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.
29/522,339	03/30/2015	Raymond A. Holman	HOL05 P-100	2628

15671 7590 08/01/2016

Gardner, Linn, Burkhart & Flory, LLP
2851 Charlevoix Dr., SE, Suite 207
Grand Rapids, MI 49546

EXAMINER
PRATT, MICHAEL AARON

ART UNIT	PAPER NUMBER
2914	

NOTIFICATION DATE	DELIVERY MODE
08/01/2016	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):

sytsma@glbf.com
patents@glbf.com
clark@glbf.com

Office Action Summary	Application No. 29/522,339	Applicant(s) HOLMAN, RAYMOND A.	
	Examiner MICHAEL A. PRATT	Art Unit 2914	AIA (First Inventor to File) Status Yes

-- 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 2 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 _____.

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

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) _____ is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☐ Claim(s) _____ 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 allowable, you may be eligible to benefit from the **Patent Prosecution Highway** 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 *3/30/2015* 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.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date *3/31/2015*.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

4) ☐ Other: _____.

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

RESTRICTION REQUIREMENT

This application discloses the following embodiments:

Embodiment 1 - Figs. Disclose an exhaust pipe with an appearance of a revolver.

Embodiment 2 - Figs. Disclose an exhaust pipe with an appearance of a double barrel shotgun

Embodiment 3 - Figs. Disclose an exhaust pipe with an appearance of a pump shotgun

Multiple embodiments of a single inventive concept may be included in the same design application only if they are patentably indistinct. See *In re Rubinfield*, 270 F.2d 391, 123 USPQ 210 (CCPA 1959). Embodiments that are patentably distinct from one another do not constitute a single inventive concept and thus may not be included in the same design application. See *In re Platner*, 155 USPQ 222 (Comm'r Pat. 1967). The differences in appearance between the embodiments create(s) patentably distinct designs.

Because of the differences identified, the embodiments are considered to either have overall appearances that are not basically the same, or if they are basically the same, the differences are not minor and patentably indistinct or are not shown to be obvious in view of analogous prior art.

The above embodiments divide into the following patentably distinct groups of designs:

Group I: Embodiment 1

Group II: Embodiment 2

Group III: Embodiment 3

Restriction is required under 35 U.S.C. 121 to one of the patentably distinct groups of designs.

Applicant is advised that the reply to be complete must include a provisional election of one of the enumerated designs listed above, even though the requirement may be traversed (**37 CFR 1.143**). Any reply that does not include election of a single group will be held nonresponsive.

Applicant is also requested to direct cancelation of all drawing figures and the corresponding descriptions which are directed to nonelected groups.

Should applicant traverse this requirement on the grounds that the groups are not patentably distinct, applicant should present evidence or identify such evidence now of record showing the groups to be obvious variations of one another. If the groups are determined not to be patentably distinct and they remain in this application, any rejection of one group over prior art will apply equally to all other groups. See *Ex parte Appeal No.* 315-40, 152 USPQ 71 (Bd. App. 1965). No argument asserting patentability based on the differences between the groups will be considered once the groups have been determined to comprise a single inventive concept.

In view of the above requirement, action on the merits is deferred pending compliance with the requirement in accordance with *Ex parte Heckman*, 135 USPQ 229 (P.O. Super. Exam. 1960).

Please note that the issue of whether a search and examination of an entire application can be made without serious burden to an examiner (as noted in MPEP § 803) is not applicable to design applications when determining whether a restriction requirement should be made; see MPEP § 1504.05. MPEP § 803 does not apply to design applications because this is an instance where other provisions have been made for design practice; see 35 USC 171. In addition, because of the single-claim regulation stated in **37 CFR 1.153**, once the presence of

patentably distinct designs in the application has been determined, the decision to restrict is not at the examiner's discretion.

Also note that, "In the case of an "ornamental design for an article of manufacture," with which we are here concerned, the patenting of which is provided for in 35 U.S.C. §171, the "best mode" requirement of the first paragraph of §112 is not applicable, as a design has only one "mode" and it can be described only by illustrations showing what it looks like (though some added description in words may be useful to explain the illustrations)." *Racing Strollers Inc. v. TRI Industries Inc.* 11 USPQ2d 1300 (CAFC 1989.

Design applications are confined to one claim. Variations of a single inventive concept may be presented and covered by the single claim. Variations are usually presented in the form of separate embodiments. Embodiments that are considered patentably distinct by the standard of Obviousness-Type Double Patenting do not share a single inventive concept. Restriction practice is employed to remove patentably distinct embodiments from applications.

There are two consecutive steps in determining whether two designs may be kept in the same application:

1. The designs must first be considered as a whole. If the two designs have overall appearances with basically the same design characteristics step two is required.

2. Secondly the differences between the two designs must be considered. When the differences between the two designs are insufficient to patentably distinguish one design from the other, no restriction is required.

   Differences may be considered patentably insufficient when they are de minimis in nature or obvious to a designer of ordinary skill in the art. A difference is de minimis in nature when its visual effect is unrelated to the overall aesthetic appearance of the design – so minimal or so minor that it has insignificant impact on the overall visual impression. A difference is obvious when it is taught or suggested in analogous prior art. Differences may also be obvious if they are among design features, which have been declared obvious in case law.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL PRATT whose telephone number is (571)272-2145. The examiner can normally be reached on 6:00 - 2:00 MST. M - F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Celia Murphy can be reached on (571) 272-2654. 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.

/MICHAEL A. PRATT/
Primary Examiner, Art Unit 2914