REMARKS

Claims 1-17 are pending. By this Amendment, claims 2, 4, 6-12, 14 and 17 are cancelled, claims 1, 3, 13, 15, 16 are amended and new claim 18 is added.

Double Patenting

Claims 1-17 were rejected on the ground of nonstatutory double patenting as being unpatentable over claim 1 of U.S. Patent 7,548,875. Applicants will electronically submit a Terminal Disclaimer to overcome this rejection upon indication of allowable subject matter. This disclaimer is not intended, and shall not be construed under any circumstances, as an admission that any invention claimed in a patent granted on the instant application is obvious in view of the prior patent or that the prior patent constitutes prior art to the instant application. See MPEP 801.02(II) (citing Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d. 870, 874 (Fed. Cir. 1991

35 USC § 101

Claims 1-17 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 also address the new 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 § 103

Claims 1-4, 7-10 and 13-15 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 5, 6, 11, 12, 16 and 17 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, further in view of Chen et al. (US 2003/0115041) 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 decisionmaker 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, use of a cellular network and have listed a digital signal processor for receiving the transmission of compressed digital files by OFDM.

With respect to Kontio, Applicants have previously presented evidence by declaration in the related cases that sear behind the Kontio priority date. Based on the argument and amendments presented this rejection should be moot. However, should the Examiner believe that Kontio still is relevant , applicant will resubmit the Declaration if requested.

With respect to Chen, the Examiner arguments are now moot as the independent claims are amended to reflect OFDM transmission of digital files to a cell phone. The obviousness rejection of the claims based on Fritsch in view of Chen should be removed.

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,

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