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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/530,407	10/31/2014	Joseph N. Romriell	2792.01-9354.2US	1048
<sup>24247</sup> TRASKBRITT	7590 10/22/201:	5	EXAM	IINER
P.O. BOX 2550 SALT LAKE CITY, UT 84110			GAUTHIER, GERALD	
			ART UNIT	PAPER NUMBER
			2653	
			NOTIFICATION DATE	DELIVERY MODE
			10/22/2015	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.

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USPTOMail@traskbritt.com



	Application No. 14/530,407	Application No. 14/530,407  Applicant(s) ROMRIELL ET AL.					
Office Action Summary	Examiner GERALD GAUTHIER	Art Unit 2653	AIA (First Inventor to File) Status No				
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 MONTHS 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 10/20/2014.							
A declaration(s)/affidavit(s) under <b>37 CFR 1.130(b)</b> was/were filed on							
· —	action is non-final.	and familiar at 120					
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 <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
	,						
5) Claim(s) 1-21 is/are pending in the application	Disposition of Claims*  5\M_Claim(s) 1.21 is/are pending in the application						
	5) Saim(s) 1-21 is/are pending in the application.  5a) Of the above claim(s) is/are withdrawn from consideration.						
6) Claim(s) is/are allowed.	nem eenede allem						
7)⊠ Claim(s) <u>1-21</u> is/are rejected.							
8) Claim(s) is/are objected to.							
9) Claim(s) are subject to restriction and/or election requirement.							
* If any claims have been determined <u>allowable</u> , you may be eligible to benefit from the <b>Patent Prosecution Highway</b> program at a							
participating intellectual property office for the corresponding application. For more information, please see							
http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.							
Application Papers							
10) The specification is objected to by the Examiner.							
11)⊠ The drawing(s) filed on <u>10/31/2014</u> 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).							
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).							
Certified copies:							
a) ☐ All b) ☐ Some** c) ☐ None of the:							
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.							
oco and attached detailed office action for a list of the certified copies flot received.							
Attachment(s)							
1) Notice of References Cited (PTO-892)	3) Interview Summary	,					
2) Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SPaper No(s)/Mail Date 10/31/2014, 11/06/2014.	SB/08b) Paper No(s)/Mail D 4) Other:	ate					
U.S. Patent and Trademark Office PTOL-326 (Rev. 11-13) Office Action	Summary	Part of Paper No	o./Mail Date 20151019				



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### **DETAILED ACTION**

### Notice of Pre-AIA or AIA Status

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

### Information Disclosure Statement

2. The information disclosure statements submitted on October 31, 2014 and November 6, 2014 are in compliance with the provisions of 37 CFR 1.97. Accordingly the information disclosure statement is being considered by the examiner, except where lined trough.

### Claim Objections

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 3 and 16 have been renumbered 1-21.



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### Double Patenting

4. 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 double patenting rejection is appropriate where the claims at issue 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 double patenting ground provided the reference 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. See MPEP § 717.02 for applications subject to examination under the first inventor to file provisions of the AIA as explained in MPEP § 2159. See MPEP §§ 706.02(I)(1) - 706.02(I)(3) for applications not subject to examination under the first inventor to file provisions of the AIA. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).



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The USPTO Internet website contains terminal disclaimer forms which may be used. Please visit www.uspto.gov/forms/. The filing date of the application in which the form is filed determines what form (e.g., PTO/SB/25, PTO/SB/26, PTO/AIA/25, or PTO/AIA/26) should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to http://www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp.

5. Claims 1-21 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1, 9, 14, 17, 25 and 29 of U.S. Patent No. 8,379,801 B2. Although the claims at issue are not identical, they are not patentably distinct from each other because at least one claim of the instant application is being taught by the claims of the U.S. Patent. The patent claims would reject the application claims since they are narrower than the application claims.

### Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.



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