

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 4624.01US12

John Mikkelsen et al.

Confirmation No.: 1253

Application No.: 14/230,938

Examiner: Robert M. Pond

Filed: March 31, 2014

Group Art Unit: 3684

For: MEDIA DELIVERY PLATFORM

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AMENDMENT

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

Commissioner:

INTRODUCTORY COMMENTS

In response to the Office Action of November 28, 2014, and in accordance with the automatic extension of time for response provided by 37 CFR § 1.136(a), amendment to the above-identified patent application is requested.

The present amendment comprises the following sections:

A. Amendments to the Claims

B. Remarks

*Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.*

AMENDMENTS TO THE CLAIMS

A detailed listing of all claims that are, or were, in the present application, irrespective of whether the claim(s) remain(s) under examination in the application is presented below. The claims are presented in ascending order and each includes one status identifier. Those claims not cancelled or withdrawn but amended by the current amendment utilize the following notations for amendment: 1. deleted matter is shown by strikethrough for six or more characters and double brackets for five or fewer characters; and 2. added matter is shown by underlining.

1.(Currently Amended) A system for providing digital media files, the system comprising:

~~a wireless network accessible by an electronic device;~~

a content server operably coupled to a cellular network ~~the wireless network~~ and configured to store a plurality of digital media files and provide for the transmission of the digital media files for download to ~~the a cellular phone an electronic device;~~ and

a monitoring server operably coupled to the ~~wireless~~ cellular network and configured to record data about every digital media file downloaded from the content server to the cellular phone,

said cellular phone configured for the transmission over a cellular network of the digital media files by orthogonal frequency-division multiplex (OFDM) modulation ~~electronic device.~~

2. (Currently Amended) The system of claim 1, wherein each of the plurality of digital media files comprises at least one of a full, partial, or segment of: a song, a musical score, musical composition, other audio recording, a ringtone, a video, other visual recording, a movie, a film, an image clip, a picture, a clip, an image, a photograph, a television show, a human voice recording, a personal recording, a cartoon, an animation, an audio advertisement, a visual advertisement, or combinations thereof.

3. (Currently Amended) The system of claim 1, wherein the monitoring server is further configured to count every digital media file downloaded from the content server to the cellular phone ~~electronic device.~~

4. (Original) The system of claim 1, wherein the data recorded by the monitoring server is at least one of a song title, an artist name, a purchase price, a user name, or a time of delivery.

5. (Original) The system of claim 1, wherein the monitoring server is further configured to aggregate the recorded data and transmit the aggregated data to a third-party device.

6. (Canceled)

7. (Currently Amended) The system of claim 1, wherein the content server is further configured to provide an interface for the selection of one of the plurality of digital media files to be downloaded to the cellular phone ~~electronic device~~.

8. (Currently Amended) The system of claim 7, wherein the digital media files are organized on the interface by at least one of: a type of media file, a title, a subject, an actor, an artist, a description of the media file, an alphabetical ordering, or a chronological ordering.

9. (Canceled)

10. (Currently Amended) A method for distributing electronic content to a user operating a cellular phone ~~an electronic device~~, the method being executable by a computer system that includes server hardware and a database, the method comprising:

providing for the transmission of, by the computer system, a database of electronically-accessible data files, each data file being subject to a copyright owner;

receiving, by the computer system, a selection from the user corresponding to at least one of the data files;

providing for the transmission of, by the computer system and in response to the received selection, a portion of the selected data file to the cellular phone ~~electronic device~~;

receiving, by the computer system, a request for the data file for which the portion was provided to the cellular phone ~~electronic device~~; and

providing for the transmitting, by the computer system, of the requested data file to the cellular phone, said cell phone configured to receive the data file over a cellular network by orthogonal frequency-division multiplex (OFDM) modulation ~~electronic device~~.

11. (Original) The method of claim 10, further comprising:

debiting, by the computer system, an account of the user corresponding to a price of the transmitted data file; and

crediting, by the computer system, an account of the copyright owner an amount associated with the price of the transmitted data file.

12. (Currently Amended) The method of claim 10, further comprising:

tracking, by the computer system, the user of the cellular phone ~~electronic device~~ receiving the data file to determine data about the user; and

reporting, by the computer system and to the copyright owner, the data about the user.

13. (Currently Amended) The method for distributing electronic content to ~~[[a]]~~ the user of claim 10, further comprising tracking, by the computer system, the user of the cellular phone ~~electronic device~~ receiving the portion of the data file to determine data about the user.

14. (Original) The method of claim 10, further comprising providing an interface, by the computer system, for the selection of one of the electronically-accessible data files.

15. (Original) The method of claim 14, wherein the electronically-accessible data files are organized on the interface by at least one of: a type of media file, a title, a subject, an actor, an artist, a description of the media file, an alphabetical ordering, or a chronological ordering.

16. (Original) The method of claim 14, wherein each of the electronically-accessible data files comprises an identifier associated with the copyright owner.

17. (Canceled)

18. (Currently Amended) A method for distributing electronic content to a user operating a cellular phone ~~an electronic device~~, the method being executable by a computer system that includes server hardware and a database, the method comprising:

~~step for~~ providing a database of electronically-accessible data files to the user of the cellular phone, each data file being subject to a copyright owner;

~~step for~~ receiving a selection from the user corresponding to at least one of the data files;  
~~step for~~ providing for the transmission of, in response to the received selection, a portion of the selected data file to the cellular phone ~~electronic device~~;  
~~step for~~ receiving a request for the data file for which the portion was provided to the cellular phone ~~electronic device~~; and  
~~step for~~ transmitting the requested data file to the cellular phone, said cellular phone configured for a cellular network that transmits the data files by orthogonal frequency-division multiplex (OFDM) modulation ~~electronic device~~.

19. (Currently Amended) The method of claim 18, further comprising:

~~step for~~ debiting an account of the user corresponding to a price of the transmitted data file; and

~~step for~~ crediting an account of the copyright owner an amount associated with the price of the transmitted data file.

20. (Currently Amended) The method of claim 18, further comprising:

~~step for~~ tracking the user of the cellular phone ~~electronic device~~ receiving the data file to determine data about the user; and

~~step for~~ reporting the data about the user to the copyright owner.

REMARKS

Claims 1-20 are pending. By this Amendment, claims 6, 9 and 17 are cancelled, claims 1-3, 7, 8, 10, 12, 13, and 18-20 are amended and no new claims are added.

35 USC § 101

Claims 1-20 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicants' respectfully traverse. Applicants have amended the independent claims to include limitations regarding the cell phone that clearly warrant removal of the 101 rejection.

Applicants response is based on the Interim Guidelines on Patent Subject Matter Eligibility promulgated by the USPTO on December 16, 2014. In view of the Supreme Court decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*, Applicants respectfully submit that the instant claims recite patentable subject matter under an analysis of Part 1. The claims do not recite abstract ideas such as, for example, fundamental economic practices, methods of organizing human activities, ideas of themselves, or mathematical relationships or mathematical formulas. Instead, the claims recite, for example, methods of wirelessly delivering a digital media from one or more servers to a wireless device means, which is plainly outside of the ideas intended to be deemed non-patentable by the Supreme Court.

Assuming, *arguendo*, that the instant claims are not identified as patentable subject matter under Part 1, the instant claims recite significantly more than any abstract idea itself under an analysis of Part 2. The claims recite the inventive results of an engineering solution to the problem of the existing state of wireless delivery of rich media files. As a result, the instant

claims provide an improvement to wireless delivery of rich media technology. The rejection of the remaining claims should be removed.

35 USC § 102

Claims 1-5, 7-16 and 18-20 were rejected under 35 USC 102(e) as being anticipated by Fritsch (US 6,247,130), previously applied.

Applicants respectfully traverse. The Examiner asserts that Fritsch discloses a wireless device capable of receiving rich media. Referring to the rejections based on Fritsch, Applicants respectfully submit that Fritsch does not disclose electronic *wireless* devices with enough specificity, as claimed. Particularly, Fritsch merely discloses a single boilerplate instance where the term “wireless” is used:

As a general overview, the present invention includes a system and method for maintaining a music web site on the Internet. Consumers may access the web site via a personal computer or any other *wired or wireless* Internet access device, such as WebTV, personal digital assistant, cellular telephone, etc., to obtain a variety of services and products.

(Fritsch, col. 2, l. 64 – col. 3, l. 2, emphasis added.) Otherwise, the entirety of Fritsch is directed towards desktop computer or personal computer (PC) access to a vendor’s website.

It is difficult but necessary that the decision maker forget what he or she has been taught . . . about the claimed invention and cast the mind back to the time the invention was made (often as here many years), to occupy the mind of one skilled in the art. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). To reach a proper determination under 35 U.S.C. § 103, the examiner must step backward in time and into the shoes worn by the hypothetical “person of ordinary skill in the art”

when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. (MPEP § 2142.) The disclosure of Fritsch does not rise to the level required such that the claimed invention as a whole would have been obvious to one skilled in the art, at the time the invention was made. Particularly, Fritsch does not disclose the details necessary for wireless delivery of digital media to electronic wireless devices. In order to advance prosecution, applicants have amended the independent claims to read “cellular phone” instead of wireless device and have provided a limitation regarding receiving the transmission of the digital files by OFDM.

In order to advance prosecution, and without acquiescing to the current rejection, applicants have amended independent claims 1, 10 and 18 to include limitations to cellular phones, transmission by OFDM and cellular networks. As Fritsch does not anticipate these amended claims, rejections of Claims 1-5, 7, 8, 10-16 and 18-20 should be removed.

### 35 USC § 103

Claims 6 and 7 were rejected under 35 USC 103(a) as being unpatentable over Fritsch (US 6,247,130), previously applied, in view of Kontio et al., (US 2005/0004875), previously applied. Claims 6 and 7 depend from claim 1, which based on the argument and amendment recited above is moot. Removal of the rejection is requested.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Thomas G. Dickson". The signature is fluid and cursive, with the first name "Thomas" and last name "Dickson" clearly distinguishable.

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