

# EXHIBIT 26

<b>Order Granting / Denying Request For Ex Parte Reexamination</b>	<b>Control No.</b> 90/012,791	<b>Patent Under Reexamination</b> 6,775,664 B2 E
	<b>Examiner</b> CAROLYN B. KOSOWSKI	<b>Art Unit</b> 2431

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

The request for *ex parte* reexamination filed 08 February 2013 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)  PTO-892,      b)  PTO/SB/08,      c)  Other: \_\_\_\_\_

1.  The request for *ex parte* reexamination is GRANTED.

**RESPONSE TIMES ARE SET AS FOLLOWS:**

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2.  The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 ( c ) will be made to requester:

- a)  by Treasury check or,
- b)  by credit to Deposit Account No. \_\_\_\_\_, or
- c)  by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

/CAROLYN B KOSOWSKI/ Primary Examiner, Art Unit 3992		
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cc:Requester ( if third party requester )

### DECISION GRANTING *EX PARTE* REEXAMINATION

1. A substantial new question of patentability (SNQ) is raised affecting claims 1, 5, 6, 21, 22, 26, 28, and 38 of U.S. Patent No. 6,775,664 ("the '664 Patent") by the request for *ex parte* reexamination filed on February 8, 2013.

#### ***Prior Art Relied on in the Request***

Ex. PA-1: Bowman et al., U.S. Patent No. 6,185,558 ("Bowman et al.");

Ex. PA-2: Culliss, U.S. Patent No. 6,006,222 ("Culliss"); and

Ex. PA-3: Yezdezard Z. Lashkari, "Feature Guided Automated Collaborative Filtering," MIT Master's Thesis ("Lashkari").

#### ***Issues Raised in the Request***

2. Requester asserts that the cited references raise SNQs in the following manner<sup>1</sup>:
  - Issue 1: Claims 1, 5, 6, 21, 22, 26, 28, and 38 of the '664 Patent are invalid under 35 U.S.C. § 102(a) as being anticipated by Bowman et al.
  - Issue 2: Claims 1, 5, 6, 21, 22, 26, 28, and 38 of the '664 Patent are invalid under 35 U.S.C. § 102(e) as being anticipated by Culliss.
  - Issue 3: Claims 1, 6, 21, 22, 26, 28, and 38 of the '664 Patent are invalid under 35 U.S.C. § 102(b) as being anticipated by Lashkari.
  - Issue 4: Claims 1, 6, 21, 22, 26, 28, and 38 of the '664 Patent are invalid under 35 U.S.C. § 103(a) as rendered obvious by Lashkari in view of Bowman et

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<sup>1</sup> In the Request, the Requester is asserting that the proposed rejections raise a reasonable likelihood that the requester will prevail ("RLP"). (Request, pg. 11.) The Examiner respectfully submits that the Request is an *ex parte* reexamination request. (*id.* at 1.) In an *ex parte* reexamination, the presence or absence of "a substantial new question of patentability" determines whether or not reexamination is ordered. MPEP § 2242. Therefore, for the purposes of reviewing the Request, the SNQ standard will be applied.

al.

Issue 5: Claim 5 of the '664 Patent is invalid under 35 U.S.C. § 103(a) as rendered obvious by Lashkari in view of Culliss.

### ***Prosecution History***

3. The '664 Patent issued on August 10, 2004 from U.S. Patent Application No. 10/045,198 filed on October 22, 2001. The '664 Patent is a continuation of U.S. Patent Application No. 09/204,149, filed on December 3, 1998 now U.S. Patent No. 6,314,420 ("the '420 Patent"), which is a continuation-in-part of U.S. Patent Application No. 08/627,436, filed on April 4, 1996 now U.S. Patent No. 5,867,799 ("the '799 Patent"), the disclosures of which were incorporated by reference. In addition, the '664 Patent is also a continuation-in-part of U.S. Patent Application No. 09/195,708, filed on November 19, 1998 now U.S. Patent No. 6,308,175, which is a continuation-in-part of U.S. Patent Application No. 08/627,436, filed Apr. 4, 1996 now U.S. Patent No. 5,867,794, the disclosures of which were incorporated by reference.<sup>2</sup>
4. The Examiner did not reject the claims and issued a notice of allowance with the following statement of reasons for allowance:

The Application ("INFORMATION FILTER SYSTEM AND METHOD FOR INTEGRATED CONTENT-BASED AND COLLABORATIVE/ADAPTIVE FEEDBACK QUERIES") is a Continuation of Application of U.S. Patent (6,314,420, Collaborative/Adaptive Search Engine), published to the inventors Lang et al., 11/6/2001. The patent teaches information search by using information entities to filter their relevancy to the queries and receiving feedback for collaborative feedback data. The Application is also a Continuation-in-part of

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<sup>2</sup> Note the typographical error on the face of the '664 Patent. The last number in "Related U.S. Application Data, recites "...now Pat. No. 5,867,794." and should recite "...now Pat. No. 5,867,799."

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Application of U.S. Patent (6,308,175), published to the same inventors, 10/23/2001. This patent teaches an integrated collaborative/content-based filter structure for finding network information entities relevant to information desired by an individual user. The two patents are continuation in part of the application, 80/627,436 (U.S. Patent 6,308,175), filed 4/4/1996 which teaches filtering massive flow of information from network by interacting feedback and adapting adaptive profiles. The filed date 4/4/1996 of Application 80/627,436 is claimed as the prior date of the current Patent Application.

The Application extends the functionality of the two Patents by teaching a content-based filter system for combining information from the scanning system for a first user and information from feedback by other users, and filtering the combined information for relevance to queries and the a first user.

4. The prior arts searched and investigated from different domains do not fairly teach or suggest the teaching of information filtering through a combination of data from the a first user and data from feedback by other users as recited in each of the independent Claims 2 and 27. Claims 3-26 and 28-39 are dependent on Claims 2 and 9, respectively and also distinct from the prior arts for the same reason.

(Notice of Allowance 04/02/2004, pp. 2-3.)

5. Related parent patent, U.S. Patent No. 6,314,420 (i.e., the '420 Patent), is also under reexamination (Control No. 90/009991.)

#### ***First Request for Reexamination***

6. A first request for reexamination was filed on February 8, 2013 and assigned Control No. 90/012,722 ("the '722 reexamination proceeding"). As set forth in the order granting reexamination, the Examiner found that the Request presented a SNQ based on U.S. Patent No. 6,202,058 (Rose et al.) with respect to claims 1, 5, 6, 21, 22, 26, 28, and 30. (Order in the '722 reexamination proceeding, pp. 11-13.) The Examiner determined that the '664 Patent was entitled to the priority date of April 4, 1996, which was the filing date of the continuation-in-part application (Application No. 08/627,436)

(i.e., the '799 Patent). (Order in the '722 reexamination proceeding, pg. 6.) The Examiner noted that "[n]either the Request nor the original prosecution has presented any argument or evidence for denying the priority date of Apr. 4, 1996 to claims requested for reexamination." (Order in the '722 reexamination proceeding, pg. 6.) The Examiner found that "[b]roadly, the inventive concept and claim language of '664, independent claims 1 and 26 find support in USPN 5,867,799 (priority date Apr. 4, 1996)." (Order in the '722 reexamination proceeding, pg. 7.) Based on this determination, the Examiner found that the Bowman et al., Culliss, and Lashkari references were intervening references and did not qualify as prior art. (Order in the '722 reexamination proceeding, pp. 6-10.) As a result, the proposed rejections based on Bowman et al., Culliss, and Lashkari were not ordered and were not addressed in further detail in the Order. (Order in the '722 reexamination proceeding, pg. 10.) In other words, the Order did not address whether the proposed rejections based on Bowman et al., Culliss, and Lashkari raised a SNQ.

### ***Priority***

7. This *ex parte* reexamination request, which is the second reexamination request of the '664 Patent, was filed on February 8, 2013. In the Request, the Requester provides additional explanation as to why the '664 claims at issue in this reexamination (i.e., claims 1, 5, 6, 21, 22, 26, 28, and 30) are not entitled to the April 4, 1996 priority date of the '799 Patent. (Request, pp. 7-11.) The Request explains that the limitation of "searching for information relevant to a query associated with a first user in a plurality of

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users" in claims 1 and 26 is not fully supported and described in the '799 specification.

(Request, pg. 8.) Because the claims in the '664 Patent are not entitled to priority, the Request asserts that Bowman et al., Culliss, and Lashkaria are prior art, and are relied upon to raise an SNQ with respect to claims 1, 5, 6, 21, 22, 26, 28, and 30.

8. Upon review of the Request, the Examiner respectfully submits that the '664 Patent is not entitled to the April 4, 1996 priority date, which was the filing date of the continuation-in-part application (Application No. 08/627,436) (i.e., the '799 Patent). Instead the '664 Patent is entitled to the December 3, 1998 priority date, which is the filing date of the continuation application (Application No. 09/204,149) (i.e., U.S. Patent No. 6,314,420). Based on the additional evidence provided in the Request in this reexamination proceeding, it is respectfully submitted that the limitation of "searching for information relevant to a query associated with a first user in a plurality of users" in claims 1 and 26 is not fully supported and described in the '799 specification. This evidence was not provided to the Examiner in the first reexamination. (See pages 7-11 of the Request.)

9. For purposes of the SNQ determination, the intervening references, namely Bowman et al., Culliss, and Lashkaria, will be considered in light of the priority issues. MPEP § 2217.

#### ***Substantial New Question of Patentability***

10. The presence or absence of "a substantial new question of patentability" determines whether or not reexamination is ordered. If the prior art patents and printed

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publications raise a substantial question of patentability of at least one claim of the patent, then a substantial new question of patentability is present, unless the same question of patentability has already been decided by (A) a final holding of invalidity, after all appeals, or (B) by the Office in a previous examination or pending reexamination of the patent. A "previous examination" of the patent is: (A) the original examination of the application which matured into the patent; (B) the examination of the patent in a reissue application that has resulted in a reissue of the patent; or (C) the examination of the patent in an earlier pending or concluded reexamination.

11. In the case of claims requested for reexamination, where it appears that the claimed invention as a whole was relied upon to distinguish over the prior art of record, there may be many different ways to establish a substantial likelihood that a reasonable Examiner would consider a prior art patent or printed publication important in deciding whether or not the claim is patentable. However, where the prior art reference appears to teach the claimed invention as a whole, there exists a substantial likelihood that a reasonable Examiner would have considered the reference important in deciding whether or not the claim is patentable.

12. For purposes of the SNQ determination, independent claim 1 is used as a representative claim. Independent claim 1 as a whole is being used by the Examiner to show how teachings of the proposed references create a SNQ in light of the original prosecution history.

Claim 1: A search system comprising:



a scanning system for searching for information relevant to a query associated with a first user in a plurality of users;

a feed back system for receiving information found to be relevant to the query by other users; and

a content-based filter system for combining the information from the feedback system with the information from the scanning system and for filtering the combined information for relevance to at least one of the query and the first user.

***Substantial New Question of Patentability Determination***

The Request proposes that five substantial new questions of patentability (SNQs) are raised by the three references cited in the request. (Request, pp. 11-12.) For the purpose of this analysis, the proposed SNQs are grouped according to the primary reference.

None of the cited references were previously considered or analyzed on the merits in the prosecution history or a final holding of invalidity of the Federal Courts. All of the cited references are considered to be "new art." See MPEP § 2258.01.

**Proposed SNQ 1 Bowman et al.**

As discussed at pages 12-13 of the Request, Bowman et al. (PA-1) functions similarly to a traditional search engine in that it accepts a query from a user and generates a body of results in response. (See Bowman et al. at Abstract; 5:31-32; claim

28.) Bowman et al. then filters those results based on a combination of collaborative feedback from other users and content analysis.

For example, if a user enters a given query, Bowman et al. generates a body of search result items satisfying the query. (Bowman at claim 28 [preamble-b].) (Bowman et al. then gives each of these items a ranking score based on how often they were selected by prior users who had entered queries containing those same terms. (*See id.* at 2:30-35; claim 28[c].) Alternatively, rather than utilizing feedback from *all* users who entered the same query, Bowman et al. may cluster users into discrete groups (such as age, income, or behavioral groups) and use feedback from users *within the same group* who entered the same query. (*See id.* at 3:28-33.) In this way, search results returned in response to a given query may have different ranking scores for users in different groups.

Some Bowman et al. embodiments further adjust the score of each search result item according to its content, by analyzing how many of the terms in the query appear in the item. (*See id.* at 8:50-53; claim 29.) Items that contain all the terms in the query get higher adjustments to their scores, while items that contain fewer of the query terms get progressively lower adjustments. (*See id.*)

The items are finally presented to the user in ranked order. (*Id.* at Abstract.) Additionally, the system may present only a subset of the items whose scores exceed a certain threshold, or a predetermined number of items that have the highest scores. (*See id.* at 9:60-64.)

In sum, the final score for each search result item in Bowman et al. is generated through a combination of collaborative feedback-based data and content-based data (See *id.* at 2:40-47, 9:28-53). This score is then used to filter which items are presented to the user. (See *id.* at 9:60-64.)

Bowman et al. appears to teach the claimed invention as a whole. Therefore, it is agreed that Bowman et al. raises a substantial new question of patentability with respect to the claims requested for reexamination. There is a substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether the claims are patentable.

#### **Proposed SNQ 2 Culliss**

As discussed at pages 13-14 of the Request, Culliss (PA-2), like Bowman et al., is directed to a search engine system that ranks search results based on a combination of the content of the search results and feedback from prior users who had viewed these search results.

In Culliss, Internet articles are associated with key terms they contain. (Culliss at 3:60-64.) These articles are given a "key term score" for each of these key terms. (*Id.* at 3:65-66.) Culliss discloses that each key term score might initially be set at 1. Alternatively, each key term score might be set to reflect how many times the key term appears in the article's content. (See *id.* at 14:32-37.)

Culliss discloses that squibs of the articles are presented to the user in the order dictated by the articles' combined key term scores. (*Id.* at 5:7-17.) When a user selects an article whose squib is presented to him, the key term scores for that article which correspond to the terms in the user's query are increased. (*Id.* at 4:37-49.) This is because the user, by selecting the article in response to his query, has implicitly indicated that these key terms from the query are appropriately matched to the article. (*See id.*) Thus, the next user who enters that same query will see a new rank of articles, based on the new key term scores that reflect the input of the first user. (*Id.* at 4:66-5:1.)

In short, the article ranking in Culliss is based on a combination of the articles' content and feedback from previous users who entered the same query. This is because both factors (article content and user feedback) are used to calculate the key term scores that determine the article ranking.

Culliss appears to teach the claimed invention as a whole. Therefore, it is agreed that Culliss raises a substantial new question of patentability with respect to the claims requested for reexamination. There is a substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether the claims are patentable.

**Proposed SNQ 3 Lashkari**

**Proposed SNQ 4 Lashkari in view of Bowman**

**Proposed SNQ 5 Lashkari in view of Culliss**

As discussed at pages 14-16 of the Request, Lashkari (PA-3) discloses WEBHOUND, a filtering system designed for use with existing search engines. WEBHOUND uses collaborative filtering, which it terms "automated collaborative filtering" or "ACF." As Lashkari states, collaborative filtering "relies on a deceptively simple idea: if person A correlates strongly with person B in rating a set of items, then it is possible to predict the rating of a new item for A, given B's rating for that item." (Lashkari at 14.) At a high level, the collaborative filtering described in WEBHOUND functions by constructing a profile for a user, comparing the user's profile with profiles of other users, constructing the set of nearest neighbors for the user, and using that set of nearest neighbors to make recommendations. (*Id.* at 25.) WEBHOUND further modifies ACF into feature-guided automated collaborative filtering or FGACF, which clusters users based on their responses to features (e.g. words) within the content of various documents, rather than their responses to the documents themselves. (*Id.* at 33.) As the Lashkari Abstract summarizes: "This thesis claims that content-based and automated collaborative filtering are complementary techniques, and the combination of ACF with some easily extractable features of documents is a powerful information filtering technique for complex information spaces." (*Id.* at Abstract.)

More specifically, users of the WEBHOUND system register for an account, then submit or rate a number of "preferred" documents to the system. (Lashkari at 57-59.) WEBHOUND then extracts the words from the preferred documents and generates scores based on term frequency inverse document frequency (TF/IDF), which are then

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combined to create a user profile. (*Id.* at 62-64.) Users can then request new documents using collaborative filtering alone (ACF) or using content-based collaborative filtering (FGACF). (*Id.* at 59-60.) Furthermore, Lashkari contemplates using WEBHOUND to filter search results from search engines like Lycos, Webcrawler, and Yahoo. (*Id.* at 78.)

Lashkari, either alone or in combination with Bowman et al. and Culliss, appears to teach the claimed invention as a whole. Therefore, it is agreed that Lashkari, Lashkari in view of Bowman et al., and Lashkari in view of Culliss raise a substantial new question of patentability with respect to the claims requested for reexamination. There is a substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether the claims are patentable.

#### ***Scope of Reexamination***

13. *Ex Parte* Reexamination is granted for claims 1, 5, 6, 21, 22, 26, 28, and 38.
14. Claims 2-4, 7-20, 23-25, 27, and 29-37 were not requested to undergo reexamination, and thus are not subject to reexamination.

#### ***Conclusion***

##### **Extensions of Time**

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*

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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).

### **Waiver of Right to File Patent Owner Statement**

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester, see 37 C.F.R. 1.550. The Patent Owner may consider using the following statement in a document waiving the right to file a Patent Owner Statement:

Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement.

### **Amendment in Reexamination Proceedings**

Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR § 1.52(a) and (b), and must contain any fees required by 37 CFR § 1.20(c). See MPEP § 2250(IV) for examples to assist in the preparation of proper proposed amendments in reexamination proceedings.

### **Service of Papers**

Any paper filed with the USPTO, *i.e.*, any submission made, by either the Patent Owner or the Third Party Requester must be served on every other party in the reexamination proceeding, including any other third party requester that is part of the proceeding due to merger of the reexamination proceedings. As proof of service, the party submitting the paper to the Office must attach a Certificate of Service to the paper, which sets forth the name and address of the party served and the method of service. Papers filed without the required Certificate of Service may be denied consideration. 37 CFR 1.550; MPEP 2266.03.

### **Notification of Concurrent Proceedings**

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 Patent No. 6,314,420 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.

All correspondence relating to this *ex parte* reexamination proceeding should be directed as follows:

By U.S. Postal Service Mail to:  
Mail Stop *Ex Parte* Reexam  
ATTN: Central Reexamination Unit  
Commissioner for Patents P.O. Box 1450



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Alexandria, VA 22313-1450

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

By hand to: Customer Service Window  
Randolph Building  
401 Dulany St.  
Alexandria, VA 22314

By EFS-Web:

Registered users of EFS-Web may alternatively submit such correspondence via the electronic filing system EFS-Web, at

<https://efs.uspto.gov/efile/myportal/efs-registered>

EFS-Web offers the benefit of quick submission to the particular area of the Office that needs to act on the correspondence. Also, EFS-Web submissions are "soft scanned" (i.e., electronically uploaded) directly into the official file for the reexamination proceeding, which offers parties the opportunity to review the content of their submissions after the "soft scanning" process is complete.

Any inquiry concerning this communication or as to the status of this proceeding should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/CAROLYN B KOSOWSKI/  
Primary Examiner, Art Unit 2431

Conferees:  
/Ovidio Escalante/

/Daniel J Ryman/  
Supervisory Patent Examiner, Art Unit 3992

<b>Notice of References Cited</b>	Application/Control No. 90/012,791	Applicant(s)/Patent Under Reexamination 6,775,664 B2 ET AL.	
	Examiner CAROLYN B. KOSOWSKI	Art Unit 2431	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,185,558	02-2001	Bowman et al.	705/37
*	B	US-6,006,222	12-1999	Culliss, Gary	1/1
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
*	U	Lashkari, Yezdezard Zerxes, Feature Guided Automated Collaborative Filtering, MIT, 1996.
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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90/012,791	02/08/2013	6,775,664 B2		3583

570                      7590                      03/07/2013  
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EXAMINER

KOSOWSKI, CAROLYN M

ART UNIT                      PAPER NUMBER

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MAIL DATE                      DELIVERY MODE

03/07/2013

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.