, given the teaching of Waugh et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Jones, as taught by Waugh et al, by substituting the locking device of Jones et al with the locking device of Waugh et al to inhibit back-out of the anchor and the cage.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,972,019	12-2005	Michelson
7,442,209	10-2008	Michelson
2006/0155295	7-2006	Anderson
2008/0249569	10-2008	Waugh et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PEDRO PHILOGENE whose telephone number is (571)272-4716. The examiner can normally be reached on Monday to Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
July 8, 2013

Notice of References Cited	Application/Control No. 13/401,829		Applicant(s)/Patent Under Reexamination MOSKOWITZ ET AL.	
	Examiner PEDRO PHILOGENE		Art Unit 3733	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2008/0249569	10-2008	Waugh et al.	606/249
*	B	US-2006/0155285	07-2006	Anderson, Kent	606/070
*	C	US-7,442,209	10-2008	Michelson, Gary K.	623/17.11
*	D	US-6,972,019	12-2005	Michelson, Gary K.	606/86A
*	E	US-7,972,363	07-2011	Moskowitz et al.	606/246
*	F	US-2008/0249575	10-2008	Waugh et al.	606/305
*	G	US-2009/0105830	04-2009	Jones et al.	623/17.16
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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BIB DATA SHEET

CONFIRMATION NO. 1458

SERIAL NUMBER	FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.	
13/401,829	02/21/2012	606	3733	3003/0107PUS5	
RULE					
APPLICANTS Nathan C. Moskowitz, Rockville, MD; Mosheh T. Moskowitz, Rockville, MD; Ahmnon D. Moskowitz, Rockville, MD; Pablo A. Valdivia Y. ALVARADO, Cambridge, MA;					
** CONTINUING DATA ***** This application is a CIP of 13/103,994 05/09/2011 which is a DIV of 12/054,335 03/24/2008 PAT 7972363 which is a CIP of 11/842,855 08/21/2007 PAT 7942903 which is a CIP of 11/536,815 09/29/2006 PAT 7846188 which is a CIP of 11/208,644 08/23/2005 PAT 7704279 This application 13/401,829 02/21/2012 is a CIP of 13/084,543 04/11/2011 PAT 8353913 which is a DIV of 11/842,855 08/21/2007 PAT 7942903 This application 13/401,829 02/21/2012 claims benefit of 61/451,582 03/10/2011 and claims benefit of 61/451,579 03/10/2011 and claims benefit of 61/445,034 02/21/2011 and said 11/208,644 08/23/2005 claims benefit of 60/670,231 04/12/2005 (*)Data provided by applicant is not consistent with PTO records.					
** FOREIGN APPLICATIONS *****					
** IF REQUIRED, FOREIGN FILING LICENSE GRANTED ** ** SMALL ENTITY ** 03/06/2012					
Foreign Priority claimed ☐ Yes ☒ No 35 USC 119(a-d) conditions met ☐ Yes ☒ No Verified and /PEDRO Acknowledged PHILOGENE/ Examiner's Signature	☐ Met after Allowance Initials	STATE OR COUNTRY MD	SHEETS DRAWINGS 25	TOTAL CLAIMS 87	INDEPENDENT CLAIMS 4
ADDRESS Dresch IP Law, PLLC P.O. Box 650903 Potomac Falls, VA 20165 UNITED STATES					
TITLE BI-DIRECTIONAL FIXATING/LOCKING TRANSVERTEBRAL BODY SCREW/INTERVERTEBRAL CAGE STAND-ALONE CONSTRUCTS					
FILING FEE	FEES: Authority has been given in Paper		☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time)		

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	43	moskowitz near nathan.in.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2013/07/08 08:19
L2	4	moskowitz near nathan.in. & bone near fusion near spacer & screw & intervertebral near cage & screw near guide same angle & screw near locking & screw near head & threaded near body	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2013/07/08 08:21
L3	5	bone near fusion near spacer & screw & intervertebral near cage & screw near guide same angle & screw near locking & screw near head & threaded near body	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2013/07/08 08:44
L4	4289	623/17.16	US-PGPUB; USPAT	OR	OFF	2013/07/08 08:46
L5	1109	(623/17.16).OCLS.	USPAT; USOCR	OR	OFF	2013/07/08 10:11
L6	1716	623/17.15	US-PGPUB; USPAT	OR	OFF	2013/07/08 10:37
L7	527	(623/17.15).OCLS.	USPAT; USOCR	OR	OFF	2013/07/08 10:44
L8	828	623/17.14	US-PGPUB; USPAT	OR	OFF	2013/07/08 10:47
L9	839	623/17.13	US-PGPUB; USPAT	OR	OFF	2013/07/08 10:47
L10	1104	623/17.12	US-PGPUB; USPAT	OR	OFF	2013/07/08 10:48
L11	4093	623/17.11	US-PGPUB; USPAT	OR	OFF	2013/07/08 10:48
L12	29	("20010021851" "20020128654" "20030130737" "20060041260" "20060149251" "20070073298" "20080249624" "20080249625" "20100137919" "5053036" "5520690" "5904683" "6099531" "6342074" "6364880" "6423063" "6558423" "6629998" "6716214" "6972019" "6984234" "7001385" "7033394" "7041135" "7077864" "7175624" "7318825" "7651517").PN. OR ("8137405").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2013/07/08 11:12

L13	1379	(623/17.11).CCLS.	USPAT; USOCR	OR	OFF	2013/07/08 11:20
L14	578	(606/246).CCLS.	USPAT; USOCR	OR	OFF	2013/07/08 11:44
L15	948	(606/279).CCLS.	USPAT; USOCR	OR	OFF	2013/07/08 11:51
L16	217	(606/301).CCLS.	USPAT; USOCR	OR	OFF	2013/07/08 12:02
L17	6	((("8167946") or ("7794502") or ("7442209") or ("6972019") or ("7041135") or ("6558423"))).PN.	USPAT; USOCR	OR	OFF	2013/07/08 12:06

7/ 8/ 2013 12:10:23 PM

Search Notes 	Application/Control No. 13401829	Applicant(s)/Patent Under Reexamination MOSKOWITZ ET AL.
	Examiner PEDRO PHILOGENE	Art Unit 3733

CPC- SEARCHED		
Symbol	Date	Examiner

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
623	17.11-17.16	7/8/2013	/P.P./
606	246, 249, 279, 301		

SEARCH NOTES		
Search Notes	Date	Examiner
EAST search enclosed	7/8/2013	/P.P./

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner

	/PEDRO PHILOGENE/ Primary Examiner.Art Unit 3733
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✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant		☐ CPA		☐ T.D.		☐ R.1.47			
CLAIM		DATE							
Final	Original	07/08/2013							
	1	✓							
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	4	✓							
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	36	✓							

<i>Index of Claims</i> 	Application/Control No. 13401829	Applicant(s)/Patent Under Reexamination MOSKOWITZ ET AL.
	Examiner PEDRO PHILOGENE	Art Unit 3733

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant											☐ CPA											☐ T.D.											☐ R.1.47										
CLAIM		DATE																																									
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<i>Index of Claims</i> 	Application/Control No. 13401829	Applicant(s)/Patent Under Reexamination MOSKOWITZ ET AL.
	Examiner PEDRO PHILOGENE	Art Unit 3733

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant		☐ CPA		☐ T.D.		☐ R.1.47			
CLAIM		DATE							
Final	Original	07/08/2013							
	73	✓							
	74	✓							
	75	✓							
	76	✓							
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	86	✓							
	87	✓							