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Patent Law Offices of Rick Martin
c/o Rick Martin
P.O. Box 1839
Longmont, CO 80502

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/020,104*.

PATENT NO. *6908099*.

ART UNIT *3993*.

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)).

Russell D. Stormer
Patent Reexamination Specialist
Art Unit: 3993

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/020,104	09/12/2016	6908099	ANDEM.004X1	3012

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER	
STORMER, RUSSELL D	

ART UNIT	PAPER NUMBER
3993	

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02/28/2017	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.

Office Action in Ex Parte Reexamination	Control No. 90/020,104	Patent Under Reexamination 6908099	
	Examiner Russell D. Stormer	Art Unit 3993	AIA (First Inventor to File) Status No

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

a. ☐ Responsive to the communication(s) filed on _____ .
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

b. ☐ This action is made FINAL.

c. ☒ A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).** If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☒ Information Disclosure Statement, PTO/SB/08.
3. ☐ Interview Summary, PTO-474.
4. ☐ _____.

Part II SUMMARY OF ACTION

1a. ☒ Claims 1-18 are subject to reexamination.
1b. ☐ Claims _____ are not subject to reexamination.
2. ☐ Claims _____ have been canceled in the present reexamination proceeding.
3. ☐ Claims _____ are patentable and/or confirmed.
4. ☒ Claims 1-18 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ The drawings, filed on _____ are acceptable.
7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
   1 ☐ been received.
   2 ☐ not been received.
   3 ☐ been filed in Application No. _____ .
   4 ☐ been filed in reexamination Control No. _____.
   5 ☐ been received by the International Bureau in PCT application No. _____.
   * See the attached detailed Office action for a list of the certified copies not received.
9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate 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.
10. ☐ Other: _____

cc: Requester (if third party requester)

The present application is being examined under the pre-AIA first to invent provisions.

Brief Summary of the Prosecution History

A Request for reexamination of claims 1-18 of United States Patent Number 6,908,099 to Anderson ("the '099 patent") was filed by a third party Requester on September 12, 2016.

An Order granting reexamination of claims 1-18 (all of the claims in the '099 patent) was mailed November 18, 2016. Of the eleven prior art references presented in the Request, it was determined that McCoy, Nagahata, Nakazawa, and Takahashi raise an SNQ as to claims 1-18, and that Moss '405, Skinner, and Gettig were not shown to raise an SNQ as to any of the claims. The Request did not assert SNQs for the remaining references (Schaffer, Zorn, Colliau, and Seksaria). See the Order for a full explanation. Reexamination of claims 1-18 was ordered and a two-month period was set for Patent Owner to file a statement, as provided in 37 C.F.R. § 1.530(b).

The two-month period set forth in the Order has expired without a reply from the Patent Owner, and an Office action on the merits is appropriate at this time.

Prior Art Documents Relied Upon in this Office Action

Moss '472 (U.S. Patent Application Publication 2003/0052472 to Moss et al.)

Kusaka (U.S. Patent No. 5,398,411 to Kusaka et al.; newly cited)

Colliau (U.S. Patent Number 3,679,234 to Colliau)

Domer (U.S. Patent Number 4,060,331 to Domer et al.)

Examiner-Raised Substantial New Questions of Patentability

As noted on page 6 of the Order, in the claimed method for manufacturing drop bars or a stepped drop bar by extruding aluminum through a die to form a profile, and cutting the extruded profile into individual units, the subject matter found to be missing from the prior art of record is recited in one or more of the following steps or limitations:

extruding billet aluminum through a die to form a profile *in a shape of an extended drop bar* (claim 1 of the '099 patent);

extruding billet aluminum through a die to form a profile *in a shape of an extended and stepped drop bar* (claim 11);

cutting the *extended (and stepped) drop bar profile to provide a plurality of drop bars that are configured to be coupled to vehicles for towing* (claims 1 and 11; claim 11 adds *stepped*);

machining a first (stepped) drop bar to configure a receiving portion that is configured to receive a ball for coupling thereto, wherein the first drop bar is one of the plurality of drop bars (claims 1 and 11; claim 11 adds *stepped*);

machining near a distal end of the first stepped drop bar to configure the first stepped drop bar to be selectively coupled to a vehicle for use in towing (claim 11).

See pages 2-6 of the Order for a more complete summary of the prosecution history of the '099 patent.

The Examiner asserts new reference **Kusaka** raises an SNQ with respect to claims 1 and 11 of the '099 patent.

Kusaka was not cited or discussed during the prior examination of the '099 patent.

Kusaka teaches a process for producing suspension components, including extruding billet aluminum through a die to form a profile in a shape of the suspension component, cutting the profile into predetermined thicknesses to form a plurality of suspension, and machining an end of the suspension components.

Therefore, Kusaka provides new, non-cumulative technical teachings of limitations found to be missing from the prior art used during the prosecution of the '099 patent, and there is a substantial likelihood that a reasonable Examiner would consider the above teachings of Kusaka to be important in determining the patentability of claims 1 and 11 of the '099 patent.

Accordingly, Kusaka is found to raise an SNQ as to claims 1 and 11 (and depending claims 2-10 and 12-18) of the '099 patent.

Claim Interpretation

Each of the claims recites a method for manufacturing a drop bar, including the step of extruding billet aluminum through a die to form a profile in a shape of an extended drop bar. Claim 11 adds the limitation of a "stepped" drop bar. Some of the terms used in the claims are not described in the specification of the '099 patent, and/or their meaning in the claims is not expressly defined. The following interpretations are set forth.

Drop Bar A drop bar 30 is described in the subject '099 patent as having a drop of 2, 4, or 6 inches, or any other size drop (column 5, lines 26-29). Figures 3 and 4 show the ball 40 on the drop bar 30 to be lower than the hitch adaptor 60. Those of ordinary skill in the art would understand the term "drop" to refer to the vertical difference between the height of a

hitch ball mounted on a straight draw bar and a ball mounted on a draw bar which lowers the height of the ball (relative to the straight draw bar), and further that the "drop" of a drop bar would compensate for a difference in height between the receiver or hitch adaptor on a vehicle and the coupling member of a trailer or the like. Therefore, the term "drop bar" as used in the claims would have been understood by those of ordinary skill in the art to refer to a draw bar or hitch bar in which the ball is positioned lower than it would be if it were mounted on a straight draw bar.

Profile The ordinary meaning of the term "profile" is an outline or contour, especially as seen in a side view, and refers to the form or shape of an object. However, the disclosure of the '510 patent consistently uses this term to refer to the product produced after the aluminum or other material has been extruded through the opening 12 of the die 10. See, for example, the "extruded product or profile" and the "extruded profile 14" described in column 3, lines 60-65. Also, column 4, lines 51-54 describe the billet material being forced through the shaped opening 12 of die 10 "to emerge on the other side as a fully formed profile 14." Therefore, the term "profile" as set forth in the claims will be understood to mean a product or component which has been formed by a step of the claimed method of manufacturing a drop bar. The process by which the profile is formed (i.e., extruding) and any specific shape are not implied by the term "profile" itself. Note that the claims recite specific limitations, such as "extruding" and "a shape of a stepped drop bar" which further limit the profile.

Shape The term "shape" is defined by merriam-webster.com as the visible makeup characteristic of a particular item or kind of item (a cake in the shape of a tree), a spatial form

or contour; and by dictionary.com as 1) the quality of a distinct object or body in having an external surface or outline of specific form or figure, 2) this quality as found in some individual object or body form. The use of this term in the disclosure of the '099 patent is consistent with the customary meaning. Note, for example, "the material is forced through a die to obtain a particular shape" (column 3, lines 58-59), and "a variety of shapes and sizes of components" (column 5, lines 26-28). Those of ordinary skill in the art would have understood the term "shape" to mean the visual make-up or spatial form of the claimed element.

Extended Claims 1 sets forth the limitation "a profile in a shape of an extended drop bar," and claim 11 sets forth "a profile in a shape of an extended and stepped drop bar." The specification does not expressly describe the shape of an "extended" drop bar, or define what is meant by the term "extended." In fact, the terms "extend," "extended," or "extending" do not appear in the specification of the '099 patent. The term "extended" appears in claims 1 and 11, but was first introduced by the amendment filed November 22, 2004.

"Extended" is defined by merriam-webster.com as drawn out in length, or fully stretched out; and by dictionary.com as 1) stretched out, 2) continued or prolonged.

The '099 patent does not describe the drop bar as being "drawn out in length," or as continued or prolonged.

Moreover, the claims set forth that the extruded profile is formed "in a shape of an extended (and stepped) drop bar," and therefore the shape of the profile is already "extended" as formed, and an additional method step of extending the profile (or the drop bar) is neither recited nor implied. As such, the term "extended" does not set forth any structural

limitations with respect to the profile or the drop bar, and does not set forth any method step for the profile or the drop bar before, during, or after the extruding step.

Therefore, the term "extended" will be afforded no special meaning in the claims, and cannot distinguish the claimed profile or drop bar over any prior art drop bar. A prior art drop bar having the structural features recited in the claims will be considered to meet the limitation of an "extended drop bar."

Stepped The term "stepped" does not appear in the specification of the '099 patent and was presented in a new claim (now claim 11) added in the amendment filed November 22, 2004. The word "step" may be defined as a step-like offset or part usually occurring in a series (merriam-webster.com), and an offset part of anything (dictionary.com). As such, the ordinary meaning of the term "stepped" would be understood to describe an object having an offset part, which may be step-like.

Figures 3 and 4 show a drop bar having a lower portion which is offset from an upper portion, and the profile 14 is shown in figures 1 and 2 to have a similar offset. Those of ordinary skill in the art would understand the profile to have the shape of a drop bar with an offset portion, i.e., a stepped drop bar.

The limitation "a profile in a shape of an extended and stepped drop bar" in claim 11 will be interpreted as reciting a profile having a form in which one portion of the profile is offset from another portion. Likewise, the limitation "stepped drop bar" will be interpreted as reciting a drop bar having one portion which is offset from another portion. The term "extended" in claim 11 will be afforded no special meaning for the reasons discussed above

for claim 1, and a prior art drop bar having a stepped form or offset portion will be considered to meet the limitation of an "extended and stepped drop bar."

Claim Rejections - 35 USC § 103

The following is a quotation of pre-AIA 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, 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 negatived by the manner in which the invention was made.

Ground 1

Claims 1-18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Moss '472 in view of Kusaka.

Moss '472 discloses a hitch apparatus 10 configured to be coupled to vehicles for towing, the apparatus comprising an extended drop bar (mount 40, or base 34 *and* mount 40, or base 34 *and* mount 40 *and* fastening portion 70) having a receiving portion 70 or 112 configured to receive a ball 74 for coupling thereto.

Regarding claim 1, Moss '472 states the apparatus 10 and the components thereof are made of steel, but that aluminum or any other material of sufficient strength and durability may be used [0057]. The components of the apparatus 10 include a trunnion 11, base 34, mount 40, and fastening portion 70 combine to form the extended drop bar as shown in figure 1, for instance.

Trunnion 11 is "substantially permanently" attached to the base 34, such as by welding or other means; or the trunnion may be omitted and the base 34 attached directly to the

towing vehicle [0058-0059]. Either way, the apparatus is configured to be coupled to a vehicle for towing.

The mount 40, includes side beams 42a, 42b parallel to one another and secured to a support 43. Alternatively, side beams 42a, 42b may be replaced with a single beam 42 or similar structure 42. The mount 40 may be formed as a monolithic member comprising surfaces and extensions providing the same functionality as a support 43 and side beams 42a, 42b [0061].

The mount 40 may be integrally attached to the base 34. The base 34 and mount 40 may be part of the same monolithic piece of material [0062].

The fastening portion 70 may be secured to the support 43 or directly to the mount 40. The fastening portion 70 may be secured to the mount 40 by means of a pivot 72, or the fastening portion 70 may be integrally, monolithically, integrally, or even homogeneously formed with the mount 40 [0075].

Therefore, Moss '472 teaches that mount 40 may be formed as a monolithic member including the structure of support 43 and side beams 42a, 42b; the mount 40 and the base 34 may be a single monolithic piece; and the mount 40 may be monolithically or homogeneously formed with the fastening portion 70. In other words, the base 34, the mount 40, and the fastening portion 70, may be formed as a single monolithic drop bar which may be made of aluminum.

Regarding claim 11, the monolithically-formed base 34, mount 40, and fastening portion 70 form a stepped drop bar as shown in figure 1, for instance.

Moss '472 does not describe the drop bar, or the components thereof, as being manufactured by extruding.

Kusaka teaches a method of manufacturing suspension members (such as a suspension arm, a suspension bracket, and the like; column 1, lines 10-12, and figures 1, 7, and 8) for vehicles comprising the steps of heating a billet 12 of aluminum or aluminum alloy; extruding the billet aluminum through a die 8, 9, to form a profile *M* in a shape of a suspension arm; cutting the profile *M* to provide a plurality of arms *A* (figure 6) that are configured to be coupled to vehicles; and machining a first suspension arm to configure a receiving portion that is configured to receive a fastening element *Bo* for coupling thereto; wherein the first suspension arm is one of the plurality of suspension arms.

Kusaka further teaches that the extrusion process allows detailed features such as cam guides to be formed with good accuracy (column 2, lines 36-39); and that welding steps (necessary in the prior art) may be omitted, thereby simplifying manufacturing, reducing costs, and reducing the size and weight of the members (column 2, lines 43-52).

From the teachings of Kusaka, one of ordinary skill in the art at the time of the invention would have found it obvious to produce the aluminum drop bar of Moss '472 (the monolithically-formed base, mount, and fastening portion components described therein) by extruding billet aluminum through a die to produce a profile in the shape of the extended drop bar, cut the profile to provide a plurality of drop bars, and to machine a first drop bar to configure a receiving portion for a ball for coupling thereto. This would require little more than the applying a known technique (manufacturing relatively complex structural members by extruding and cutting as taught by Kusaka) to a known device (the drop bar of Moss '472) to simplify the process of manufacturing a plurality of substantially identical and accurately produced drop bars. As further taught by Kusaka, extruding the drop bars of Moss '472 using

such a method would yield the predictable result of reducing the cost of manufacturing the drop bars as compared to other methods.

With respect to claim 11 specifically, the extruded profile has a shape of an extended and stepped drop bar, and cutting a plurality of parallel cuts through the profile would produce a plurality of stepped drop bars. The step of machining to configure a receiving portion would be near a distal end of a first stepped drop bar.

As noted above, the trunnion 11 is "substantially permanently" attached to the base 34, such as by welding or other means; or the trunnion may be omitted and the base 34 attached directly to the towing vehicle as described by Moss '472. If the trunnion were omitted, it would have been obvious to machine the base 34 to configure the stepped drop to be coupled to a vehicle. Alternatively, in light of Kusaka's teaching that forming the cam guides G on the profile M (and thus the members 1) by the extrusion die is an improvement over the prior art welded-on cam guides G', G" (column 1, lines 52-62, and column 2, lines 34-52 of Kusaka), those of ordinary skill in the art at the time of the invention would have found it obvious to extrude the profile for the stepped drop bar of Moss '472 with a vehicle coupling element (such as a member equivalent to trunnion 11) formed as or near an end of the stepped drop bar in order to eliminate the welding step and reduce manufacturing costs. It would further have been obvious, with respect to claim 11, to include a step of machining near a distal end of the first stepped drop bar to configure the drop bar to be selectively coupled to a vehicle for towing.

With respect to claims 2 and 12, the aluminum may be an aluminum alloy as taught by Kusaka.

With respect to claims 3, 13, and 14, the individual suspension arms of Kusaka are machined to produce openings 2a. While drilling is not specified by Kusaka, those of ordinary skill in the art would have found it obvious to use a machining step which comprises drilling an aperture through the first drop bar (claim 3), near a distal end (claim 13), and near a proximal end (claim 14) of Moss '472 inasmuch as drilling is a notoriously well-known machining process for forming holes in metal articles.

With respect to claims 4, 5, 6, and 15,[1] it would have been obvious to machine the first drop bar to create a radius on a portion of the drop bar in order to remove any sharp corners and produce the rounded ends and/or edges shown on the base 34, trunnion 11, and side beams 42a, 42b of Moss '472.

With respect to claims 7 and 16, the ball 74, 76 may be removably coupled to the first (stepped) drop bar of Moss '472.

With respect to claim 8, first drop bar of Moss '472 is configured to be removably coupled to a vehicle.

With respect to claims 9, 10, 17, and 18, the method set forth in claims 1 and 11 includes a step of machining a first drop bar to configure a portion "that is configured to receive a ball." The ball is not positively recited in claims 1 and 11, and forms no part of the method for manufacturing set forth in these claims. As such, the composition of the unclaimed ball is given no patentable weight in the method claims.

[1] Claim 4 sets forth a step of creating a radius on a portion, and therefore recites a second machining step different from the drilling step of claim 3 from which claim 4 depends. Claims 5 and 6 depend from claim 4 and are considered to further limit the portion on which the radius is created, and not the step of drilling. Likewise, claim 15 recites a second machining step different from the drilling step of claim 14.

Ground 2

Claims 9 and 17 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Moss '472 and Kusaka as applied to claims 1 and 11 above, and further in view of Colliau.

The ball 74, 76 of Moss '472 is not disclosed as comprising a polymer.

Colliau teaches a hitch ball 10 comprising a plastic coating 14 covering the ball.

From this teaching, it would have been obvious that the receiving portion of Moss '472 as modified in view of Kusaka, having been configured by the step of machining near a distal end of a first drop bar (near a distal end of a stepped drop bar, claim 11), would be configured to receive a ball which comprises a polymer, such as the well-known ball of Colliau.

If the ball is considered to be positively recited in claims 1 and 11, then it would have been obvious for the ball of Moss '472 to comprise a polymer so as to provide a reflective and friction-reducing coating as taught by Colliau.

Ground 3

Claims 10 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Moss '472 and Kusaka as applied to claims 1 and 11 above, and further in view of Domer.

The ball 74, 76 of Moss '472 is not disclosed as comprising an elastomer.

Domer teaches a hitch ball comprising a rubber layer 3 covering a ball 1.

From this teaching, it would have been obvious that the receiving portion of Moss '472 as modified in view of Kusaka, having been configured by the step of machining near a distal

end of a first drop bar (near a distal end of a stepped drop bar, claim 11), would be configured to receive a ball which comprises an elastomer, such as the well-known ball of Domer.

If the ball is considered to be positively recited in claims 1 and 11, then it would have been obvious for the ball of Moss '472 to comprise an elastomer in order to reduce noise generated by the ball and trailer coupling as taught by Domer.

Information Disclosure Statement

The information disclosure statements (IDS) submitted on January 24, 2017 has been considered by the Examiner and placed of record. The transmittal letter for the January 24 IDS states that it is identical to the IDS filed January 11, 2017, with the exception of the Certificate of Service included with the January 24 IDS. Accordingly, only the January 24 IDS has been considered.

Submissions

Patent Owner is reminded that 37 CFR 1.550(f) requires that "After filing of a request for *ex parte* reexamination by a third party requester, any document filed by either the patent owner or the third party requester **must** be served on the other party in the reexamination proceeding in the manner provided by § 1.248."

In order to ensure full consideration of any affidavits or declarations or other documents as evidence of patentability, such documents must be submitted in response to this first Office action on the merits (which does not result in a close of prosecution). Submissions after the second Office action on the merits, which is intended to be a final

action, will be governed by the requirements of 37C.F.R. 1.116, after final rejection and by 37 C.F.R. 41.33 after appeal, which will be strictly enforced.

Notice of Concurrent Proceedings or Litigation

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. 6,908,099 throughout the course of this reexamination proceeding. The third party requestors are also reminded of the ability to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving the subject patent. See MPEP §§ 2207, 2282 and 2286.

Extensions of Time

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).

Correspondence

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

By EFS: Registered users may submit via the electronic filing system EFS-Web, at https://efs.uspto.gov/efile/myportal/efs-registered

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

By hand: Customer Service Window
Randolph Building
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Alexandria, VA 22314

For EFS-Web transmissions, 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 Office's 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.

/Russell D. Stormer/

Russell D. Stormer
Primary Examiner
Central Reexamination Unit
Art Unit 3993
(571) 272-6687

Conferee: /SC/

Conferee: /GAS/