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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,056	06/21/2010	6081786	383003-786RX (106555)	1579

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EXAMINER

ART UNIT                      PAPER NUMBER

DATE MAILED: 09/03/2010

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



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**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/011,056.

PATENT NO 6081786.

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)).

<b>Order Granting / Denying Request For Ex Parte Reexamination</b>	<b>Control No.</b> 90/011,056	<b>Patent Under Reexamination</b> 6081786	
	<b>Examiner</b> Christina Y. Leung	<b>Art Unit</b> 3992	

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

The request for *ex parte* reexamination filed 21 June 2010 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)  PTO-892,      b)  PTO/SB/08,      c)  Other: \_\_\_\_\_

1.  The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2.  The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a)  by Treasury check or,
- b)  by credit to Deposit Account No. 502778, or
- c)  by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

/Christina Y. Leung/ Primary Examiner, Art Unit 3992	/A. J. G./ Primary Examiner, Art Unit 3992	
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cc: Requester ( if third party requester )

## DECISION DENYING EX PARTE REEXAMINATION

### *Decision on the Request*

The present request for *ex parte* reexamination **does not** raise a substantial new question of patentability (SNQ) with respect to **claims 1-66** of United States Patent 6,081,786 to **Barry**.

### *References Cited in the Request*

**MYCIN** (*Rule-Based Expert Systems: The MYCIN Experiments of the Stanford Heuristic Programming Project*, Bruce G. Buchanan & Edward H. Shortliffe eds., Addison-Wesley Publishing, 1984)

**Suan** (Ong Lean Suan, *Computer-Aided Diagnosis and Treatment of Malaria: The IMEX System*, Comp. Biol. Med. No. 5, 361-72, 1990.

### *Issues Raised by the Request*

#### **Issue 1**

The request alleges that MYCIN in combination with Suan raises an SNQ with respect to claims 1-66.

### *The Barry Patent*

Barry is generally directed to a system and method for guiding selection of a therapeutic treatment regimen for a known disease such as HIV infection. Claim 1 is representative:

1. A method for guiding the selection of a therapeutic treatment regimen for a patient with a known disease or medical condition, said method comprising:
  - (a) providing patient information to a computing device comprising:
    - a first knowledge base comprising a plurality of different therapeutic treatment regimens for said disease or medical condition;

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a second knowledge base comprising a plurality of expert rules for evaluating and selecting a therapeutic treatment regimen for said disease or medical condition;

a third knowledge base comprising advisory information useful for the treatment of a patient with different constituents of said different therapeutic treatment regimens;  
and

(b) generating in said computing device a ranked listing of available therapeutic treatment regimens for said patient; and

(c) generating in said computing device advisory information for one or more therapeutic treatment regimens in said ranked listing based on said patient information and said expert rules.

#### ***Prosecution History***

The instant request for reexamination is the 4<sup>th</sup> request for reexamination overall of claims 1-66 of Barry.

Barry issued 27 June 2000 from application 09/283,702 filed 01 April 1999. Application 09/283,702 claims priority to provisional application 60/080,629 filed 03 April 1998.

**19 January 2000:** Examiner allowed claims 1-5, 7-28, and 30-68 in application 09/283,702 (now renumbered claims 1-66).

**10 October 2008:** A 3PR filed a request for *ex parte* reexamination (90/010,313) of claims 1-66.

**14 October 2008:** A 3PR filed a corrected request for *ex parte* reexamination (09/009,204) of claims 1-66.

**29 November 2008:** In reexamination 90/009,204, Examiner granted reexamination of claims 1-66, agreeing with the request that:

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1) MYCIN alone or in combination with Pazzani, Miller, Kuperman, Miller, Vlahavas, Barrett, Warner, and/or Zhao raised an SNQ with respect to claims 1-66; and

2) Siepman alone or in combination with MYCIN, Miller, Pazzani, Kuperman, Vlahavas, Barrett, Warner, and Zhao raised an SNQ with respect to claims 1-66.

**07 January 2009:** In reexamination 90/010,313, Examiner granted reexamination of claims 1-66, agreeing with the request that

1) Shortliffe alone or in combination with Perry, Bartlett, Nienow and/or Shafer raised an SNQ with respect to claims 1-66;

2) Kulikowski raised an SNQ with respect to claims 1, 5, 6, 8, 12, 21, 23, 27, 28, 30, 34, 43, 45, 49, 50, 52, 56, and 65;

3) Miller in combination with Nienow raised an SNQ with respect to claims 4, 10, 11, 26, 32, 33, 48, 54, and 55;

4) Siepman alone or in combination with Degoulet raised an SNQ with respect to claims 1, 5, 6, 8, 12-14, 20-23, 27, 28, 30, 34-36, 42-45, 49, 50, 52, 56-58, and 64-66;

5) Evans 1993 alone or in combination with Evans 1995 raised an SNQ with respect to claims 1, 5-8, 12, 14, 17, 20-23, 27-30, 34, 36, 39, 42-45, 49-52, 56, 58, 61, and 64-66; and

6) Pazzani raised an SNQ with respect to claims 1, 12, 19, 20, 23, 34, 41, 42, 45, 56, 63, and 64.

Examiner further noted that Miller *did not* raise an SNQ with respect to claims 1-3, 5, 7, 12, 13, 20, 25, 27, 29, 34, 35, 42-47, 49, 51, 56, 57, and 64-66; and Hickam in combination with Langlotz *did not* raise an SNQ with respect to claims 1, 5-8, 16, 21, 23, 27-30, 38, 43, 45, 49-52, 60, and 65.

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**22 June 2009:** The office merged reexaminations 90/009,204 and 90/010,313.

**15 September 2009:** In merged reexaminations 90/009,204 and 90/010,313, Examiner confirmed claims 1-66 as patentable, noting that the prior art of record did not disclose or suggest three distinct knowledge bases in combination with other limitations as recited in claims 1-66.

**31 July 2009:** A 3PR filed a corrected request for *ex parte* reexamination (90/010,600) of claims 1-66.

**26 October 2009:** In reexamination 90/010,600, Examiner granted reexamination of claims 1-66, agreeing with the request that Lau in combination with Suan, Nienow, Perry, and/or Windyga raised an SNQ with respect to claims 1-66.

Examiner further noted that MYCIN in combination with Lau, Suan, Nienow, Van Heijst, and/or Windyga *did not* raise an SNQ with respect to claims 1-66 because “3PR fails to address how MYCIN teaches or suggested multiple distinct knowledge bases” (emphasis in the original) and “3PR has not cast MYCIN in a new light” after MYCIN was already thoroughly considered and addressed in the previous reexamination.

**19 January 2010:** In reexamination 90/010,600, Examiner confirmed claims 1-66 as patentable, noting that the prior art of record did not disclose or suggest a third knowledge base comprising advisory information useful for the treatment of a patient with different constituents of the different therapeutic treatment regimens in combination with the first and second knowledge bases recited in claims 1-66.

***Detailed Analysis***

**Claims 1-66** will *not* be reexamined. In view of the prosecution history, a substantial new question of patentability may be raised by the evaluation of a prior art reference (or a combination of prior art references) that teaches

a first knowledge base comprising a plurality of different therapeutic treatment regimens for the disease or medical condition;

a second knowledge base comprising a plurality of expert rules for evaluating and selecting a therapeutic treatment regimen for the disease or medical condition; and

a third knowledge base comprising advisory information useful for the treatment of a patient with different constituents of the different therapeutic treatment regimens.

**Issue 1**

MYCIN and Suan are prior art with respect to Barry. MYCIN and Suan were thoroughly considered and discussed on the record during previous reexaminations.

A comparison of Claim Chart B (MYCIN in view of Suan) in reexamination 90/010,600 and the claim chart in the instant request shows that in the instant request, 3PR proposes rejections of the Barry claims over MYCIN in view of Suan that are nearly identical to those proposed over MYCIN in view of Suan in the previous reexamination (90/010,600). Examiner notes that with respect to claim 1, for example, the claim chart is identical to the one in the '600 reexamination, except that in the '600 reexamination, 3PR further noted that "Suan does not expressly disclose a distinct first knowledge base," while in the instant reexamination, this line is omitted. 3PR appears to assert that such a presentation of the combination of MYCIN and Suan is in a new light based on this difference.



However, neither MYCIN nor Suan disclose or suggest a combination of a first knowledge base comprising a plurality of different therapeutic treatment regimens for the disease or medical condition; a second knowledge base comprising a plurality of expert rules for evaluating and selecting a therapeutic treatment regimen for the disease or medical condition; and a third knowledge base comprising advisory information useful for the treatment of a patient with different constituents of the different therapeutic treatment regimens. A reasonable examiner at this point would not consider evaluation of MYCIN and Suan important in determining the patentability of the claims. Therefore, MYCIN in combination with Suan does *not* raise a substantial new question of patentability with respect to claims 1-66.

#### ***Conclusion***

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to “an applicant” and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings “will be conducted with special dispatch” (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 6,081,786 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

**All** correspondence relating to this *ex parte* reexamination proceeding should be directed:

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By mail to: Mail Stop *Ex Parte* Reexam  
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By fax to: (571) 273-9900  
Central Reexamination Unit

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401 Dulany Street  
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Any inquiry concerning this communication should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/Christina Y. Leung/

Primary Examiner, Art Unit 3992

Conferees:

/A. J. G./  
Primary Examiner, Art Unit 3992

/E. K./  
Supervisory Patent Examiner, Art Unit 3992