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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/002,132	08/31/2012	7,461,353 B2	SV.95002132	1682

59860 7590 12/16/2025
LAW OFFICE OF R. ALAN BURNETT
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EXAMINER

BASEHOAR, ADAM L

ART UNIT	PAPER NUMBER
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3992

MAIL DATE	DELIVERY MODE
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12/16/2025

PAPER

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.

Transmittal of Communication to Third Party Requester <i>Inter Partes</i> Reexamination	Control No.	Patent Under Reexamination	
	95/002,132	7461353	
	Examiner	Art Unit	AIA (FITF) Status
	Adam L Basehoar	3992	No

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

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination proceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

All correspondence relating to this *inter partes* reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

<i>Right of Appeal Notice</i> <i>(37 CFR 1.953)</i>	Control No. 95/002,132	Patent Under Reexamination 7461353
	Examiner Adam L Basehoar	Art Unit 3992

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

Responsive to the communication(s) filed by:

Patent Owner on _____

Third Party(ies) on _____

Patent owner and/or third party requester(s) may file a notice of appeal with respect to any adverse decision with payment of the fee set forth in 37 CFR 41.20(b)(1) within **one-month or thirty-days (whichever is longer)**. See MPEP 2671. In addition, a party may file a notice of **cross** appeal and pay the 37 CFR 41.20(b)(1) fee **within fourteen days of service** of an opposing party's timely filed notice of appeal. See MPEP 2672.

All correspondence relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

If no party timely files a notice of appeal, prosecution on the merits of this reexamination proceeding will be concluded, and the Director of the USPTO will proceed to issue and publish a certificate under 37 CFR 1.997 in accordance with this Office action.

The proposed amendment filed _____ ☐ will be entered ☐ will not be entered*

*Reasons for non-entry are given in the body of this notice.

- 1a. ☒ Claims See Continuation Sheet are subject to reexamination.
- 1b. ☒ Claims See Continuation Sheet are not subject to reexamination.
2. ☒ Claims 39,84,220 and 323 have been cancelled.
3. ☒ Claims 6,70,147,216 and 320-322 are confirmed. [Unamended patent claims].
4. ☐ Claims _____ are patentable. [Amended or new claims].
5. ☐ Claims _____ are rejected.
6. ☐ Claims _____ are objected to.
7. ☐ The drawings filed on _____ ☐ are acceptable. ☐ are not acceptable.
8. ☐ The drawing correction request filed on _____ is ☐ approved. ☐ disapproved.
9. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119 (a)-(d) or (f). The certified copy has:
☐ been received. ☐ not been received. ☐ been filed in Application/Control No. _____.
10. ☒ Other See Continuation Sheet

Attachments

1. ☐ Notice of References Cited by Examiner, PTO-892
2. ☒ Information Disclosure Citation, PTO/SB/08
3. ☐ _____

Continuation of 1a. Claims are subject to reexamination: 5-6,23-27,39,60-61,70,84,122,137,140-141,147,156,174-177,216,220,238-242,248,259,274-277 and 320-323

Continuation of 1b. Claims are not subject to reexamination: 2-4,7-22,28-32,34-35,37-38,40-42,44-47,49-50,53-57,62-65,67-69,71-83,85-117,119-121,123-136,142-146,148,150-155,157-173,178-182,184-215,217-219,221-237,243-247,249-251,253-258,260-273,278-282,284-316 and 318-319

Continuation of 10. Other: Claims 1, 33, 36, 43, 48, 51, 52, 58, 59, 66, 118, 138, 139, 149, 183, 252, 283 and 317 were held invalid in a final decision by the Court of Appeals for the Federal Circuit (CAFC). *Softview LLC v. Kyocera Corp. and Motorola Mobility LLC.*, No. 2014-1600 (Fed. Cir. Feb. 9, 2015). Thereafter, claims 1, 33, 36, 43, 48, 51, 52, 58, 59, 66, 118, 138, 139, 149, 183, 252, 283 and 317 were cancelled in the Inter Partes Review Certificate issued on 01/12/2016. Thus, claims 1, 33, 36, 43, 48, 51, 52, 58, 59, 66, 118, 138, 139, 149, 183, 252, 283 and 317 are now withdrawn from consideration in the reexamination.

As a result of a decision by the Patent Trial and Appeal Board (PTAB) on 04/06/2022 and a subsequent decision by the CAFC on 07/26/2024, claims 5, 23-27, 60-61, 122, 137, 140-141, 156, 174-177, 238-242, 248, 259, and 274-277 are currently withdrawn from consideration in the reexamination. Said claims will be cancelled by the Examiner in due course upon the conclusion of the reexamination proceeding and the eventual issuance of a Notice of Intent to Issue Inter Partes Reexamination Certificate (NIRC).

RIGHT OF APPEAL NOTICE (RAN)

1. This Office action addresses claims 5, 6, 23-27, 39, 60, 61, 70, 84, 122, 137, 140, 141, 147, 156, 174-177, 216, 220, 238-242, 248, 259, 274-277, and 320-323 of United States Patent Number 7,461,353 B2 (Rohrbaugh et al.), for which it has been determined in the Order Granting *Inter Partes* Reexamination (hereafter the “Order”) mailed 11/26/2012 that a reasonable likelihood to prevail (RLP) was raised in the Request for *Inter Partes* Reexamination filed on 08/31/2012 (hereafter the “Request”).

2. This Office Action is a second Right of Appeal Notice (RAN) in response to the “Order Remanding to the Examiner” (hereafter the “PTAB Remand”) mailed by the Patent Trial and Appeal Board (PTAB) on 02/26/2025.

Recent Prosecution Summary

3. The following is a brief summary of the prosecution history of Rohrbaugh ‘353 patent in this *Inter Partes* Reexamination proceeding subsequent to the mailing of the Examiner’s Answer on 08/25/2021:

I. On 04/06/2022 the PTAB issued a Decision on Appeal (hereafter the “PTAB ‘132 Decision”), important excerpts provided below, whereby (1) the determination to reject claims 5, 6, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, 274-277, 320, and 321 was **reversed**; (2) the determination to confirm claim 322 was **reversed**; and (3) all claims subject to the instant reexamination proceeding (i.e., 5, 6, 23-27, 60, 61, 70, 122, 137,

140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, 274-277, and 320-322) were newly **rejected** under 37 CFR 41.77(b) based on 37 CFR 42.73(d) estoppel.

The Examiner notes that the PTAB '132 Decision incorporates by reference the concurrently mailed Decision on Appeal (hereafter the "PTAB '634 Decision") by the PTAB. The PTAB '634 Decision was related to substantially identical issues and specifically addressed the same Rohrabough '353 patent in the currently pending 95/000,634 *Inter Partes* Reexamination proceeding. An important excerpt from the PTAB '634 Decision is also provided below.

I. STATEMENT OF THE CASE²

Appellant appeals under 35 U.S.C. § 134 from a final decision of the Primary Examiner rejecting claims 5, 6, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, 274-277, 320, and 321. We have jurisdiction under 35 U.S.C. § 315(b). We reverse the Examiner's decision rejecting these claims.

Cross-Appellant appeals under 35 U.S.C. § 134 from a final decision of the primary examiner favorable to the confirmation/patentability of claim 322. We have jurisdiction under 35 U.S.C. § 315(b). We reverse the Examiner's decision favorable to the confirmation/patentability of this claim.

(PTAB '132 Decision, p. 2)

A. Examiner's Rejections

The Examiner rejects the claims herein on essentially the same basis as the rejection of the claims in related appeal 2021-005530. The arguments Patent Owner presents in this appeal are the same arguments presented in related appeal 2021-005530. We reverse the Examiner's rejections herein for the reasons we set forth in our decision directed to related appeal 2021-005530. To the extent that the Examiner relies on additional references in this appeal, those additional references do not cure the deficiencies we set forth in the 2021-005530 decision. We incorporate that decision here in full.

(PTAB '132 Decision, p. 12)

We conclude, consistent with Patent Owner's arguments, that there is currently insufficient articulated reasoning to support the Examiner's finding that Pad+++, alone or in the proposed combinations, teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that the claims would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.⁶

(PTAB '634 Decision, p. 23)

B. New Ground of Rejection – 37 C.F.R. § 42.73(d)(3)(i)

I.

We reject claims 5, 6, 23–27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174–177, 216, 238–242, 248, 259, 274–277, and 320–322, herein for the reasons we set forth in our decision directed to related appeal 2021-005530. We incorporate that decision here in full.

(PTAB '132 Decision, p. 12)

A. Effect on the Claims

Upon expiration of U.S. Patent 7,461,353, all amendments proposed during this inter partes reexamination will be withdrawn *except for* amendments cancelling claims and any claim amendments herein that were also set forth in the related Ex Parte Reexamination Certificate that issued on December 29, 2017 covering amendments to claims 5, 23–27, 60, 61, 122, 137, 140, 141, 147, 156, 174–177, 238–242, 248, 259 and 274–277, and adding new claims 320–322. For all other remaining claims which are not cancelled, any proposed amendments are withdrawn and those claims will be as they were when this inter partes reexamination was filed. In this case,

(PTAB ‘132 Decision, p. 14)

V. CONCLUSIONS

The Examiner erred in rejecting claims 5, 6, 23–27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174–177, 216, 238–242, 248, 259, 274–277, 320, and 321 as being unpatentable under 35 U.S.C. § 103.

The Examiner erred in making a final decision favorable to the patentability of claim 322.

We newly reject all claims subject to this reexamination based on 37 C.F.R. § 42.73(d) estoppel as not being patentably distinct from claims finally cancelled during an *inter partes* review of the patent which is the subject of this reexamination.

(PTAB ‘132 Decision, p. 15)

II. On 07/26/2024 the United States Court of Appeals for the Federal Circuit (CAFC) issued a Decision (hereafter the “CAFC Decision”) that “Affirmed-in-Part and Vacated and

Remanded-in-Part.” The corresponding “Mandate” issued on 10/09/2024. The CAFC Decision determined, important excerpts provided below, that (1) the validity of the regulation and the estoppel standard adopted in the regulation was upheld with respect to new claims or amended claims, but not to previously issued claims; (2) the PTAB’s decision as to the issued claims was **vacated**; (3) the PTAB’s application of the regulation to the amended claims was **affirmed**; (4) the vacated and remanded issued claims are 3, 6, 11, 18, 30-32, 35, 37-38, 41, 50, 53, 55, 69-70, 75, 87, 111, 128, 131, 133-134, 144-145, 147, 150-151, 154, 161, 165, 168-169, 171, 182, 184-187, 189-194, 196, 199, 203-204, 206-207, 209, 216, 253-254, 264, 267, 269, 282, 285-288, 290-294, 296, 303-307, 310 and 318-322; and (5) the amended claims are 5, 9, 12-14, 16-17, 19-21, 23-27, 60-61, 71-83, 85, 86, 88-111, 122, 126, 129, 130, 132, 134, 135, 137, 140-141, 147, 156, 162-164, 166-167, 174-177, 215, 226-236, 238-242, 245-248, 251, 259, 265, 266, 268, 270-271, and 274-277.

We uphold the validity of the regulation and the estoppel standard adopted in the regulation. With respect to the scope of the regulation, however, we agree with SoftView that the regulation applies to new claims or amended claims, but not to previously issued claims.

(CAFC Decision, p. 3)

³ The amended claims are claims 5, 23-27, 60-61, 122, 137, 140-41, 147, 156, 174-77, 238-42, 248, 259, and 274-77, as well as the claims that depend from those directly amended, which are claims 9, 12-14, 16-17, 19-21, 71-83, 85, 86, 88-111, 126, 129, 130, 132, 134, 135, 162-64, 166-67, 215, 226-36, 245-47, 251, 265, 266, 268, and 270-71. This list includes some claims that are not on appeal.

(CAFC Decision, p. 4)

Although we agree that the PTO was authorized to promulgate section 42.73(d)(3)(i), we disagree with the Board's application of that regulation to previously issued claims. By its terms, the regulation applies to "obtaining" a claim—not maintaining an existing claim. For that reason, we vacate the Board's decision as to the "issued claims" on appeal but affirm its application of the regulation to the "amended claims."⁴

(CAFC Decision, pp. 11-12)

V

We have considered SoftView's remaining arguments and find them unpersuasive. For the reasons stated, we affirm the Board's application of section 42.73(d)(3)(i) to the amended claims, but we vacate and remand for further consideration of the application of the regulation to issued claims 3, 6, 11, 18, 30–32, 35, 37–38, 41, 50, 53, 55, 69–70, 75, 87, 111, 128, 131, 133–34, 144–45, 147, 150–51, 154, 161, 165, 168–69, 171, 182, 184–87, 189–94, 196, 199, 203–04, 206–07, 209, 216, 253–54, 264, 267, 269, 282, 285–88, 290–94, 296, 303, 304–07, 310, and 318–22.

AFFIRMED-IN-PART AND VACATED AND REMANDED-IN-PART

(CAFC Decision, pp. 15-16)

III. On 02/26/2025 the PTAB issued the PTAB Remand which "ORDERED that reexamination Application No. 95/002,132 is remanded to the Examiner." The PTAB Remand determined, important excerpts provided below, that (1) the CAFC remanded the issued claims noted above; and (2) the PTAB previously reversed the Examiner's rejection to those remanded issued claims and PTAB does not enter a new ground of rejection.

DISCUSSION

The Federal Circuit remanded as to the “issued” claims listed above. Four of the claims, however, were amended or added during reexamination. Specifically, in the ‘634 reexamination, in a July 24, 2017 Amendment, Patent Owner amended claim 147 and added claims 320–322.

As to the claims listed as remanded in the Federal Circuit’s *SoftView* decision, we previously reversed the Examiner’s rejection of those claims and we do not enter a new ground of rejection here. Therefore, these cases are remanded to the Examiner.

CONCLUSION

Accordingly, it is

ORDERED that reexamination Application No. 95/000,634 is remanded to the Examiner.

ORDERED that reexamination Application No. 95/002,132 is remanded to the Examiner.

(PTAB Remand, p. 4)

IV. Therefore, remanded “issued claims” 6, 70, 147, 216 and 320-322 are now before the Examiner for further consideration in the instant reexamination proceeding.

Claim Status Summary

4. In light of the recent prosecution summary discussed above, the status of the claims of the Rohrabough ‘353 patent in this *Inter Partes* Reexamination proceeding are as follows:

- Claims 1, 33, 36, 43, 48, 51, 52, 58, 59, 66, 118, 138, 139, 149, 183, 252, 283 and 317 were previously cancelled and were thus previously withdrawn from consideration in the reexamination.

- Claims 5-6, 23-27, 39, 60-61, 70, 84, 122, 137, 140-141, 147, 156, 174-177, 216, 220, 238-242, 248, 259, 274-277 and 320-323 are subject to the reexamination.
- Claims 2-4, 7-22, 28-32, 34, 35, 37, 38, 40-42, 44-47, 49, 50, 53-57, 62-65, 67-69, 71-83, 85-117, 119-121, 123-136, 142-146, 148, 150-155, 157-173, 178-182, 184-215, 217-219, 221-237, 243-247, 249-251, 253-258, 260-273, 278-282, 284-316, 318 and 319 are not subject to reexamination.
- Claims 39, 84, 220, and 323 are cancelled.
- Claims 6, 70, 147, 216 and 320-322 are confirmed as discussed below.

These claims correspond to the vacated and remanded “issued claims” by the CAFC.

These “issued claims” were subsequently remanded to the Examiner by the PTAB.

- Claims 5, 23-27, 60-61, 122, 137, 140-141, 156, 174-177, 238-242, 248, 259, and 274-277 are currently withdrawn from consideration in the reexamination. These claims will be cancelled by the Examiner in due course upon the conclusion of the reexamination proceeding and the eventual issuance of a Notice of Intent to Issue *Inter Partes* Reexamination Certificate (NIRC).

These claims correspond to the newly rejected claims by the PTAB that were designated as “amended claims” and affirmed by the CAFC.

5. The Examiner notes that the CAFC designated claims 75, 111, 134, and 147, as can be seen above, as both “amended claims” and “issued claims.” Here, only claim 147 is subject to the current reexamination proceeding. To resolve the tension of this dual categorization, the Examiner has determined that claim 147 falls into the category of “issued claims.” Thus, as noted above and discussed below, claim 147 is confirmed in this reexamination proceeding.

Rohrbaugh '353 Patent Status

6. The Examiner notes that the Rohrbaugh '353 patent term appears to have expired at least on 04/18/2022, during the pendency of the reexamination proceeding, after a full twenty year term from the filing date of earliest application (i.e., application 09/828,511, filed 04/07/2001) for which a benefit is claimed (see: MPEP 2701(I)) plus an additional 376 days of patent term adjustment.

Once a patent has expired, no amendment may be proposed for entry in an expired patent other than the cancellation of claims which will be incorporated into the patent by a certificate issued after the expiration of the patent (see: MPEP 2250(III) and 37 C.F.R. 1.530(j)). The cancellation of the original patent claims is the only "amendatory" change permitted in an expired patent. Since the Rohrbaugh '353 patent expired during the pendency of the reexamination proceeding, all claim amendments made during the proceeding other than the cancellation of claims are improper, and are hereby expressly withdrawn. All subsequent reexamination will be on the basis of the unamended patent claims. This procedure is necessary since no amendments will be incorporated into the patent by a certificate after the expiration of the patent.

Furthermore, in a reexamination proceeding involving claims of an expired patent, claim construction pursuant to the principle set forth by the court in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (words of a claim "are generally given their ordinary and customary meaning" as understood by a person of ordinary skill in the art in question at the time of the invention) should be applied since the expired claims are not subject to amendment. See *Ex parte Papst-Motoren*, 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986).

Thus, the Examiner now grants the claims of the Rohrbaugh '353 patent their "ordinary and customary meaning" pursuant to Phillips v. AWH Corp.

Related Proceeding Notification

7. The Examiner notes that the Rohrbaugh '353 patent is subject to the instant 95/002,132 *Inter Partes* reexamination proceeding as well as the currently pending 95/000,634 *Inter Partes* reexamination proceeding. A substantially similar second Right of Appeal Notice (RAN) will also mail concurrently in the 95/000,634 *Inter Partes* reexamination proceeding. Additionally, the Examiner notes that the instant 95/002,132 *Inter Partes* reexamination proceeding has not been merged with the 95/000,634 *Inter Partes* reexamination proceeding or the previously concluded 90/009,994 *Ex Parte* reexamination proceeding.

The Patent Owner (PO) is further notified that where any reexamination proceeding concludes and changes the Rohrbaugh '353 patent while the instant reexamination proceeding is still pending, amendments will be made relative to the Rohrbaugh '353 patent, as revised by the concluded proceeding, and 37 CFR 1.530(i) is waived to that extent (see: MPEP 2250(II) and 2295(II)). In the instant case, the 90/009,994 *Ex Parte* reexamination proceeding has concluded while the instant reexamination proceeding is still pending and an *Ex Parte* Reexamination Certificate was issued on 12/29/2017. Via said Certificate claims 84 and 220 were canceled; claims 5, 23-27, 60, 61, 122, 137, 140, 141, 147, 156, 174-177, 238-242, 248, 259, and 274-277 were amended; and claims 320-322 were newly added. Therefore, any amendment (claim listing) made in the instant reexamination proceeding must be presented as if the changes made to the Rohrbaugh '353 patent text via said *Ex Parte* Reexamination Certificate are a part of the original patent. All italicized text of the Certificate is considered as if the text was present

without italics in the original patent. Further, any text of the Certificate found in brackets is considered as if it were never present in the patent at all (see: MPEP 2250(V)(C)).

8. The objection to claims 26, 27, and 61 (see: RAN, p. 12 - mailed 08/28/2020) has been withdrawn at least as necessitated by the expiration of the Rohrabach '353 patent and the subsequent express withdrawal of all claim amendments made during the reexamination proceeding other than the cancellation of claims.

Information Disclosure Statement (IDS)

9. Regarding Information Disclosure Statement (IDS) submissions, MPEP 2656 recites the following: "Where patents, publications, and other such items of information are submitted by a party (patent owner or requester) in compliance with the requirements of the rules, the requisite degree of consideration to be given to such information will be normally limited by the degree to which the party filing the information citation has explained the content and relevance of the information. The initials of the examiner placed adjacent to the citations on the form PTO/SB/08A and 08B or its equivalent, without an indication to the contrary in the record, do not signify that the information has been considered by the examiner any further than to the extent noted above."

Accordingly, the IDS submissions filed by Patent Owner on 09/23/2020, 09/25/2020, and 03/31/2022 have been considered by the Examiner only with the scope required by MPEP 2656, unless otherwise noted.

References and Rejections Proposed

10. The following is a list of references cited in this second Right of Appeal Notice:

- Bederson, Benjamin B. and James D. Hollan, Pad++: A Zoomable Graphical Interface System, CHI '95 Mosaic of Creativity, May 1995 (“**Bederson-1**”)
- Bederson, Benjamin B. and George W. Furnas, Space-Scale Diagrams: Understanding Multiscale Interfaces, CHI '95 Proceedings, 1995 (“**Bederson-2**”)
- Bederson, Benjamin B., et al, A Zooming Web Browser, SPIE, Vol. 2667, 260-271, May 1996 (“**Bederson-3**”)
- Bederson, Ben and Jon Meyer, Implementing a Zooming User Interface: Experience Building Pad + +, Software-Practice and Experience, Vol. 28 (1), 1101-1135, August 1998 (“**Bederson- 4**”)
- Bederson, Benjamin B., et al., Pad++: A Zoomable Graphical Sketchpad for Exploring Alternate Interface Physics, Journal of Visual Languages and Computing, Vol. 7, 3-31, 1996 (“**Bederson- 5**”)

The five Bederson references, as disclosed above, are combined and will collectively be referred to as the “**Bederson-1 – Bederson-5 references.**” Each of the Pad++ references on record was published between 1995 and 1998 and each qualify as prior art under 35 U.S.C. §102(b).

- Pad++ Reference Manual Version 0.2.7, published July 9, 1996 (“**Reference Manual**”)
- Pad++ Programmer's Guide Version 0.2.7, published June 10, 1996 (“**Programmer's Guide**”)

- Meyer, Jonathan, “A Brief Tour Through Pad++,” published April 1997 (“**Tour**”)

Each of the three Pad++ references, as disclosed above, were published between 1996 and 1997 and each qualify as prior art under 35 U.S.C. §102(b). The Bederson-1 – Bederson-5 references and the three Pad++ references, as disclosed directly above, are combined and will collectively be referred to as the “**Bederson, Tour, Reference Manual, and Programmer’s Guide References.**”

- Japanese Application Publication No, H10-326169 to Hara, et al. published December 8, 1998 (“**JP 169**”)

Japanese Application Publication No, H10-326169 to Hara, et al. (JP 169) was published on December 8, 1998 and qualifies as a 102(b) prior art reference. An English translation is included. All citations map to the English translation provided.

- Specification for Simple Vector Format (SVF) v1.1, published January 16, 1995 (“**SVF**”)
- “New CAD System Works With AutoCAD Drawings Without Translation,” released June 17, 1996 (“**SVF Press 1**”)
- “Bring New CAD Viewing Power to the Internet,” released March 4, 1996 (“**SVF Press 2**”)

The three SVF references, as disclosed above, are combined and will collectively be referred to as the “**SVF references.**” Each of the SVF references was published between 1995 and 1996 and each qualify as prior art under 35 U.S.C. §102(b).

- Matthews, et al., Vector Markup Language (VML), World Wide Web Consortium Note, May 13, 1998, Note-VML-19980513 (“**VML**”)

The VML reference was published May 13, 1998 and qualifies as a 102(b) prior art reference.

- Nokia Unveils World's First All-In-One Communicator for the Americas, Nokia Press Release, September 19, 1996 (“**Nokia**”)
- 3Com Announces the Palm VII Connected Organizer, the First Handheld Solution for Out-of-the-box Wireless Internet Access, Palm TM press release, December 2, 1998 (“**Palm**”)
- Robles, Emilo, and Jeni Johnston, Apple Outlines Plethora of Newton Wireless Communications Solutions at MessagePad 120 Launch, published January 30, 1995 (“**Newton**”)
- Locatio Beginner's Guide published July 30, 1999 (including English translation thereof (“**Locatio**”) and English Translation thereof
- Bray, Tim, "XML Support' in IE5," <http://www.xml.com/pub/a/1999/O3/ie5/first-x.html>, published March 18, 1999 (“**Bray**”)

- Fox, Armondo, et al., Experience with Top Gun Wingman: A Proxy-Based Graphical Web Browser for the 3Com PalmPilot, published June 22, 1998 (“**Fox**”)
- W3C, “HTML 3.2 Reference Specification, W3C Recommendation”, 01/14/1997, pp. 1-44 (“**HTML 3.2 Standard**”)
- W3C, “HTML 4.0 Specification, W3C Recommendation”, 12/18/1997, pp. 1-363 (“**HTML 4.0 Standard**”)

The two HTML references, as disclosed above, are combined and will collectively be referred to as the “**HTML Standards**.” Each of the HTML Standards was published more than a year before the earliest priority date of the Rohrabough ‘353 patent and thus each qualify as prior art under 35 U.S.C. §102(b).

- Applicant Admitted Prior Art - Rohrabough ‘353 patent, column 17, lines 31-41 (“**AAPA**”)

11. The following are proposed grounds of rejections listed in this second Right of Appeal Notice. The list of rejections is divided into Original Issues from the Non-Final Action, mailed on 04/07/2017, and New Issues added by the Action Closing Prosecution (ACP), mailed on 10/02/2018.

Original Issues:

Issue 11: Claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **Bederson, Tour, Reference Manual, and Programmer’s Guide References** under 35 U.S.C. 103

- Issue 12:* Claims 5, 23-27, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **Bederson, Tour, Reference Manual, and Programmer's Guide References**, and **SVF references** under 35 U.S.C. 103
- Issue 13:* Claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **JP 169, SVF references**, in view of **One of Ordinary Skill** under 35 U.S.C. 103
- Issue 14:* Claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **Bederson, Tour, Reference Manual, and Programmer's Guide References**, and **VML** under 35 U.S.C. 103
- Issue 15:* Claims 5, 6, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **JP 169, VML**, in view of **One of Ordinary Skill** under 35 U.S.C. 103

New Issues:

- Issue 16:* The pending claims in view of instituted prior art of record in view the **HTML Standards** under 35 U.S.C. 103
- Issue 17:* The pending claims in view of instituted prior art of record in view the **AAPA** under 35 U.S.C. 103
- Issue 18:* Claims 26, 27, 60, 61, 140, 141, 176, 177, 241, 242, 275-277, and 320-322 under 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite
- Issue 19:* Claims 320-322 in view of **Bederson, Tour, Reference Manual, and Programmer's Guide References** and **One of Ordinary Skill** under 35 U.S.C. 103
- Issue 20:* Claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **Bederson, Tour, Reference Manual, and Programmer's Guide References** and **HTML Standards** under 35 U.S.C. 103

Issue 21: Claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 in view of **Bederson, Tour, Reference Manual, and Programmer's Guide References** and **AAPA** under 35 U.S.C. 103

Claim Rejection Paragraphs

12. The following are quotations from the MPEP regarding the types of rejections to be discussed below:

Claim Rejections –

35 USC § 112

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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.

Issue 11

With regard to the proposed rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277, the Examiner notes that the PTAB '132 Decision **reversed** said rejection.

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
5, 23–27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174– 177, 216, 238–242, 248, 259, 274–277	103	Pad++		5, 23–27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174–177, 216, 238– 242, 248, 259, 274– 277	

(PTAB ‘132 Decision, p. 16)

Specifically, the PTAB ‘132 Decision determined that Pad++, alone or in the proposed combinations, fails to teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

A. Examiner’s Rejections

The Examiner rejects the claims herein on essentially the same basis as the rejection of the claims in related appeal 2021-005530. The arguments Patent Owner presents in this appeal are the same arguments presented in related appeal 2021-005530. We reverse the Examiner’s rejections herein for the reasons we set forth in our decision directed to related appeal 2021-005530. To the extent that the Examiner relies on additional references in this appeal, those additional references do not cure the deficiencies we set forth in the 2021-005530 decision. We incorporate that decision here in full.

(PTAB ‘132 Decision, p. 12)

We conclude, consistent with Patent Owner's arguments, that there is currently insufficient articulated reasoning to support the Examiner's finding that Pad++, alone or in the proposed combinations, teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that the claims would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.⁶

(PTAB '634 Decision, p. 23)

Therefore, the previous rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 has now been **withdrawn** (i.e., not adopted).

Issue 12

With regard to the proposed rejection of claims 5, 23-27, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277, the Examiner notes that the PTAB '132 Decision **reversed** said rejection.

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174- 177, 216, 238-242, 248, 259, 274-277	103	Pad++, the SVF references		5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238- 242, 248, 259, 274- 277	

(PTAB ‘132 Decision, p. 16)

For substantially similar reasons as noted above for Issue 11, the PTAB ‘132 Decision determined that Pad++, alone or in the proposed combinations, fails to teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

Therefore, the previous rejection of claims 5, 23-27, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 has now been **withdrawn** (i.e., not adopted).

Issue 13

This rejection was proposed by the third party requester in the Request with regard to claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 of the Rohrbaugh ‘353 patent. For the reasons set forth in the Right of Appeal Notice (RAN) (see: RAN, pp. 47-50 – mailed 08/28/2020), this rejection was previously **withdrawn** (i.e., not adopted).

Issue 14

With regard to the proposed rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277, the Examiner notes that the PTAB ‘132 Decision **reversed** said rejection.

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
5, 23–27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174– 177, 216, 238–242, 248, 259, 274–277	103	Pad++, VML		5, 23–27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174–177, 216, 238– 242, 248, 259, 274– 277	

(PTAB ‘132 Decision, p. 16)

For substantially similar reasons as noted above for Issue 11, the PTAB ‘132 Decision determined that Pad++, alone or in the proposed combinations, fails to teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

Therefore, the previous rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 has now been **withdrawn** (i.e., not adopted).

Issue 15

This rejection was proposed by the third party requester in the Request with regard to claims 5, 6, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 of the Rohrabough ‘353 patent. For the reasons set forth in the Right of Appeal Notice (RAN) (see: RAN, pp. 53-54 – mailed 08/28/2020), this rejection was previously **withdrawn** (i.e., not adopted).

Issue 16

The rejection of the pending claims as obvious over the instituted prior art of record (e.g., the Pad++ references, JP 169, etc.) in further view of the HTML Standards (see: 3PR Comments, pp. 19-20) is **not adopted** for the following reasons: 3PR submits the HTML Standards pursuant to 37 CFR 1.948(a)(2) in order to rebut the response of the Patent Owner that claims requiring “preservation of the entire HTML-based Web content” would be patentable over the prior art. 37 CFR 1.948(a)(2) permits (see: MPEP 2666.05(II)) 3PR to provide a newly proposed rejection, where such new proposed rejection is necessitated by PO’s amendment of the claims. However, the 3PR must present each newly proposed rejection in compliance with the guidelines set forth in MPEP § 2617, since any such newly proposed rejection stands on the same footing as a proposed rejection presented with the Request. The instant newly proposed rejection does not provide the required detailed discussion of the pertinence of HTML Standards to the patentability of at least one specific claim of the Rohrbaugh ‘353 patent. The newly proposed rejection must explain how each of the proposed combinations specifically applies to each claim that it is asserted against. The instant newly proposed rejection merely lumps together the cited teachings of the HTML Standards with the prior proposed rejections or the prior proposed combinations of references (i.e., “the Bederson references, JP 169, SVF, and/or VML”) and is further deficient for not applying the new rejection to specific claims of the Rohrbaugh ‘353 patent.

For the reasons above, the rejection of the pending claims as obvious over the instituted prior art of record (e.g., the Pad++ references, JP 169, etc.) in further view of the HTML Standards is **not adopted**.

It is noted that to rebut the PO's statement regarding "preservation of the entire HTML-based Web content," the 3PR may cite (see: MPEP 2666.05(II)) newly presented art directed to supporting the originally advanced proposed rejection(s) made in the Request, and include the new art as a supporting reference in the existing rejection. Thus, while the newly proposed rejection is not adopted as discussed above, the teachings of the HTML Standards have been considered to support 3PR's position regarding the capabilities of the HTML content processed in, for example, the Pad++ references as well as evidence of what was well-known regarding HTML at the time of the claimed invention.

Issue 17

The rejection of the pending claims as obvious over the instituted prior art of record (e.g., the Pad++ references, JP 169, etc.) in further view of the AAPA (see: 3PR Comments, pp. 20-21) is **not adopted** for the following reasons: 3PR appears to submit the AAPA pursuant to 37 CFR 1.948(a)(2) in order to rebut the response of the Patent Owner regarding the claims requiring "preservation of the entire HTML-based Web content." 37 CFR 1.948(a)(2) permits (see: MPEP 2666.05(II)) 3PR to provide a newly proposed rejection, where such new proposed rejection is necessitated by PO's amendment of the claims. However, the 3PR must present each newly proposed rejection in compliance with the guidelines set forth in MPEP § 2617, since any such newly proposed rejection stands on the same footing as a proposed rejection presented with the Request. The instant newly proposed rejection does not provide the required detailed discussion of the pertinence of the AAPA to the patentability of at least one specific claim of the Rohrabach '353 patent. The newly proposed rejection must explain how each of the proposed combinations specifically applies to each claim that it is asserted against. The instant newly

proposed rejection merely lumps together the cited teachings of the AAPA with the prior proposed rejections or the prior proposed combinations of references (i.e., “the Bederson references, JP 169, SVF, and/or VML”) and is further deficient for not applying the new rejection to specific claims of the Rohrbaugh ‘353 patent.

For the reasons above, the rejection of the pending claims as obvious over the instituted prior art of record (e.g., the Pad++ references, JP 169, etc.) in further view of the AAPA is **not adopted**.

It is noted that to rebut the PO’s statement regarding “preservation of the entire HTML-based Web content,” the 3PR may cite (see: MPEP 2666.05(II)) newly presented art directed to supporting the originally advanced proposed rejection(s) made in the Request, and include the new art as a supporting reference in the existing rejection. Thus, while the newly proposed rejection is not adopted as discussed above, the teachings of the AAPA have been considered to support 3PR’s position regarding the well-known conventional processing of HTML content at the time of the claimed invention.

Issue 18

This rejection was proposed by the Examiner in the ACP with regard to claims 26, 27, 60, 61, 140, 141, 176, 177, 241, 242, 275-277, and 320-322 of the Rohrbaugh ‘353 patent. For the reasons set forth in the prior Proposed Claim Amendments section (see: RAN, pp. 3-5 - mailed 08/28/2020), this rejection was previously **withdrawn**. Additionally, this rejection would also now be **withdrawn** because the Rohrbaugh ‘353 patent has expired during the pendency of the reexamination proceeding, and thus all claim amendments made during the proceeding other than the cancellation of claims are hereby expressly withdrawn.

Issue 19

With regard to the proposed rejection of claims 320 and 321, the Examiner notes that the PTAB '132 Decision **reversed** said rejection.

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
320, 321	103	Pad++, common knowledge		320, 321	

(PTAB '132 Decision, p. 17)

Therefore, the previous rejection of claims 320 and 321 has now been **withdrawn** (i.e., not adopted).

Additionally, the PTAB '132 Decision **reversed** the Examiner's prior decision favorable to the confirmation/patentability of claim 322.

Cross-Appellant appeals under 35 U.S.C. § 134 from a final decision of the primary examiner favorable to the confirmation/patentability of claim 322. We have jurisdiction under 35 U.S.C. § 315(b). We reverse the Examiner's decision favorable to the confirmation/patentability of this claim.

(PTAB '132 Decision, p. 2)

The Examiner erred in making a final decision favorable to the patentability of claim 322.

(PTAB '132 Decision, p. 15)

Therefore, the previous decision favorable to the confirmation/patentability of claim 322 has now been **withdrawn**.

Issue 20

With regard to the proposed rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277, the Examiner notes that the PTAB '132 Decision **reversed** said rejection.

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174- 177, 216, 238-242, 248, 259, 274-277	103	Pad++, HTML standards		5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238- 242, 248, 259, 274- 277	

(PTAB '132 Decision, p. 17)

For substantially similar reasons as noted above for Issue 11, the PTAB '132 Decision determined that Pad++, alone or in the proposed combinations, fails to teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

Therefore, the previous rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 has now been **withdrawn** (i.e., not adopted).

Issue 21

With regard to the proposed rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277, the Examiner notes that the PTAB '132 Decision **reversed** said rejection.

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
5, 6, 23- 27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238- 242, 248, 259, 274- 277	103	Pad++, AAPA		5, 6, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238- 242, 248, 259, 274- 277	

(PTAB '132 Decision, p. 17)

For substantially similar reasons as noted above for Issue 11, the PTAB '132 Decision determined that Pad++, alone or in the proposed combinations, fails to teach, suggest, or otherwise render obvious the layout and design limitation of the claims.

Therefore, the previous rejection of claims 5, 23-27, 60, 61, 70, 122, 137, 140, 141, 147, 156, 174-177, 216, 238-242, 248, 259, and 274-277 has now been **withdrawn** (i.e., not adopted).

Statement of Reasons for Patentability and/or Confirmation

13. The following is an Examiner's statement of reasons for patentability and/or confirmation of the claims found patentable and/or confirmed in this reexamination proceeding:

Claims 6, 70, 147, 216 and 320-322 are **confirmed**.

As noted above in the Recent Prosecution Summary section, the PTAB '132 Decision reversed the Examiner's decision rejecting said claims at least because it was determined that Pad++, alone or in the proposed combinations, fails to teach, suggest, or otherwise render obvious the layout and design limitation of said claims. This determination by the PTAB '132 Decision is controlling in the instant reexamination proceeding and the Examiner has given full faith and credit to the analysis/decision rendered by the PTAB.

And while the PTAB '132 Decision newly rejected said claims based on 37 CFR 42.73(d) estoppel, the subsequent CAFC Decision designated said claims as "issued claims" and determined that 37 CFR 42.73(d) does not apply to "issued claims." Therefore, the CAFC Decision vacated the PTAB's decision only to said claims and remanded said claims for further consideration.

As such, there is currently no outstanding rejection (based on either prior art or estoppel) against said claims and thus said claims are hereby confirmed.

Any comments considered necessary by Patent Owner regarding the above statement must be submitted promptly to avoid processing delays. Such submission by the Patent Owner should be labeled: "Comments on Statement of Reasons for Patentability and/or Confirmation" and will be placed in the reexamination file.

Conclusion

14. **This is a RIGHT OF APPEAL NOTICE (RAN);** see MPEP § 2673.02 and § 2674.

The decision in this Office action as to the patentability or unpatentability of any original patent claim, any proposed amended claim and any new claim in this proceeding is a FINAL DECISION.

No amendment can be made in response to the Right of Appeal Notice in an *Inter Partes* reexamination. 37 CFR 1.953(c). Further, no affidavit or other evidence can be submitted in an *Inter Partes* reexamination proceeding after the right of appeal notice, except as provided in 37 CFR 1.981 or as permitted by 37 CFR 41.77(b)(1). 37 CFR 1.116(f).

Each party has a **thirty-day or one-month time period, whichever is longer**, to file a notice of appeal. The Patent Owner may appeal to the Board of Patent Appeals and Interferences with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent by filing a notice of appeal and paying the fee set forth in 37 CFR 41.20(b)(1). The Third Party Requester may appeal to the Board of Patent Appeals and Interferences with respect to any decision favorable to the patentability of any original or proposed amended or new claim of the patent by filing a notice of appeal and paying the fee set forth in 37 CFR 41.20(b)(1).

In addition, a Patent Owner who has not filed a notice of appeal may file a notice of cross appeal within **fourteen days of service** of a Third Party Requester's timely filed notice of appeal and pay the fee set forth in 37 CFR 41.20(b)(1). A Third Party Requester who has not filed a notice of appeal may file a **notice of cross appeal within fourteen days of service** of a Patent Owner's timely filed notice of appeal and pay the fee set forth in 37 CFR 41.20(b)(1).

Any appeal in this proceeding must identify the claim(s) appealed, and must be signed by the Patent Owner (for a Patent Owner appeal) or the Third Party Requester (for a Third Party Requester appeal), or their duly authorized attorney or agent.

Any party that does not file a timely notice of appeal or a timely notice of cross appeal will lose the right to appeal from any decision adverse to that party, but will not lose the right to file a respondent brief and fee where it is appropriate for that party to do so. If no party files a timely appeal, the reexamination prosecution will be terminated, and the Director will proceed to issue and publish a certificate under 37 CFR 1.997 in accordance with this Office action.

Contact Information

15. **All** correspondence relating to this *Inter Partes* reexamination proceeding should be directed:

Electronically: Registered users may submit via Patent Center at <https://patentcenter.uspto.gov/>.

By Mail to: Mail Stop *Inter Partes* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand: Customer Service Window
Knox Building
501 Dulany St.
Alexandria, VA 22314

For Patent Center, 37 CFR 1.8(a)(1)(i)(C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the USPTO patent electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the date of transmission, which is prior to the expiration of the set period of time in the Office action.

Any inquiry concerning this communication or earlier communications from the examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/Adam L Basehoar/
Primary Examiner, Art Unit 3992

Conferees:

/ALEXANDER J KOSOWSKI/
Supervisory Patent Examiner, Art Unit 3992