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**From:** Erik Ericksen [mailto:Ericksen@tnw.com]

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**To:** AB93Comments

**Subject:** Comments on Proposed Changes to Continuation Practice

I am concerned as to what qualifies as an acceptable showing for making a second or subsequent request. Specifically, I frequently encounter Examiners who change arguments in a final office action stating that such changes were "necessitated by Applicant's amendment or argument." Thus, in these cases the Examiner is moving the target such that evidence or arguments were not previously presented due to the fact that they were not necessary to overcome the rejections at hand.

The rules, or at least comments on the rules, should explicitly recognize that any change in the nature of the rejection would qualify as an acceptable showing as to why such arguments or amendments were not presented earlier. For example, this would include situations where a primary reference in an obviousness rejection was maintained but the secondary reference was replaced. This should also include situations where the Examiner maintains the same basic rejection but changes the supporting arguments. For example, a previous rejection focused on the disclosure of element A in column 1. A response persuades the Examiner that element A is not disclosed in column 1; however the Examiner insists that it is disclosed in another passage of the reference. Such situations amount to a moving target which an Applicant cannot anticipate nor be expected to have provided argument, amendment or evidence previously.

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