



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,945	04/27/2017	7234262	PHAZZER010	9735

49754 7590 08/09/2017
AXON ENTERPRISE, INC.
17800 N. 85TH STREET
SCOTTSDALE, AZ 85255-9603

EXAMINER

ENGLISH, PETER C

ART UNIT	PAPER NUMBER
----------	--------------

3993

MAIL DATE	DELIVERY MODE
-----------	---------------

08/09/2017

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.



DO NOT USE IN PALM PRINTER

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

ADAM R. STEPHENSON, LTD.
8350 E RAINTREE DR., STE 245
SCOTTSDALE, AZ 85260

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/013,945.

PATENT NO. 7,234,262.

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)).

Office Action in Ex Parte Reexamination	Control No. 90/013,945	Patent Under Reexamination 7,234,262	
	Examiner Peter C. English	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. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 3. <input type="checkbox"/> Interview Summary, PTO-474. |
| 2. <input type="checkbox"/> Information Disclosure Statement, PTO/SB/08. | 4. <input type="checkbox"/> ____. |

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)

Art Unit: 3993

DETAILED ACTION

Pre-AIA First to Invent

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

Second Request for Reexamination

2. The instant *ex parte* reexamination of US Patent No. 7,234,262 was filed subsequent to a previous *ex parte* reexamination (Control No. 90/013,770) of the same patent, which previous reexamination concluded with the issuance of the reexamination certificate on 18 April 2017. In the previous reexamination, patent claims 1, 2 and 5 were amended. This action and any subsequent prosecution in the instant reexamination proceeding is on the basis of the claims as modified by the previously issued reexamination certificate.

Claims Subject to Reexamination

3. Requester has alleged that a substantial new question of patentability (SNQ) exists, and upon review, it has been determined that the alleged SNQ in fact is present for claims 1-18. Accordingly, claims 1-18 are subject to reexamination in the instant proceeding.

Listing of Prior Art

4. The following is a listing of the prior art documents relied upon, together with the shorthand reference for each document:

“Murray”	US Patent No. 5,654,867
“Mendelsohn et al.”	US Patent No. 5,502,915
“Yerazunis et al.”	US Patent No. 7,158,167
“Cover”	US Patent No. 3,803,463
“Mangolds et al.”	US Patent No. 5,750,918
“O’Dwyer”	US Patent No. 6,477,801
“Poole”	US Patent No. 6,237,461

Art Unit: 3993

“Martin”	US Patent No. 5,192,818
“Goodson et al.”	US Patent No. 5,128,548
“Shepard et al.”	US Patent No. 5,532,469
“McMahan”	US Patent No. 5,845,165

Claim Rejections - 35 USC § 103

5. **GROUND 1:** Claims 13, 17 and 18 are rejected under pre-AIA 35 U.S.C. 103(a) as obvious over Murray in view of Mendelsohn et al. and Yerazunis et al.

Murray discloses an electrical dart weapon 10 comprising:

- A launcher (receiver) 20 receiving replaceable cartridges 60, each cartridge having wire-tethered darts 27 and a propellant 78 that propels the darts 27. See Figs. 1, 2 and 8-12; col. 4, ll. 26-29; col. 6, ll. 11-22 and 32-35.
- An electric circuit (see Fig. 13) including a battery 40 and a trigger switch 32 housed in a handle 14 of the weapon 10. When the trigger switch 32 is actuated by a user, the electric circuit functions to (a) activate the propellant 78 to propel the darts 27 toward a target, and (b) conduct a high voltage pulsed current through the darts 27 via wires 29. See Figs. 1-4, 8 and 13; col. 1, ll. 11-47; col. 2, ll. 9-14; col. 4, ll. 29-30 and 47-54; col. 4, l. 57 – col. 5, l. 7; col. 6, ll. 17-32 and 36-49.

Murray fails to teach a microprocessor that controls the firing of the weapon and records in memory the date and time of each actuation of the weapon’s firing trigger.

Mendelsohn et al. teaches a gun programmed to limit firing of the gun to authorized users based on handprints stored in a memory of the gun. See col. 1, ll. 3-9. Prerecorded handprints stored in the gun’s memory are compared to the print of a user’s hand on the gun handle to verify the user and allow actuation of the gun’s trigger. See col. 2, ll. 11-35. Firing of the gun by the verified user is then recorded by storing the time of firing and the user’s handprint in the gun’s memory. See col. 2, ll. 35-37 and 51-52. More specifically, Mendelsohn et al. teaches a gun 10 including:

- A sensing pad 20 on the gun’s handle (grip) 14 for sensing (reading) a user’s handprint. See Figs. 1, 3 and 8; col. 3, ll. 26-36.

Art Unit: 3993

- A memory 34 in the gun's handle 14 that stores the prerecorded handprints of authorized users. See Figs. 1, 3 and 8; col. 4, ll. 1-51.
- A microprocessor 42 that (a) compares the prerecorded handprints stored in the memory 34 to the print of a user's hand on the gun handle sensed (read) by the sensing pad 20 to verify the user, and (b) actuates a solenoid 58 driving a latch pin 62 to allow actuation of the gun's trigger 65 by the verified user. See Figs. 1, 3 and 8; col. 4, l. 60 – col. 5, l. 58.
- A switch 69 actuated by operation of the trigger 65, a clock 70, two AND networks 74, 78, and two recording heads 76, 80 that are controlled by the microprocessor 42 to record each actuation of the trigger 65 by the verified user by storing the time and date of each trigger actuation and the user's handprint in the memory 34. See Figs. 5 and 8; col. 6, ll. 43-56; col. 7, l. 58 – col. 8, l. 2; col. 8, ll. 14-45; col. 10, ll. 9-15.
- Two additional AND networks 82, 86, and two additional recording heads 84, 88 that are controlled by the microprocessor 42 to record the attempted operation of the gun by an unauthorized user by storing the time and date of the unauthorized attempt and the user's handprint in the memory 34. See Figs. 6 and 8; col. 6, l. 57 – col. 7, l. 9; col. 7, l. 58 – col. 8, l. 2; col. 8, ll. 14-45; col. 10, ll. 9-15.

Therefore, Mendelsohn et al. teaches one of ordinary skill in the art to use a microprocessor that is involved with the firing of a weapon to record in memory the date and time of each actuation of the weapon's firing trigger.

Yerazunis et al. teaches a video recording device mounted to a targetable weapon, such as a lethal gun or a non-lethal stun gun (TAZER™), for capturing a video record each time the gun is fired. See col. 1, ll. 17-43; col. 3, ll. 9-17. The device is controlled by a microprocessor that stores recorded video frames in a circular buffer memory; upon detection of a triggering event, the microprocessor causes a predetermined number of video frames following the triggering event to be stored along with a number of video frames preceding the triggering event such that a video event record is stored in the memory. See col. 2, ll. 12-58; col. 3, ll. 17-35. The triggering event can be a button actuated by a user or any other suitable activation signal known in the art.

Art Unit: 3993

See col. 2, ll. 58-64. In one embodiment, the triggering event is a gun firing signal generated upon actuation of the trigger of the gun. See col. 3, ll. 20-25. The video event record can be downloaded to a computer for viewing. See col. 3, ll. 1-2. More specifically, Yerazunis et al. teaches a lethal gun or a non-lethal stun gun (TAZER™) including:

- A video recording device 300 mounted to the gun 304. See Figs. 9-10b; col. 14, ll. 45-50.
- A triggering event sensor 70 for generating a gun firing signal upon actuation of the trigger of the gun 304. See Fig. 14; col. 14, ll. 55-61; col. 16, ll. 43-50 and 59-65.
- A microprocessor 54 that (a) causes a camera 40 of the video recording device 300 to begin recording when the gun 304 is removed from a holster 332, (b) stores recorded video frames in memory units 58, 60, and (c) responds to each trigger actuation (gun firing) signal from the triggering event sensor 70 by storing a predetermined number of video frames following each triggering event along with a number of video frames preceding each triggering event such that a video event record is stored in a memory unit 83 each time the gun's trigger is actuated. See Figs. 13 and 14; col. 14, l. 50 – col. 15, l. 20; col. 16, ll. 4-34; col. 16, l. 66 – col. 17, l. 12; col. 18, ll. 4-28.
- A clock 84 that is used by the microprocessor 54 to record the time and the date of each firing (i.e., the time and the date of each actuation of the gun's trigger) and store the time and the date of firing along with each video event record. See Fig. 14; col. 16, ll. 18-29; col. 19, ll. 1-9.

Therefore, Yerazunis et al. teaches one of ordinary skill in the art to use a microprocessor that is involved with the firing of a lethal gun or a non-lethal stun gun (TAZER™) to record in memory the date and time of each actuation of the weapon's firing trigger.

From these teachings of Mendelsohn et al. and Yerazunis et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Murray by using a microprocessor that is involved with the firing of the weapon to record in memory the date and time of each actuation of the weapon's firing trigger so that law enforcement or other

Art Unit: 3993

officials can monitor the use of the weapon and enforce its proper use. One of ordinary skill in the art would also appreciate that a modern day microprocessor (such as the microprocessor used by Mendelsohn et al. or Yerazunis et al.) is an advantageous implementation of Murray's electric control circuit given the small size and programmability of a microprocessor. Therefore, it would have been obvious to one of ordinary skill in the art to use the processor to both control the firing of Murray's weapon and record the date and time of firing.

6. The above ground of rejection is based solely on patents and/or printed publications already cited/considered in an earlier-concluded examination or review of the patent being reexamined, or has been raised to or by the Office in a pending reexamination or supplemental examination of the patent. On November 2, 2002, Public Law 107-273 was enacted. Title III, Subtitle A, Section 13105, part (a) of the Act revised the reexamination statute by adding the following new last sentence to 35 U.S.C. 303(a) and 312(a):

“The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.”

For any reexamination ordered on or after November 2, 2002, the effective date of the statutory revision, reliance on previously cited/considered art, i.e., “old art,” does not necessarily preclude the existence of a substantial new question of patentability (SNQ) that is based exclusively on that old art. Rather, determinations on whether a SNQ exists in such an instance shall be based upon a fact-specific inquiry done on a case-by-case basis.

In the present instance, there exists a SNQ based on the combined teachings of Murray, Mendelsohn et al. and Yerazunis et al. for the following reasons:

Mendelsohn et al. and Yerazunis et al. were cited during the earlier-filed *ex parte* reexamination (Control No. 90/013,770). See the Information Disclosure Statement (IDS) filed on 21 January 2017. However, the previous examiner did not rely upon either of these references to reject any claim, and the relevance of these references to the patentability of the claims was not discussed. Therefore, Mendelsohn et al. and Yerazunis et al. both present a new, non-cumulative technological teaching that was not previously considered and discussed on the record during the earlier examinations, and the request in the instant reexamination presents the

Art Unit: 3993

teachings of both Mendelsohn et al. and Yerazunis et al. in a new light, or in a different way, as compared with their use in the earlier examinations. Accordingly, reliance on the teachings of Mendelsohn et al. and Yerazunis et al. as the basis of an SNQ(s) is proper in this reexamination proceeding. See the explanation provided in the Order Granting Request for *Ex Parte* Reexamination mailed on 22 May 2017 under the heading “*Standard for Granting Request for Ex Parte Reexamination*” (pp. 2-3 of the Order). See also MPEP 2258.01, item “(B)”, section “(1)”.

7. GROUND 2: Claims 1-12 and 14-16 are rejected under under pre-AIA 35 U.S.C. 103(a) as obvious over Murray in view of Mendelsohn et al. and Yerazunis et al. (GROUND 1 above) and further in view of Cover and Mangolds et al.

The Murray, Mendelsohn et al. and Yerazunis et al. combination fails to teach that (a) the microprocessor maintains the high voltage pulsed current through the darts for a period of about 7 seconds, and (b) the pulsed current comprises 2-40 pulses per second.

Cover teaches an electrical dart weapon comprising:

- A launcher (receiver) 52 receiving replaceable cartridges 206, each cartridge having wire-tethered projectiles 208, 210, 220, 222 and a propellant 254 that propels the projectiles. See Figs. 7 and 13-15; col. 7, ll. 38-42 with col. 4, l. 67 – col. 5, l. 4; also col. 8, l. 65 – col. 9, l. 2; col. 9, ll. 18-44. As shown in Fig. 10, the projectiles may comprises darts 84. See col. 8, ll. 20-37.
- An electric circuit (see Fig. 2) including a battery 10’ and a trigger switch 12’ or 204. When the trigger switch 12’ or 204 is actuated by a user, the electric circuit functions to (a) activate the propellant 254 to propel the projectiles 208, 210, 220, 222 toward a target, and (b) conduct a high voltage pulsed current through the projectiles via wires 30’ or 212, 214 at a pulse repetition rate of 2-10 pulses per second. See Figs. 2, 7, 14 and 15; col. 5, l. 19 – col. 6, l. 18; col. 8, l. 65 – col. 9, l. 5; col. 9, ll. 45-56. The high voltage pulsed current is maintained for a sufficient length of time to immobilize a person. See col. 5, l. 65 – col. 6, l. 3.

Therefore, Cover teaches one of ordinary skill in the art to use an electric control circuit to control an electrical dart weapon such that (a) the high voltage pulsed current through the

Art Unit: 3993

projectiles is maintained for a sufficient period of time to immobilize a person, and (b) the pulsed current comprises 2-10 pulses per second. One of ordinary skill in the art would also appreciate that a modern day microprocessor (such as the microprocessor used by Mendelsohn et al. or Yerazunis et al.) is an advantageous implementation of Cover's control circuit given the small size and programmability of a microprocessor.

Mangolds et al. teaches an electrical weapon comprising:

- A launcher (receiver) 10 that fires a projectile 20 housing a deployable net 32 that is unfurled and electrified. See Figs. 1A-1C; col. 4, ll. 51-63.
- An electric circuit (see Fig. 15) including a battery 180, a microcontroller 185 and stinging circuits 182, 184, 186 for electrifying the deployable net 32, wherein the stinging circuits are tunable via a microcontroller 260 (see Fig. 17) in order to (a) conduct a high voltage pulsed current to the net 32 at a pulse rate of 1-20 pulses per second, (b) maintain the pulsed current for a period of 5-15 seconds, (c) turn the pulsed current off for a period of 1-3 minutes, and (d) repeat the cycle for up to 30 minutes. See col. 9, l. 14 – col. 10, l. 36.

Therefore, Mangolds et al. teaches one of ordinary skill in the art to use a microcontroller to control an electrical weapon such that (a) the high voltage pulsed current is maintained for a period of 5-15 seconds, and (b) the pulsed current comprises 1-20 pulses per second.

From these teachings of Cover and Mangolds et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Murray by using the microprocessor to maintain the high voltage pulsed current through the darts for a period of 5-15 seconds (which range encompasses the claimed value of about 7 seconds), with the pulsed current comprising 2-10 or 2-20 pulses per second (which range falls within the claimed range of 2-40 pulses per second), because this insures that high voltage pulsed current is produced at a sufficient level and maintained for a sufficient period to immobilize a person without permanently injuring the person.

Pertinent Prior Art

8. The O'Dwyer, Poole, Martin, Goodson et al., Shepard et al. and McMahan references are not relied upon in this Office action to reject any claim but are pertinent to the claimed invention

Art Unit: 3993

for the reasons given in the Order Granting Request for *Ex Parte* Reexamination mailed on 22 May 2017.

Remarks

9. 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).

10. In order to ensure full consideration of any amendments, affidavits or declarations, or other documents as evidence of patentability, such documents must be submitted in response to this Office action. Submissions after the next Office action, which is intended to be a final action, will be governed by the requirements of 37 CFR 1.116, which will be strictly enforced.

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

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

By Mail to: Mail Stop *Ex Parte* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
Attn: Central Reexamination Unit

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

Art Unit: 3993

12. Any proposed amendment filed in this reexamination proceeding must be made in accordance with 37 CFR 1.530(d)-(j) and comply with the formal requirements of 37 CFR 1.52(a) and (b). See MPEP 2250.

13. Any document filed by either the patent owner or third party requester *must be served* on the other party (or parties in a merged proceeding) in the reexamination proceeding in the manner provided by 37 CFR 1.248. See 37 CFR 1.550(f) and MPEP 2266.03.


14. 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 the patent 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.

15. Any inquiry concerning this communication or earlier communications from the Reexamination Examiner should be directed to Peter English whose telephone number is (571)272-6671. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis, can be reached at (571)272-6928.

For general information regarding reexamination proceedings please call the Central Reexamination Unit at 571-272-7705. For guidance on reexamination practice and procedure please call the Office of Patent Legal Administration at 571-272-7703.

/Peter C. English/
Patent Reexamination Specialist
Central Reexamination Unit

Conferees: /GAS/ and /MCG/

Reexamination 	Application/Control No. 90/013,945	Applicant(s)/Patent Under Reexamination 7,234,262
	Certificate Date	Certificate Number

Requester Correspondence Address: <input type="checkbox"/> Patent Owner <input checked="" type="checkbox"/> Third Party
ADAM R. STEPHENSON, LTD. 8350 E RAINTREE DR., STE 245 SCOTTSDALE, AZ 85260

LITIGATION REVIEW <input checked="" type="checkbox"/>	/PE/ <small>(examiner initials)</small>	8/3/2017 <small>(date)</small>
Case Name	Director Initials	
Taser International, Inc. v. Phazzer Electronics, Inc. et al., US District-Florida Middle, No. 6:16cv366, open.	GAS for JRC	
Taser International, Inc. v. Phazzer Electronics, Inc. et al., US District-Arizona, No. 2:15cv2398, closed.	GAS for JRC	
Taser International, Inc. v. Stinger Systems, Inc., US District-Arizona, No. 2:07cv42, closed.	GAS for JRC	

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER
1. NONE	
2.	
3.	
4.	