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28101	7590	10/31/2011	EXAMINER	
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**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.

PTOL 89A (Rev. 04/02)



## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Group IV in the reply filed on 1 August 2011 is acknowledged.

### *Double Patenting*

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 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).

Claims 20, 26, 43-45, 49-51, 52 and 59 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 15, 25 and 26 of U.S. Patent No. 7934843. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 20, 26, 43-45, 49-51, 52 and 59 recite essentially the same subject matter as claims 1, 15, 25 and 26 in US 7934843 except for a mirror housing and a spherical or single radius of curvature of the curved mirror element which are known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a mirror housing and have the auxiliary non-plano curved element be defined by a spherical radius of curvature so as to provide for protection from the elements and to provide for an improved field of view to the user.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 20-29, 39-42, 46-48, and 52-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Lynam et al (hereafter "Lynam") US 2002/0072026.

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

In regard to claims 20 and 26, Lynam discloses (see Figures 1-3, 5, 6, 8, 14) an exterior sideview mirror assembly suitable for vehicular use, said exterior sideview mirror assembly comprising: a mirror housing (40) defining a primary opening; a single mirror backing plate element (60) within said mirror housing and disposed adjacent to said primary opening; said single mirror backing plate element movable by an electrically-operable actuator (36) as described in paragraph [0042]; a main plano mirror element (50) fixedly secured to and supported by said single mirror backing plate element and disposed within said primary opening for providing a view rearward of a vehicle equipped with said exterior sideview mirror assembly through a first primary field of view as described in paragraphs [0041] and [0042]; an auxiliary non-piano curved mirror element (55) fixedly secured to and supported by said single mirror backing plate element and disposed adjacent to said main plano mirror element as described in

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