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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/978,358	12/23/2010	Simon N. Richmond	AIL1682-1-006C2	1080
3624	7590	07/13/2012	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			A, MINH D	
			ART UNIT	PAPER NUMBER
			2821	
			NOTIFICATION DATE	DELIVERY MODE
			07/13/2012	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eoffice@volpe-koenig.com

Office Action Summary	Application No. 12/978,358	Applicant(s) RICHMOND, SIMON N.	
	Examiner MINH D. A	Art Unit 2821	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 4/20/12.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance 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.

Disposition of Claims

- 5) Claim(s) 1-49 is/are pending in the application.
 - 5a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 6) Claim(s) 35-44, 47-49 is/are allowed.
- 7) Claim(s) 1-3, 18-20, 23, 26, 28-34 and 45-46 is/are rejected.
- 8) Claim(s) 4-17, 21-22, 24-25 and 27 is/are objected to.
- 9) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 1/17/12 1/18/12 1/23/12
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other:

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Remarks/Arguments, filed on 4/20/12 with respect to claims 1-49 have been fully considered and are persuasive. The restriction of record has been withdrawn. Therefore, in view of the filing, claims 1-49 are currently presented in the instant application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

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double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 32-34 of U.S. Patent No. 7,429,827.

Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant merely uses slightly different language to claim the same invention.

Regarding claim 1, claim 32 of Patent disclose a lighting device, said device including: a lens; a circuit comprising: at least two light sources(**lamps**) of different colors mounted to direct light through at least part of said lens; an activation sub-circuit to provide power to said light sources only at low light levels; a light sub-circuit to independently control delivery of power to each of said at least two light sources(**lamps**) so as to ramp up and ramp down intensity (**vary intensity**) of light emitted over time by said at least two light sources(**lamps**) to produce a color changing cycle of more than two colors; connections for at least one rechargeable battery to power said circuit; and at least one solar cell mounted so as to be exposed to light and operatively associated with said connections to charge said battery.

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Regarding claim 2, claim 32 of Patent disclose further comprising a spike for positioning said connections above a ground surface.

Regarding claim 3, claim 34 of Patent disclose wherein said light sub-circuit further independently controls delivery of power to each of said light sources(**lamps**) so as to vary frequency of changes to said intensity.

Regarding claim 20, claim 31 of patent disclose wherein said at least two light sources are at least three light sources and said more than two colors are more than three colors. See at least two lamps of different colors.

4. Claims 18-19, 23, 26, 28-34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 32-34 of U.S. Patent No. U.S. Patent No. 7,429,827. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 32-34 of Patent obviously disclose all limitations in claims 18-19, 22-23, 26-34.

Regarding claim 18, claim 32 of patent obviously disclose wherein any one of said at least two light sources is a single diode that emits light when energized, and wherein said at least two light sources comprise at least a diode that emits red light and a diode that emits blue light, because claim 32 of patent provides at least lamps of a different colors.

Therefore, it would have been obvious to one of ordinary skill in the art to employ the at least two light sources comprise at least a diode that emits red light and a diode that emits blue light instead of the at least of a different colors, since it is known and well

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