

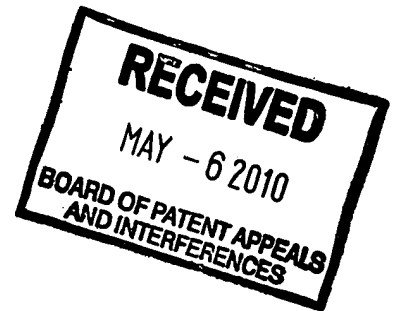
00093

BOARD OF PATENT APPEALS AND INTERFERENCES  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the appeal of the reexamination application of:

U.S. Patent No. 4,910,652  
Gary E. Rhine  
Reexamination Control No.: 90/005,694  
Appeal No.: 2010-006734  
Filed: April 3, 2000  
For: COMBINATION WRIST WATCH AND  
FLASHLIGHT

Exr. S. Husar  
Art Unit: 2875



BOARD OF PATENT APPEALS AND INTERFERENCES  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

May 4, 2010

U.S. EXPRESS MAIL CERTIFICATE

Express Mail No.: EV 518809295 US  
Date of Deposit: May 4, 2010

I hereby certify that the following attached papers, Owner's Supplemental Response To Examiner's Supplemental Answer Filed March 31, 2010, and Exhibits A and B are being sent by U.S. Express Mail to Board of Patent Appeals and Interferences, United States Patent and Trademark, P.O. Box 1450, Alexandria VA 22313-1450.

Respectfully submitted,

EMCH, SCHAFFER, SCHAUB  
& PORCELLO CO., L.P.A.

A handwritten signature in cursive script that reads "Kathy A. Burgess".

Kathy A. Burgess

Date: May 4, 2010

BOARD OF PATENT APPEALS AND INTERFERENCES  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the appeal of the reexamination application of:

Gary E. Rhine

Reexamination Control No: 90/005,694

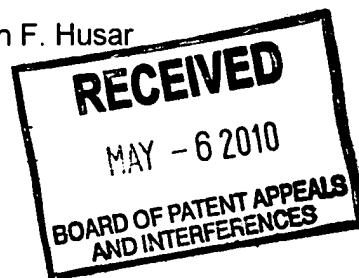
Appeal No.: 2010-006734

Filing Date: April 3, 2000

Title: COMBINATION WRIST WATCH AND  
FLASHLIGHT

Art Unit: 2837

Examiner: Stephen F. Husar



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**OWNER'S SUPPLEMENTAL RESPONSE TO EXAMINER'S  
SUPPLEMENTAL ANSWER FILED MARCH 31, 2010**

BOARD OF PATENT APPEALS AND INTERFERENCES  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

May 4, 2010

Sir:

This Supplemental Response is being filed in response to the Examiner's outrageous Supplemental Answer filed March 31, 2010. In the Supplemental Answer the Examiner argues that since United States Patent No. 4,910,652, the patent in this Reexamination, has expired, the claims cannot be amended pursuant to 37 CFR §1.530(j). The Reexamination of the '652 patent has been in process since April 12, 2000. It is respectfully submitted, that if this reexamination and appeal had proceeded in a timely manner, the issues now on

appeal to the Board of Appeals would have been resolved well in advance of the 2007 expiration of the '652 patent.

Owner Rhine submits that the reexamination proceedings were fairly timely through the Examiner's third Office Action and the Owner's Response to that Office Action dated August 27, 2002. The period of time from the Owner's Response on August 27, 2002, to the filing of the fourth Office Action in December 21, 2004, was 28 months. This is not a timely response on the part of the Examiner.

The final Office Action was filed on June 15, 2005. Owner Rhine filed his Notice of Appeal on August 10, 2005. Owner Rhine's Brief was filed on October 6, 2005, via USPS Express Mail. See Exhibit A to this Supplemental Response (Express Mail Certificate and a copy of the date stamped post card dated October 6, 2005, as received by the United States Patent & Trademark Office). On October 19, 2006, Owner Rhine filed a Request For Status Check due to the fact that, as of that date, there was no indication that the Brief was filed with the United States Patent Office (Exhibit B). No response to the Request For Status Check was ever received.

Owner Rhine received a Failure To Comply Notice from the Examiner dated February 19, 2008. The Failure To Comply Notice indicated that the Brief was filed on March 27, 2006. Owner Rhine questions the veracity of the Examiner's contention that the Brief was filed on March 27, 2006, rather than October 6, 2005. Owner Rhine further inquires as to why the bibliographic data when checked on October 19, 2006, indicates that the status is "Notice of Appeal filed". Even accepting that Owner Rhine's Brief was filed on March 27,

2006, why did the Examiner require nearly two years to file a Failure To Comply Notice (February 19, 2008).

In response to the Failure To Comply Notice an Amended Brief was filed on February 28, 2008, and a Substituted Amended Brief was filed on March 4, 2008. The Examiner's Answer was filed on January 30, 2009, again nearly one year after the filing of the Amended Brief.

On March 2, 2009, the Owner Rhine replied to the Examiner's Answer. Now after more than a year, the Examiner files this Supplemental Answer.

Owner Rhine submits that, if the Examiner had timely filed the above noted papers, this Appeal of this Reexamination could easily have been resolved before the expiration of the '652 patent on March 19, 2007.

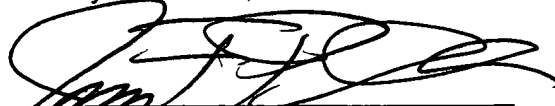
A review of the transaction history of this reexamination would indicate that the reexamination has pended for 10 years; of that time 5 years and 7 months have been lost due to inactivity on the part of the United States Patent & Trademark Office and the Examiner taking grossly excessive amounts of time to respond to Rhine's filings. If the Examiner's responses had been timely this appeal could have been resolved long prior to the March 19, 2007, expiration of the '652 patent.

Therefore, Owner Rhine respectfully requests that the Board of Appeals consider his arguments as presented in his Appeal Brief and supporting Affidavit in support of claim 1 as amended:

1. (As Amended) A time keeping and displaying wrist mountable watch having a flashlight mounted in the case thereof, said flashlight comprising a power supply for supplying electrical power to said flashlight, said power supply

electrically connected to at least one light source, and time delay means for automatically extinguishing said light source after a fixed time delay following the energization of said light source by the electrical deenergization of said light source.

Respectfully submitted,



James F. Porcello, Jr.  
Reg. No. 29,425

Emch, Schaffer, Schaub  
& Porcello Co., L.P.A.  
P.O. Box 916  
Toledo, OH 43697-0916  
JFP/kab

Certificate of Service

This is to certify that copies of the Owner's Supplemental Response To Examiner's Supplemental Answer Filed March 31, 2010, Exhibits A and B, and U.S. Express Mail Certificate, Certificate No. EV 518809295 were served on Scott Stimpson of Morgan Lewis, 101 Park Avenue, 42<sup>nd</sup> Floor, New York, New York 10178, Attorneys for Defendant, Casio, Inc. by regular United States mail on this 4th day of May, 2010.



James F. Porcello, Jr.



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MAIL STOP TTAB  
 SERIAL NO. 90/005,694 CASE NO. 00093  
4,910,652  
 APPLICANT(S): Gary E. Rhine **DOCKETED**  
 FOR: COMBINATION WRIST WATCH AND FLASHLIGHT JFP/bam

THE PATENT OFFICE MAIL ROOM DATE STAMP HEREON ACKNOWLEDGES RECEIPT OF THE FOLLOWING ITEMS:

<input type="checkbox"/> Patent Application (Sp (Claims ___ pages)(A)	<input type="checkbox"/> Amendment
<input type="checkbox"/> Drawing(s) (___ sh)	<input type="checkbox"/> I.D.S. and ___ References
<input type="checkbox"/> Assignment	<input type="checkbox"/> Extension of Time
<input type="checkbox"/> Declaration and Powe	<input type="checkbox"/> Issue Fee Transmittal
<input type="checkbox"/> Small Entity Declarat.	<input type="checkbox"/> Advance Patent Copy Order
<input checked="" type="checkbox"/> Express Mail Certificate	<input type="checkbox"/> Maintenance Fee Transmittal
No. <u>EV439669375US</u>	<input type="checkbox"/> TM/SM Application
<input checked="" type="checkbox"/> Fees \$ <u>500.00</u> (check)	<input type="checkbox"/> TM/SM Exhibits(3)
Other <u>Applicant's Brief on Appeal, including Affidavit of</u>	<input type="checkbox"/> Sec. 8 & 15 Declaration
<u>Gary E. Rhine and Exhibits A, A1, A2, A3, A4, and C</u>	



10-06-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #34

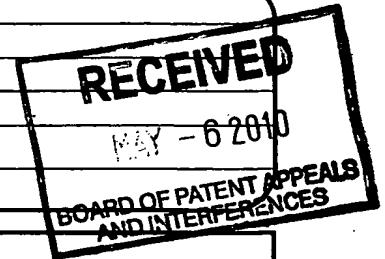
EXHIBIT  
 A

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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	90/005,694
Filing Date	April 03, 2000
First Named Inventor	Gary Rhine
Art Unit	2875
Examiner Name	Stephen F. Husar
Attorney Docket Number	00093



Total Number of Pages in This Submission

## ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input checked="" type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
Remarks _____		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Emch, Schaffer, Schaub & Porcello Co., L.P.A.		
Signature			
Printed name	James F. Porcello, Jr.		
Date	10/19/06	Reg. No.	29,425

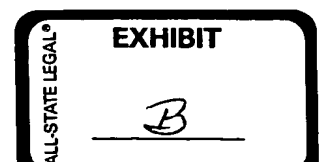
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Signature			
Typed or printed name	Kathy A. Burgess	Date	10/19/06

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Practitioner's Docket No. 00093

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Gary Rhine  
Application No.: 090 / 005,694 Group No.: 2875  
Filed: April 03, 2000 Examiner: Stephen F. Husar  
For: COMBINATION WRIST WATCH AND FLASHLIGHT

Assistant Commissioner for Patents  
Washington, D.C. 20231

**STATUS INQUIRY**

1. More than 14 months have passed since we have heard anything on this matter.

NEW APPLICATIONS

the filing of this application on \_\_\_\_\_.

No communication has been received from the Patent and Trademark Office indicating action on this application.

AMENDED APPLICATIONS

the filing of a response on \_\_\_\_\_.

No further communication has been received from the Patent and Trademark Office.

APPEALED APPLICATION

The Appeal Brief was filed on \_\_\_\_\_.

*(check and complete applicable items below)*

An Examiner's Answer was mailed on \_\_\_\_\_.

A Reply to the Examiner's Answer was submitted on \_\_\_\_\_.

ALLOWED APPLICATIONS

the mailing of FORM POL-327 and/or Examiner's Amendment on \_\_\_\_\_.

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Date: 10/19/06

Kathy A. Burgess  
Signature  
Kathy A. Burgess  
*(type or print name of person certifying)*



2. Kindly advise the undersigned of the present status of this application, by checking the appropriate box below. A stamped return-addressed envelope is provided.

NOTE: Status Inquiries should not be submitted for:

NEW applications until a reasonable period after the Official Gazette indicates that the filing date of the "oldest new case" awaiting action in the group to which the application is assigned, is subsequent to the filing date of the application, or

AMENDED applications within six (6) months after the filing of a response to which no reply from the PTO has been received, or ALLOWED applications where a notice of allowance is not received within three (3) months from the receipt of either a Form PTOL 327 or an Examiner's Amendment.

See Notice of November 24, 1971 (893 O.G. 810); M.P.E.P. § 203.08, 6th ed. rev.

Reg. No.: 29,425

Tel. No.: (419) 243-1294

Customer No.: 20879

  
SIGNATURE OF PRACTITIONER

James F. Porcello, Jr.

(type or print name of practitioner)

P.O. Box 916

P.O. Address

Toledo, OH 43697-0916

### STATUS INQUIRY REPLY

APPLICATION SERIAL NO. 0 / \_\_\_\_\_ IS CURRENTLY

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- ACTION BY THE EXAMINER.
  - APPLICANT'S RESPONSE TO THE OFFICE ACTION MAILED
- \_\_\_\_\_
- \_\_\_\_\_

APPEAL NO. \_\_\_\_\_

- IS AWAITING ACTION BY THE BOARD OF PATENT APPEALS AND INTERFERENCES
- DATE OF HEARING EXPECTED \_\_\_\_\_
  - DECISION EXPECTED \_\_\_\_\_

(Status Inquiry [9-3]—page 2 of 2)

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**Bibliographic Data**

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Application Number:	90/005,694	Customer Number:	-
Filing or 371 (c) Date:	04-03-2000	Status:	Notice of Appeal Filed
Application Type:	Re-Examination	Status Date:	08-20-2005
Examiner Name:	HUSAR, STEPHEN F	Location:	ELECTRONIC
Group Art Unit:	2875	Location Date:	-
Confirmation Number:	5900	Earliest Publication No:	-
Attorney Docket Number:	5965-021	Earliest Publication Date:	-
Class / Subclass:	362/234	Patent Number:	-
First Named Inventor:	Gary Rhine(Owner) , Lima, OH	Issue Date of Patent:	-

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Title of Invention: COMBINATION WRIST WATCH AND FLASHLIGHT

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90/005,694 COMBINATION WRIST WATCH AND FLASHLIGHT

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 [Continuity Data](#) | 
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Transaction History

Date	Transaction Description
08-10-2005	Notice of Appeal Filed
08-10-2005	Certificate of Service
06-15-2005	Final Rejection Mailed
02-22-2005	Response after Non-Final Action
12-21-2004	Reexam Non-Final Action Mailed
10-07-2003	Scanned in Central Reexam Unit
08-27-2002	Response after Non-Final Action
08-27-2002	Affidavit(s), Declaration(s) and/or Exhibit(s) Filed
06-28-2002	Scanned in Central Reexam Unit
06-27-2002	Reexam Non-Final Action Mailed
08-07-2001	Supplemental Response after Non-Final Rejection
07-10-2001	Certificate of Service
06-28-2001	Response after Non-Final Action
06-13-2001	Examiner Interview Summary Record
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05-03-2001	Reexam Non-Final Action Mailed
10-20-2000	Timely Requestor's Reply to an Owner's Statement
08-23-2000	Timely Owner Statement in Response to Order
06-28-2000	Determination – Reexam Ordered
04-26-2000	Case Docketed to Examiner in GAU
04-26-2000	Completion of Preprocessing - Released to Assigned
04-25-2000	IFW Scan & PACR Auto Security Review
04-12-2000	Correspondence Address Change
05-16-2000	Notice of Reexam Published in Official Gazette
04-03-2000	Initial Exam Team nn

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