

PTO/SB/30 (09-04)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Request for Continued Examination (RCE) Transmittal

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	10/229,993
Filing Date	August 28, 2002
First Named Inventor	Roderick Swift
Art Unit	2882
Examiner Name	Church, Craig E
Attorney Docket Number	1945/A27

EXHIBIT

C

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

ii. ☐ Other _____

b. ☒ Enclosed

i. ☐ Amendment/Reply

iii. ☒ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/ Declaration(s)

iv. ☐ Other _____

2. Miscellaneous

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. ☐ Other _____

3. Fees

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge the following fees, or credit any overpayments, to

a. ☐ Deposit Account No. 19-4972. I have enclosed a duplicate copy of this sheet.

i. ☒ RCE fee required under 37 CFR 1.17(e)

ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)

iii. ☐ Other _____

b. ☒ Check in the amount of \$ \$790.00 enclosed

c. ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED	
Signature	<i>Samuel J. Petuchowski</i>
Name (Print/Type)	Samuel J. Petuchowski
Date	March 29, 2005
Registration No.	37,910

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below. Express Mailing Label No. EV 401278220 US

Signature	<i>Samuel J. Petuchowski</i>
Name (Print/Type)	Samuel J. Petuchowski
Date	March 29, 2005

This collection of information is required by 37 CFR 1.114. 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 take 12 minutes 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: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

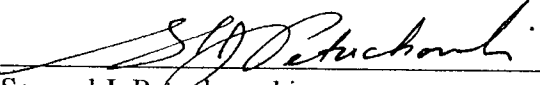
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Swift et al.	Atty Dkt:	1945/A27
Serial No:	10/229,993	Art Unit:	2882
Date Filed:	08-28-2002	Examiner:	C. Church
Invention:	Mobile X-Ray Inspection System for Large Objects		

EXPRESS MAIL CERTIFICATE

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Samuel J. Petuchowski

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

REQUEST FOR CONTINUED EXAMINATION
(37 CFR § 1.114)

Dear Sir:

Patentee has filed, contemporaneously with this filing, a Petition to Withdraw from Issue in order to submit an Information Disclosure Statement for consideration in accordance with the present Request for Continued Examination. This Request for Continued Examination is filed, after payment of issue fee, in accordance with 37 CFR § 1.114.

The inventions claimed in the US Patent No. 6,252,929, of which the present application is a reissue application, are directed to certain mobile x-ray inspection systems for the inspection of large objects such as trucks. The present application was filed, on August 28, 2002, for the reissue of US Patent No. 6,252,929, originally issued on June 26, 2001, which claims priority, through two intervening applications, from U.S. provisional application number 60/011,495, filed February 12, 1996.

Two related patents, US Patent Nos. 5,903,623 and 6,292,533, are in suit in a pending civil action (U.S. Dist. Ct. D. Mass., Case No. 04-10339-RWZ). The patent, US Patent No. 6,252,929, that forms the basis of the present Reissue Application is NOT in suit. However, as one of the litigants has raised issues bearing on the validity of the patents in suit on grounds of issues addressed in the Information Disclosure Statement currently submitted, those issues and related documents are also being disclosed in the current case.

Examination and allowance of the pending claims in view of the newly disclosed information is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Petuchowski', with a stylized flourish at the end.

Samuel J. Petuchowski
Registration No. 37,910
Attorney for Applicant

Bromberg & Sunstein
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292

01945/00A27 373929.1

Practitioner's Docket No. 1945/A27

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent application
of _____

for _____
Inventor(s)

Title of invention

the specification of which is being transmitted herewith

OR

In re application of: Swift et al.

Application No.: 10/229,993

Group No.: 2882

Filed: August 28, 2002

Examiner: C. Church

For: Mobile X-Ray Inspection System for Large Objects

Mail Stop RCE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

CERTIFICATION UNDER 37 C.F.R. SECTIONS 1.8(a) and 1.10*

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37 C.F.R. SECTION 1.8(a)

37 C.F.R. SECTION 1.10*

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Signature



Samuel J. Petuchowski

(type or print name of person certifying)

Date: March 29, 2005

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"Since the filing of correspondence under section 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable C.F.R.e. requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(Information Disclosure Statement--page 1 of 11)

INFORMATION DISCLOSURE STATEMENT

NOTE: *"An information disclosure statement shall be considered by the Office if filed by the applicant:*

- (1) Within three months of the filing date of a national application;*
- (2) Within three months of the date of entry of the national stage as set forth in section 1.491 in an international application; or*
- (3) Before the mailing date of a first Office action on the merits, whichever event occurs last." 37 C.F.R. section 1.97(b).*

NOTE: *"Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." 37 C.F.R. section 1.56(a).*

"Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;*
- (2) each attorney or agent who prepares or prosecutes the application; and*
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application." 37 C.F.R. section 1.56(c).*

NOTE: *The "duty as described in section 1.56 will be met so long as the information in question was cited by the Office or submitted to the Office in the manner prescribed by sections 1.97(b) - (d) and 1.98 before issuance of the patent." Notice of January 9, 1992, 1135 O.G. 13-25 at 17.*

WARNING: *"No information disclosure statement may be filed in a provisional application." 37 C.F.R. section 1.51(b).*

List of Sections Forming Part of This Information Disclosure Statement

The following sections are being submitted for this Information Disclosure Statement:

(check sections forming a part of this statement: discard unused sections and number pages consecutively)

1. ☒ Preliminary Statements
2. ☒ Forms PTO/SB/08A and 08B (substitute for Form PTO-1449)
3. ☒ Statement as to Information Not Found in Patents or Publications
4. ☐ Identification of Prior Application in Which Listed Information was Already Cited and for Which No Copies Are Submitted or Need Be Submitted
5. ☐ Cumulative Patents or Publications
6. ☒ Copies of Listed Information Items Accompanying This Statement
7. ☐ Concise Explanation of Non-English Language Listed Information Items
 - 7A. ☐ EPO Search Report
 - 7B. ☐ English Language Version of EPO Search Report
8. ☐ Translation(s) of Non-English Language Documents
9. ☐ Concise Explanation of English Language Listed Information Items (Optional)
10. ☒ Identification of Person(s) Making This Information Disclosure Statement

(complete the following, if appropriate)

Sections _____, respectively, have been continued on ADDED PAGE(S).

NOTE : *"Once the minimum requirements are met, the examiner has an obligation to consider the information." Notice of April 20, 1992 (1138 O.G. 37-41, 37).*

Section 1. Preliminary statements

Applicants submit herewith patents, publications or other information, of which they are aware that they believe may be material to the examination of this application, and in respect of which, there may be a duty to disclose.

The filing of this information disclosure statement shall not be construed as a representation that a search has been made (37 C.F.R. section 1.97(g)), an admission that the information cited is, or is considered to be, material to patentability, or that no other material information exists.

The filing of this information disclosure statement shall not be construed as an admission against interest in any manner. Notice of January 9, 1992, 1135 O.G. 13-25, at 25.

SECTION 2. FORMS PTO/SB/08A and 08B (formerly Form PTO-1449)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Swift et al. Attorney Docket: 1945/A27
 Serial No: 10/229,993 Art Group Unit: 2882
 Date Filed: August 28, 2002 Examiner Name: C. Church
 Invention: Mobile X-Ray Inspection System for Large Objects

**LIST OF PATENTS AND PUBLICATIONS FOR
 APPLICANT'S INFORMATION DISCLOSURE STATEMENT**

U.S. PATENT DOCUMENTS					
Examiner Initials	Reference Number	Document Number	Issue Date	Inventor	Class/Subclass
	BB	US 4,031,401	June 21, 1987	Jacob	378/146

Examiner Signature: _____

Date Considered: _____

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation *if not* in conformance and not considered. Include copy of this form with next communication to applicant.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Swift et al.	Atty Dkt:	1945/A27
Serial No:	10/229,993	Art Unit:	2882
Date Filed:	08-28-2002	Examiner:	C. Church
Invention:	Mobile X-Ray Inspection System for Large Objects		

**STATEMENT AS TO INFORMATION NOT FOUND
IN PATENTS OR PUBLICATIONS**

Dear Sir:

The inventions claimed in US Patent No. 6,252,929 (the "Patent"), of which the present application is a reissue application, are directed to certain mobile x-ray inspection systems for the inspection of large objects, such as trucks. The present application was filed, on August 28, 2002, for the reissue of US Patent No. 6,252,929, originally issued on June 26, 2001. The Patent claims priority, through two intervening applications, from U.S. provisional application number 60/011,495 (the "Provisional Application"), filed February 12, 1996.

On October 19, 1994, Contract No. DAAB10-95-C-0001 (the "Contract", enclosed as Exhibit A) was awarded to Assignee by the U.S. Army. The Contract, as awarded, is attached hereto and disclosed herewith. As explained below, the Contract was for conceptual design, and development of a prototype in accordance with a Technical Proposal. The existence of the Contract and a copy of the contents of the Technical Proposal were filed with the provisional application (Ser. No. 60/011,495) on which the present Reissue Application relies for priority.

While Applicant believes that the Contract is neither a sale of a product (as a development effort, rather than a deliverable product, is specified), nor was there any such product in existence or designed prior to the Critical Date, Applicant is again disclosing the Contract herewith at the insistence of a litigant who has threatened, per a disclosed letter (of which a copy is attached as Exhibit B), to charge Assignee's attorneys with concealing it from the USPTO.

The Contract was a Cost-Plus-Fixed-Fee type Government contract (Contract, p. B-1) and called for the contractor to provide two items:

Item 001: The Contractor shall furnish all labor, material and facilities necessary to perform the effort as described in accordance with [Assignee's] proposal dated January 31, 1994, entitled "Mobile CARGOSEARCH X-Ray Inspection System" which is enclosed as Attachment 1.

Item 0002: Data Items in accordance with Exhibit A, DD Form 1423, Contract Data Items List, dated 20 July 1994.

(Contract, p. B-1)

In particular, the Contract defined the supplies and services to be provided under the Contract, on Page C-1 (the 5th page) of the Contract, as follows:

"The [Assignee] proposal dated 31 January 1994, entitled 'Mobile CARGOSEARCH X-Ray Inspection System' is hereby incorporated as the Statement of Work, herein referred to as the 'SOW', Attachment 1."

The precise tasks under the proposal entitled 'Mobile CARGOSEARCH X-Ray Inspection System' (the "Technical Proposal") can be found by referring to Attachment 1 of the Contract. The Tasks are explicitly listed on page C-1 of the Technical Proposal:

. . . Project Management, System Conceptual Design and Specification, Detailed Design and Documentation, Prototype Production, Prototype Testing, Training and Final Report.

The Contract was, thus, a contract for conceptual design, and development of a prototype, not for procurement of a product. Indeed, the Federal Acquisition Regulations (FAR) provide, at Subpart 16.306 (enclosed herewith as Exhibit C) that a cost-plus-fixed-fee contract is suitable for use in instances where the contract is for the performance of research or preliminary exploration or study, or where the contract is for development and test.

Inception of the Contract, on October 19, 1994, began a period of research into a multitude of issues that needed to be resolved before there was any assurance as to whether, and if so, how, the prototype that the Assignee was contracted to develop would operate. Section C of the Contract contains no Operational Specifications as would a contract for sale of a product.

On February 14, 1995, Assignee conducted a Preliminary Design Review (PDR – Report enclosed herewith as Exhibit D), on which occasion Assignee and Government contract personnel identified a large number of issues that still required resolution before there could be any assurance as to whether, and if so, how, the prototype that the Assignee was contracted to develop would operate. Operation and testing of a mobile x ray backscatter system was not achieved until late in the summer or autumn of 1995.

As of the Critical Date (February 12, 1995), based on priority from the Provisional Application filed on February 12, 1996), no product had been developed to the point where its operation was assured.

The Technical Proposal, including the Task listing on page C-1, was filed with the Provisional Application on which the present Reissue Application relies for priority, and is already of record in the file.

At the insistence of the litigant, pleadings, by both parties, in a pending civil action (U.S. Dist. Ct. D. Mass., Case No. 04-10339-RWZ), concerning two related US patents (US Patent Nos. 5,903,623 and 6,292,533) are also being disclosed, even though the patent currently in reissue is not in suit in the pending litigation.

The Pleadings disclosed include the following documents:

- a. Amended Complaint for Declaratory Judgment (Exhibit E);
- b. American Science and Engineering's Answer to L-3's Amended Complaint and Counterclaims for Patent Infringement (Exhibit F);
- c. AS&E's Motion and Memorandum of Law In Support of AS&E's Motion for Partial Summary Judgment on L-3's Inequitable Conduct Defenses (Exhibit G);
- d. L-3's Motion for Partial Summary Judgment that Certain Claims of U.S. Patent No. 5,903,623 are Invalid under 35 U.S.C. § 102(b) (Exhibit H);
- e. L-3's Memorandum in Support of Its Motion for Partial Summary Judgment That Certain Claims of U.S. Patent No. 5,903,623 are Invalid under 35 U.S.C. § 102(b) (Exhibit I);
- f. L-3's Local Rule 56.1 Statement of Facts In Support of Its Motion for Partial Summary Judgment that Certain Claims of U.S. Patent No. 5,903,623 are Invalid under 35 U.S.C. § 102(b) (Exhibit J);
- g. AS&E's Opposition to L-3's Motion for Partial Summary Judgment Concerning the Validity of U.S. Patent No. 5,903,623 (Exhibit K);
- h. AS&E's LR 56.1 Statement of Material Facts Opposing L-3's Motion For Partial Summary Judgment Concerning The Validity of U.S. Patent No. 5,903,623 (Exhibit L).

A Reexamination Request in reexamination proceedings (US Serial No. 90/005268) that pertained to a predecessor patent to the patent currently in reissue is disclosed herewith and enclosed as Exhibit M. The references cited in the Reexamination Request are already listed on the face of the Patent of which the present application is a reissue application, and thus need not be disclosed again.

Finally, a document of uncertain provenance and unknown date is disclosed: a proposal by NITON Corporation of Bedford, MA, to ARPA, entitled "The Scanner: A Mobile X-Ray Inspection System" (Exhibit N). To the best of Patentee's knowledge, this document was submitted to the Government as a proprietary proposal and was abandoned.

Examination and allowance of the pending claims in view of the newly disclosed information is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. J. Petuchowski', written in a cursive style.

Samuel J. Petuchowski
Registration No. 37,910
Attorney for Applicant

Bromberg & Sunstein
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Swift et al.	Atty Dkt:	1945/A27
Serial No:	10/229,993	Art Unit:	2882
Date Filed:	08-28-2002	Examiner:	C. Church
Invention:	Mobile X-Ray Inspection System for Large Objects		

**LISTING OF ATTACHMENTS TO
INFORMATION DISCLOSURE STATEMENT**

- A. U.S. Army Contract DAAB10-95-C-0001 (October 19, 1994)
- B. Correspondence of Robert Abrahamsen, Esq. to John Conway, Esq. (March 21, 2005)
- C. Cost-Plus-Fixed-Fee provisions of FAR 16.306
- D. Minutes of Preliminary Design Review under .S. Army Contract DAAB10-95-C-0001 (February 22, 1995)
- E. Amended Complaint for Declaratory Judgment (04-10339-RWZ)
- F. American Science and Engineering's Answer to L-3's Amended Complaint and Counterclaims for Patent Infringement
- G. AS&E's Motion and Memorandum of Law In Support of AS&E's Motion for Partial Summary Judgment on L-3's Inequitable Conduct Defenses
- H. L-3's Motion for Partial Summary Judgment that Certain Claims of U.S. Patent No. 5,903,623 are Invalid under 35 U.S.C. § 102(b)
- I. L-3's Memorandum in Support of Its Motion for Partial Summary Judgment That Certain Claims of U.S. Patent No. 5,903,623 are Invalid under 35 U.S.C. § 102(b)
- J. L-3's Local Rule 56.1 Statement of Facts In Support of Its Motion for Partial Summary Judgment that Certain Claims of U.S. Patent No. 5,903,623 are Invalid under 35 U.S.C. § 102(b)
- K. AS&E's Opposition to L-3's Motion for Partial Summary Judgment Concerning the Validity of U.S. Patent No. 5,903,623
- L. AS&E's LR 56.1 Statement of Material Facts Opposing L-3's Motion For Partial Summary Judgment Concerning The Validity of U.S. Patent No. 5,903,623
- M. Request for Reexamination of US Patent No. 5,764,683 (February 18, 1999)
- N. *The Scanner: A Mobile X-Ray Inspection System* – A Proposal to ARPA in Response to BAA DAAB10-91-Q-2036

Section 6. Copies of Listed Information Items Accompanying This Statement

NOTE: 37 C.F.R. section 1.98(a)(2) requires that any information disclosure statement filed under section 1.97 shall include: "A legible copy of: (i) Each U.S. and foreign patent; (ii) Each publication or that portion which caused it to be listed; and (iii) All other information or that portion which caused it to be listed, except that no copy of a U.S. patent application need be included..."

NOTE: The wording in section 1.98(a)(2)(iii) makes it clear that the requirement to submit a copy of each item of information listed in an information disclosure statement does not apply to the citation of a U.S. patent application. Notice of January 9, 1992, 1135 O.G. 13-25, at 14.

Legible copies of all items listed in Forms PTO/SB/08A and 08B (substitute for Form PTO-1449) accompany this information statement.

(complete the following, if applicable)

☒ Exception(s) to above:

☐ Items in prior application, from which an earlier filing date is claimed for this application, as identified in Section 4.

☐ Cumulative patents or publications identified in Section 5.

U.S. patent citations are not included pursuant to the United State Patent and Trademarks Office's September 21, 2004 waiver of the copy requirement in 37 CFR 1.98 for cited pending U.S. patent citations when the patent citations are available in the USPTO's IFW system.

Section 10. Identification of Person(s) Making This Information Disclosure Statement

The person making this certification is

(check each applicable item)

- (a) ☐ the inventor(s) who signs below

SIGNATURE OF INVENTOR

(type name of inventor who is signing)

- (b) ☐ an individual associated with the filing and prosecution of this application (37 C.F.R. section 1.56(c))

SIGNATURE OF INVENTOR

(type name of inventor who is signing)

- (c) ☒ the practitioner who signs below on the basis of the information:

(check each applicable item)

☐ supplied by the inventor(s).

☐ supplied by an individual associated with the filing and prosecution of this application. (37 C.F.R. section 1.56(c)).

☒ in the practitioner's file.

Reg. No.: 37,910

Tel. No.: (617) 443-9292

Customer No.: 002101


SIGNATURE OF PRACTITIONER

Samuel J. Petuchowski

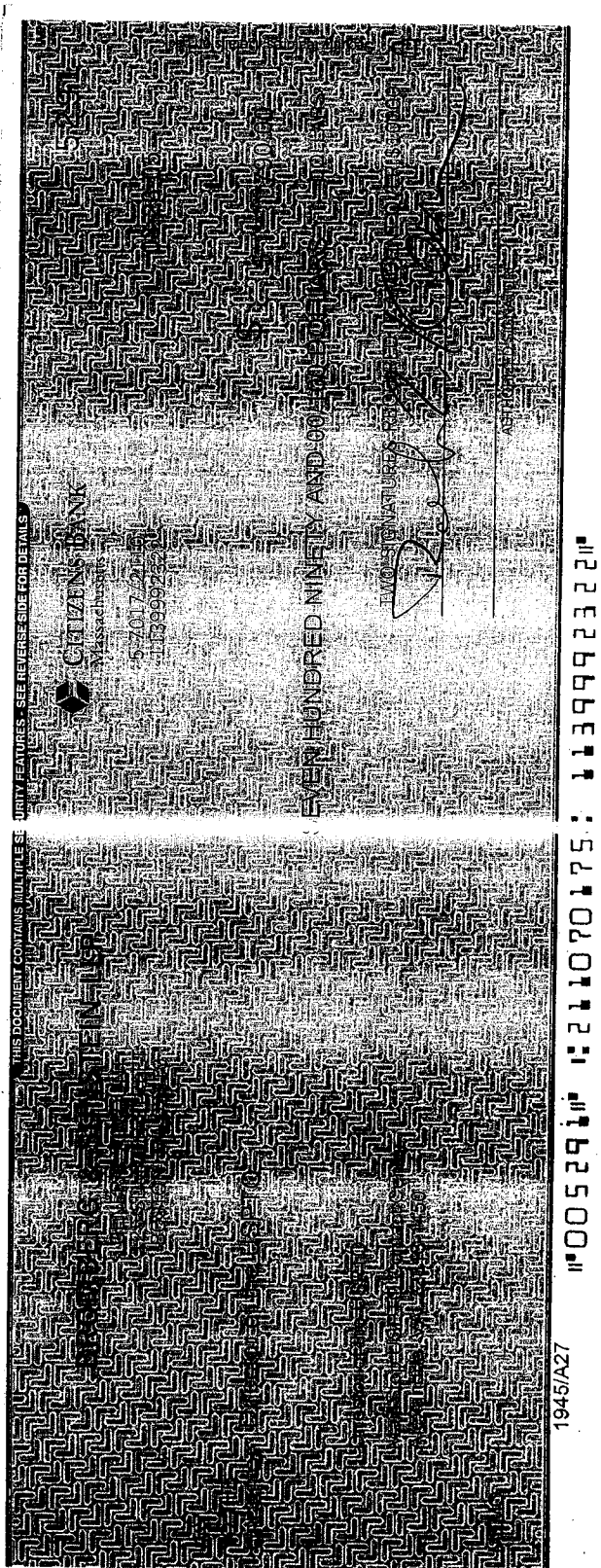
(type or print name of practitioner)

125 Summer Street, 11th Floor

P.O. Address

Boston, MA 02110

01945/00A27 374380.1



the Commissioner for Patents has received from Bromberg & Sunstein LLP the following re:

Inventor: Swift et al.
 Title: Mobile X-Ray Inspection System for Large Objects
 Serial/Patent No.: 10/229,993
 Filing/Issue Date: August 28, 2002

Docket No.: 1945/A27
 Art Unit: 2882
 Examiner: Church, Craig E.
 Date: March 29, 2005
 Express Mail No.: EV 401278220 US

Documents:

☐ New Application Transmittal
☐ Provisional Application Cover Sheet
☐ Description- pages
☐ Claims- pages
☐ Abstract
☐ Application Data Sheet
☐ Request and Certification under 35 USC 122(b)(2)(B)(i)
☐ sheets of drawings
☐ formal ☐ informal
☐ Declaration & Power of Attorney
☐ executed ☐ unexecuted

☐ Amendment Transmittal
☐ Amendment (Preliminary)
☐ Response
☒ IDS & References
☐ Petition for month extension
☐ Issue Fee Transmittal & Form PTOL-85b
☐ Payment of Maintenance Fee
☐ Assignment/Recordation Form Cover Sheet
☒ Check in the amount of \$790.00
☐ Completion of Filing Requirements
☐ Transmittal of Formal Drawings
☒ Request for Continued Examination



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