



# 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.
12/553,107	09/03/2009	Brian Ault	POZN.P0026US	5949

  

108197	7590	10/09/2015
Parker Highlander PLLC 1120 South Capital of Texas Highway Bldg. 1, Suite 200 Austin, TX 78746		

  

EXAMINER	
JUSTICE, GINA CHIEUN YU	

  

ART UNIT	PAPER NUMBER
1617	

  

NOTIFICATION DATE	DELIVERY MODE
10/09/2015	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.

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

docket@phiplaw.com

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

**Continuation of No. 5:**

Applicant's reply has overcome the following rejections:

- 1) Rejection made under 35 U.S.C. § 103 (a) over Hassan-Alin et al. (Gastroenterology, 124 (4), 2003) in view of Plachetka (US 6926907 B2), which was indicated in the previous Office action dated March 26, 2015;
- 2) Obviousness double patenting rejection made in view of claims 1-55 of US Pat. No. 6926907 B2 in view of Hassan-Alin; and
- 3) Obviousness double patenting rejection made in view of claims 57-75 of Application No. 14/045156 (now US Pat. No. 8852636).

**Continuation of No. 12:**

Claims 19, 29, 33, 34, 40, 42 and 45 remain rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 8945621 B2 (previously cited as Application No. 12/822612). The rejection is deemed proper and maintained for the reasons of record. Although applicant indicated disagreement with the rejection, no specific reasons or explanation was given.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA YU JUSTICE whose telephone number is

(571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA YU JUSTICE/  
Primary Examiner, Art Unit 1617

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 12/553,107	<b>Applicant(s)</b> AULT ET AL.	
	<b>Examiner</b> GINA YU JUSTICE	<b>Art Unit</b> 1617	<b>AIA (First Inventor to File) Status</b> No

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

THE REPLY FILED 25 September 2015 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  
**NO NOTICE OF APPEAL FILED**

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires \_\_\_\_\_ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

*Examiner Note:* If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 25 September 2015. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because

a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

b) ☐ They raise the issue of new matter (see NOTE below);

c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See continuation sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): (a) ☐ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_\_.

9. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

10. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

11. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

12. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See continuation sheet.

13. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

14. ☐ Other: \_\_\_\_\_.

**STATUS OF CLAIMS**

15. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 19, 29, 33, 34, 40, 42 and 45.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

	/GINA YU JUSTICE/ Primary Examiner, Art Unit 1617
--	--