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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/001,577	03/16/2011	Paul A. FREIBERGER	2230.0001L	1540

27896 7590 06/23/2011  
EDELL, SHAPIRO & FINNAN, LLC  
1901 RESEARCH BOULEVARD  
SUITE 400  
ROCKVILLE, MD 20850

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 06/23/2011

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



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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS  
STERNE, KESSLER, GOLDSTEIN & FOX PLLC  
1100 NEW YORK AVENUE, NW  
WASHINGTON, DC 20005

Date:

**MAILED**

**JUN 23 2011**

CENTRAL REEXAMINATION UNIT

**Transmittal of Communication to Third Party Requester  
Inter Partes Reexamination**

REEXAMINATION CONTROL NO. : 95001577  
PATENT NO. : 6778314  
TECHNOLOGY CENTER : 3999  
ART UNIT : 3992

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.

MAILED

**Decision on Petition for Extension of Time in Reexamination**

Control No.: 95/001,577

JUN 23 2011

CENTRAL REEXAMINATION UNIT

1. THIS IS A DECISION ON THE PETITION FILED 22 June 2011.

2. THIS DECISION IS ISSUED PURSUANT TO:

- A.  37 CFR 1.550(c) – The time for taking any action by a patent owner in an *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified.
- B.  37 CFR 1.956 – The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified.  
The petition is before the Central Reexamination Unit for consideration.

3. FORMAL MATTERS

Patent owner requests that the period for responding to the Office action dated 19 May 2011 which sets a two (2) month period for filing a response to the Office action, be extended by one (1) month.

- A.  Petition fee per 37 CFR §1.17(g):
  - i.  Petition includes authorization to debit a deposit account.
  - ii.  Petition includes authorization to charge a credit card account.
  - iii.  Other: \_\_\_\_\_.
- B.  Proper certificate of service was provided. (Not required in reexamination where patent owner is requester.)
- C.  Petition was timely filed.
- D.  Petition properly signed.

4. DECISION (See MPEP 2265 and 2665)

- A.  Granted or  Granted-in-part for seven (7) days, because petitioner provided a factual accounting that established sufficient cause. (See 37 CFR 1.550(c) and 37 CFR 1.956).
- B.  Other/comment: see attached
- C.  Dismissed because:
  - i.  Formal matters (See unchecked box(es) (A, B, C and/or D) in section 4 above).
  - ii.  Petitioner failed to provide a factual accounting of reasonably diligent behavior by all those responsible for preparing a response to the outstanding Office action within the statutory time period.
  - iii.  Petitioner failed to explain why, in spite of the action taken thus far, the requested additional time is needed.
  - iv.  The statements provided fail to establish sufficient cause to warrant extension of the time for taking action (See attached).
  - v.  The petition is moot.
  - vi.  Other/comment: \_\_\_\_\_.

5. CONCLUSION

Telephone inquiries with regard to this decision should be directed to Mark Reinhart at 571-272-1611. In his/her absence, calls may be directed to Eric Keasel at 571-272-4929 in the Central Reexamination Unit.

/Mark Reinhart/  
[Signature]

SPE, AU 3992 Central Reexamination Unit  
(Title)

In consideration of providing the patent owner with a fair opportunity to present an argument against any attack on the patent as balanced with the statutory mandate of conducting reexamination proceedings with special dispatch that the Office must fully consider the facts presented in any petitions for extension of time. This is the second request for extension of time in this proceeding. While the petition speaks to the considerations of the unexpected need to seek new counsel following the mailing of the first action on the merits, the petitioner additionally notes that the time with the prior law firm is "lost." It is agreed that patent owner needs to be given opportunity to complete all aspects of investigation prior to responding to the first Office action on the merits in a reexamination proceeding. This is why, absent litigation stayed for reexamination all patent owners are given a response period of two months for preparation of a response. Yet it is Patent owner who must exercise diligence in responding to an outstanding office action. The requirement for reasonably diligent behavior by patent owner includes a reasonable expectation of resource management. Resource management takes into consideration the actions by counsel representing the patent owner. It is expected that the time with the earlier counsel was in fact monitored by the patent owner who must exercise diligence in response to any Office action.

It is noted that the patent owner did not expect the earlier counsel to withdraw and the time lost seeking new representation could not have been anticipated. As such the time from 08 June 2011 when the patent owner was apprised of the withdrawal of the representation and the new counsel on 15 June 2011 suggests a period of seven (7) days during which action could not have been taken.

On balance the petition for extension of time supports "sufficient cause" to grant a seven (7) day extension of time.

The petition for extension of time is hereby granted-in-part.