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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/009,213	10/14/2008	6188988	SMA002	1603

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MYERS BIGEL SIBLEY & SAJOVEC
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 08/16/2010

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



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MAILED

AUG 16 2010

CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/009,213

PATENT NO 6188988.

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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In re Barry et alia
Reexamination Proceeding
Control No. 95/001,088
Request Deposited: October 13, 2008
For: U.S. Patent No. 6,188,988

:
: DECISION
: DISMISSING PETITIONS

In re Barry et alia
Reexamination Proceeding
Control No. 90/009,213
Request Deposited: June 26, 2008
For: U.S. Patent No. 6,188,988

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This is a decision on the April 12, 2010 papers entitled "PETITION UNDER 37 C.F.R. §1.182 FOR RELIEF NOT OTHERWISE PROVIDED FOR UNDER THE RULES – REQUEST FOR DISMISSAL OF APPEAL" and "PETITION UNDER 37 C.F.R. §1.182 FOR RELIEF NOT OTHERWISE PROVIDED FOR UNDER THE RULES – REQUEST FOR REFUSAL OF CONSIDERATION OF REQUESTER’S IMPROPER ARGUMENTS". This decision also

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addresses the papers filed April 15, 2010 entitled “OPPOSITION TO PATENT OWNER’S PETITION UNDER 37 C.F.R. §1.812 REQUESTING DISMISSAL OF THE APPEAL OR IN THE ALTERNATIVE, PETITION UNDER 37 C.F.R. §1.813 TO SUSPEND THE RULES IN THE INTEREST OF JUSTICE” and “PETITION UNDER 37 C.F.R. §1.182 IN OPPOSITION TO PATENT OWNER’S PETITION REQUESTING ‘REFUSAL OF CONSIDERATION OF REQUESTER’S IMPROPER ARGUMENTS’”.

The papers are before the Director of the Central Reexamination Unit for consideration.

The petitions are **dismissed** for the reasons set forth below.

BACKGROUND AND DECISION

Third-Party Requester in *inter partes* control number 95/001,088 filed a Notice of Appeal on January 21, 2010. Patent Owner was not entitled to file a cross appeal as no claims were finally rejected (see 37 CFR 41.61(b)(1)). An appellant’s brief must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross-appeal, if any party to the proceeding is entitled to file an appeal or cross-appeal but fails to timely do so, no later than two months from the expiration of the time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant’s brief or an amended appellant’s brief may not be extended (see 37 CFR §41.66(a)). Appellant’s brief was due on March 22, 2010 (as March 21, 2010 was a Sunday). The paper filed April 2, 2010 is untimely.

In view of the issuance of the Notice of Intent to Issue Reexamination Certificate mailed August 13, 2010, the petition to dismiss the appeal filed April 12, 2010 is **dismissed as moot**.

Similarly, the petition requesting to refuse to consider arguments presented in the untimely filed paper is **dismissed as moot**. The opposition petition to the petition requesting to refuse to consider arguments is also **dismissed as moot**.

The paper entitled “OPPOSITION TO PATENT OWNER’S PETITION UNDER 37 C.F.R. §1.812 REQUESTING DISMISSAL OF THE APPEAL OR IN THE ALTERNATIVE, PETITION UNDER 37 C.F.R. §1.813 TO SUSPEND THE RULES IN THE INTEREST OF JUSTICE” is **dismissed** under 37 CFR 1.4(c). Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects. Furthermore, it does not appear that 37 CFR 1.812 or 37 CFR 1.813 are the proper rules to cite.


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CONCLUSION

1. The petitions filed on April 12, 2010 entitled "PETITION UNDER 37 C.F.R. §1.182 FOR RELIEF NOT OTHERWISE PROVIDED FOR UNDER THE RULES – REQUEST FOR DISMISSAL OF APPEAL" and "PETITION UNDER 37 C.F.R. §1.182 FOR RELIEF NOT OTHERWISE PROVIDED FOR UNDER THE RULES – REQUEST FOR REFUSAL OF CONSIDERATION OF REQUESTER'S IMPROPER ARGUMENTS" and the petitions filed on April 15, 2010 entitled "OPPOSITION TO PATENT OWNER'S PETITION UNDER 37 C.F.R. §1.812 REQUESTING DISMISSAL OF THE APPEAL OR IN THE ALTERNATIVE, PETITION UNDER 37 C.F.R. §1.813 TO SUSPEND THE RULES IN THE INTEREST OF JUSTICE" and "PETITION UNDER 37 C.F.R. §1.182 IN OPPOSITION TO PATENT OWNER'S PETITION REQUESTING 'REFUSAL OF CONSIDERATION OF REQUESTER'S IMPROPER ARGUMENTS'" are dismissed.

2. This decision is without prejudice to a request for reconsideration or higher-level review.

3. Telephone inquiries related to this decision should be directed to Eric Keasel, at (571) 272-4929, or in his absence to Mark Reinhart, at (571) 272-1611, or Jessica Harrison, at (571) 272-4449.



Eric Keasel
SPE, AU 3992, Central Reexamination Unit