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PATTERSON THUENTE PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER

POND, ROBERT M

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3684

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 14/230,906	Applicant(s) MIKKELSEN ET AL.	
	Examiner ROBERT POND	Art Unit 3684	AIA (First Inventor to File) Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/9/14.
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) ☒ Claim(s) 1-20 is/are pending in the application.
5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-20 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) ☐ All b) ☐ Some** c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
Paper No(s)/Mail Date 6/20/14;9/18/14;10/31/14.
- 3) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 4) ☐ Other: ____.

DETAILED ACTION

The present application is being examined under the pre-AIA first to invent provisions.

Priority

The effective priority for claims 1-6, 8, 11-18 and 20 is 27 June 2001. The effective priority for claims 7, 9, 10 and 19 is 26 October 2001.

Response to Amendment

All pending claims 1-20 were examined in this non-final office action necessitated by a new ground of rejection under 35 USC 101, *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*

Response to Arguments

Declaration under Rule 131

The declaration filed under Rule 131 pertains to a different application #14/057,831. The declaration will be reviewed once formal matters are corrected.

35 USC 103(a)

Applicant's arguments filed have been fully considered but they are not persuasive. Gudorf fully discloses wireless devices, e.g. PDA, wireless phones, mobile. Kontio fully discloses OFDM communications in a wireless telephone system.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 1. Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Subject Matter Eligibility Standard

When considering subject matter eligibility under 35 U.S.C. 101, it must be determined whether the claim is directed to one of the four statutory categories of invention, i.e., process, machine, manufacture, or composition of matter. If the claim does fall within one of the statutory categories, it must then be determined whether the claim is directed to a judicial exception (i.e. law of nature, natural phenomenon, and abstract idea), and if so, it must additionally be determined whether the claim is a patent-eligible application of the exception. If an abstract idea is present in the claim, any element or combination of elements in the claim must be sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. Examples of abstract ideas include fundamental economic practices; certain methods of organizing human activities; an idea itself; and mathematical relationships/formulas. *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*, 573 U.S. ____ (2014).

Analysis

In the instant case, claim 20 is directed to a process. Additionally, the claim is directed to wirelessly delivering data files to wireless devices which is considered to be an abstract idea inasmuch as such activity is considered to be both a fundamental economic practice and method of organizing human activity by requiring a user of the wireless device to interact with a website and wireless device in a specific manner to achieve the claimed outcome. The instant disclosure clearly indicates the wireless device is under control of a user who makes requests to the website via the wireless device. Interaction with a website organizes the interaction of the wireless device under control of a user in order to successfully request and receive the data files. Given that the method of claim 20 is designed to facilitate the exchange of data file(s), the claimed method is presently determined to be an essential series of steps in order to transact an economic process.

The elements of the process are:

- providing a website accessible over a wireless communications network;
- providing a database operably coupled to the website, the database configured to store a plurality of data files;
- receiving, through the website and over the wireless communications network, a data file from a first device;
- storing, in the database, the data file received from the first device;
- receiving, through the website and over the wireless communications network, a request for the data file from a second device;

querying the database for the requested data file; and
transmitting the data file over the wireless communications network to the
second device.

The elements of the instant process, when taken alone, each execute in a manner routinely and conventionally expected of these elements. That is, a website is accessed, a data file is received by a first device and the data file is received by a second device.

The elements of the instant process, when taken in combination, together do not offer substantially more than the sum of the functions of the elements when each is taken alone. That is, the elements involved in the recited process undertake their roles in performance of their activities according to their generic functionalities which are well-understood, routine and conventional. The elements together execute in routinely and conventionally accepted coordinated manners and interact with their partner elements to achieve an overall outcome which, similarly, is merely the combined and coordinated execution of generic computer functionalities which are well-understood, routine and conventional activities previously known to the industry.

Conclusion

The claim as a whole, does not amount to significantly more than the abstract idea itself. This is because the claim does not effect an improvement to another technology or technical field; the claim does not amount to an improvement to the

functioning of a computer itself; and the claim does not move beyond a general link of the use of an abstract idea to a particular technological environment.

The claim merely amounts to the application or instructions to apply the abstract idea (i.e. wirelessly delivering data files to wireless devices) on a computer, and is considered to amount to nothing more than requiring a generic computer system (e.g. a generic computer system comprising a generic database; a generic element for receiving input; a generic element for displaying output) to merely carry out the abstract idea itself. As such, the claim, when considered as a whole, is nothing more than the instruction to implement the abstract idea (i.e. wirelessly delivering data files to wireless devices) in a particular, albeit well-understood, routine and conventional technological environment .

Accordingly, the Examiner concludes that there are no meaningful limitations in the claim that transform the judicial exception into a patent eligible application such that the claim amounts to significantly more than the judicial exception itself.

Note: The analysis above applies to all statutory categories of invention. As such, the presentment of claim 1 otherwise styled as a broader/narrower method, machine or manufacture, for example, would be subject to the same analysis.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-6, 8, 11-18 and 20 are rejected under 35 USC 102(e) as being anticipated by Gudorf, US 2002/0116082 previously applied.

Gudorf teaches all the limitations of claims 1-5, 8, 11-18 and 20. For example, Gudorf discloses a system and methods that include (a) receiving electronic files at a central location from a first device, those electronic files representing audio signals; (b) associating the audio files with identification information; (c) storing the audio files at the central location on at least a portion of a storage media, that portion being uniquely associated with the identification information; (d) receiving the identification information from a second device; and (e) transmitting the audio files to the second device upon receipt of the identification information, see at least 0007. In Gudorf, a system is provided for storing and transmitting audio information. It includes a processor, memory, data stored in the memory and instructions executable by the processor. The data identifies a plurality of users or devices and also includes a plurality of files associated with audio information. Each of the files is uniquely associated with the identity of a single user or device. The set of instructions also conditions the transmission of a song from the system to a user or device based on the identity of the user or device associated with the audio information, see at least 0008. In Gudorf, a method of storing and transmitting songs includes: uniquely associating a portion of the storage space on a server with a user

or device; associating the portion with a first identifier; receiving the first identifier; receiving a song file representative of a song; storing the song file in the portion of the storage space associated with the first identifier; receiving a second identifier and a request for the song file; comparing the second identifier with the identifier associated with the requested song file; and transmitting the song file in response to the request depending upon the outcome of the step of comparing, see at least 0009. Gudorf further discloses:

- Regarding claim 20:

- providing a website accessible over a communications network;

Web server 70 contains hardware for sending and receiving information over the World Wide Web, such as web pages or files. The web server 70 may be a typical web server or any computer network server or other automated system capable of communicating with other computers over a network, including the Internet, wide area networks or local area networks, see at least Fig. 1 (70, 71); 0017; 0020.

- providing a database operably coupled to the website, the database configured to store a plurality of data files;

As shown in greater detail in FIG. 2, web server 70 functions as a content store and contains a processor 102, a set of instructions 104 which are executed by processor 102 and data such as user storage area 110. The functions, methods and routines of the program are explained in more detail below. Although the data is shown separately from the

instructions, the data may be modified by the processor during execution of the instructions. Moreover, both the data and the instructions may be stored as a program on the hard disk of the server 70, see at least Fig. 2; 0022; 0025 (user upload storage area)' 0039; 0040.

- receiving, through the website and over the communications network, a data file from a first device;

Music is stored on the server in accordance with the steps shown in the flowchart of FIG. 4. First, the user encodes audio compact discs from red book format or an analog source into electronic digital files (step 202).

The files are preferably compatible with MPEG-3 format or Sony's ATRAC3 format and are encoded with a general purpose computer, such as computer 60, or a dedicated device. The user then causes end user computer 60 to access the content server 70 via the Internet 80 (such as by logging onto a web page) (step 204), supplies its User ID 112 (step 206) and then uploads the files to the content server 70 (step 208). Using the foregoing example of FIG. 2, User1 would take a compact disc it owned, encode "SongA" as a digital file on end user computer 60 and upload the digital file to the content server 70 via Internet 80. In so doing, the user identifies the song with a string, such as "File1", see at least 0025.

- storing, in the database, the data file received from the first device;

Upon receipt of the User ID 112 and the song file, processor 101 of

server 70 in accordance with instructions 104 first checks the size of the file to make sure that the user has not exceeded its space limit (step 209). If the user has, then an error notification will be sent to the user explaining the problem (step 211). Otherwise, processor 101 will store the uploaded file into the space allocated for the particular user (step 210), and associate the file with the identifying string provided by the user, see at least 0026.

- receiving, through the website and over the communication network, a request for the data file from a second device;

The operation of downloading the music is also shown in FIG. 4. In this embodiment, the user accesses the content server 70 (such as by logging onto a web page) via PDA 73 which, for the purposes of this example, shall be considered to be at a geographic location remote from end user computer 60 (step 220). In other words, although the user uploaded the songs with one device, the user may download the songs at a different location with a different device, Examiner's note: a different device would be a second device. For examination purposes, the download request may be from the first device or a second device. The user accesses the web site maintained by content server 70 by using wireless modem 76 in a manner well known to those of ordinary skill in the art. The user next supplies its User ID to content server 70 by entering the information on a web page displayed on screen 75 (step 222). For example, the user may

identify itself as "User1" (it is recommended, but not required, that user names be more arbitrary than a designation of "User1" for security reasons), see at least Fig. 4B (220-222); 0027.

- querying the database for the requested data file;

If the user ID is found, the server 70 checks whether it has already been provided with an identification of the song to be downloaded (step 228). If not, then server 70 may, optionally, send a list of the identifying strings to the user (step 230). For example, server 70 would send the strings "File1", "File2" and "File3" if the songs matched the illustrative examples in FIG. 2. These strings could be displayed on screen 75. Content server 70 next prompts the user to enter the identifier for the song, which may be entered via touch-screen 75 (step 232), see at least Fig. 4; 0028. The identifier for the song is checked against the list of songs associated with that user (step 234). Using the example values of FIG. 2, the string "File1" would be valid identifier because there is a song file having that identifier contained in User1's space. The string "File4", on the other hand, would not be a valid identifier even though it points to a byte-for-byte identical file with the same name in User2's space. Accordingly, the identifier must identify a song contained in the respective user's space. If the song with that identifier is not contained in the space allocated to that user in user storage user 110, the user is notified of the error (step 211), see at least Fig. 4; 0029.

- and transmitting the data file over the communications network to the second device.

The song is validly identified, the song is then sent from the server 70 to the PDA 73 (step 236). Once downloaded, the song may then be played by the user (step 240), see at least Fig. 4B (236); 0028-0030. As disclosed by Gudorf, either the first device may make the download request and receive the downloaded data file or a second device may make the download request and receive the data file.

- Regarding claim 1: Rejection is based on the disclosures applied to claim 20.
- Regarding claims 2-4: Rejections are based on the disclosures applied to claims 1 and 20.
- Regarding claim 5: After the music is uploaded by the user to the central location, it may be played anywhere by any device capable of connecting with the server. For example, if the online service provider hosts a website, the user provides its unique identification code and the online service provider authenticates the user. The user may then download, via the internet, a copy of one or more of the music files that had been uploaded by the user, see at least 0032. Note: any device may be a third device.
- Regarding claim 6: debiting an account associated with a user of the second device. The system also has the ability to limit the number of songs that a consumer can download or stream to, either simultaneously or in total. In such an embodiment and as shown in FIG. 6, each content server 70 counts

how many times a file has been downloaded. The processor also decrements that value each time it is downloaded. For example, if a device designated as "Device1" was given a trial period to listen to Song A, then content server 70 may store the value "5" in the Copies Left field 513 of the user storage area, thus indicating that the device may download the song 5 times. Each time the song is downloaded, the value decrements. For example, FIG. 6 shows that "Device2" may only download the song 3 more times. However, if SongA were purchased, then the device would be able to download the song any number of times (such as is shown for "Device3"), see 0037.

- Regarding claim 8: Rejection is based on the disclosures applied to claims 1 and 20.
- Regarding claim 11: Rejection is based on the disclosures applied to claims 1 and 20 and as further disclosed by Gudorf. Devices can be a computer, PDA, car audio system, other mobile devices, e.g. Internet-capable wireless phones, see at least 0017-0019.
- Regarding claim 12: sound clips or full songs. Note: a full song is at least a portion of the data file.
- Regarding claim 13: Rejection is based on the disclosures applied to claims 1 and 20.
- Regarding claim 14: Rejection is based on the disclosures applied to claim 20.

- Regarding claims 15-18: Rejections are based on the disclosures applied to claims 1 and 20.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 7 and 19 are rejected under 35 USC 103(a) as being unpatentable over Gudorf, US 2002/0116082 previously applied, in view of Kontio et al., US 2005/0004875 “Kontio” previously applied.

Gudorf teaches all the above as noted under the 102(e) rejection as it pertains to i) uploading by a user a data file, e.g. music, song and/or clip, to private storage at a website server, ii) downloading one or more of the stored data files to a device of the user, and iii) communicating between user devices and the website server/storage using a computer communications network having wireless communication means, e.g. internet capable wireless phone, or wired communication means. In Kontio, techniques are implemented in a system, apparatus and methods of content distribution wherein sharing access to the content is accomplished by a digital voucher that is stored in a mobile, wireless device. The digital voucher authorizes the mobile, wireless device to access to a specified primary or secondary content that may be located elsewhere in the network. The mobile, wireless device can download a copy of portions or all of the content to be viewed, played, or executed, depending on the terms specified in the voucher. The principles of the invention

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apply even where the voucher and the content are located in any other nodes in the network, see at least 0023. The totality of information constituting a digital asset is its primary content, which contains all of the expression of its author for that particular asset. The expression may be in the form of text, graphics, sound, video, or other multimedia forms. Portions of the information in the primary content can be distilled out as a preview, such as a text abstract, a thumbnail view, a sound bite, a video clip, executable code fragment, or the like, which are generically referred to as secondary content. The presentation of the information in the primary content can be limited to a specified duration or a specific number of viewings, see at least 0030. Additionally the voucher can express usage rights for low value content, e.g. cellular telephone ringing tones, logos (note: images), cellular telephone games see 0080; 0176; 0281; 0374; 0377. For music and e-books see at least 0211; 0230; 0257.

In Kontio, techniques described are applicable to virtually all digital communications networks, including wide area networks (WANs), metropolitan area networks (MANs), local area networks (LANs), and personal area networks (PANs). The invention is applicable to fixed station wireline networks, mobile wireless networks, and hybrid combinations of fixed station wireline networks communicating through wireless access points with mobile wireless networks. In particular, the invention is applicable to any mobile computing environment, including any wireless wide area network such as a cellular telephone network or any short range wireless system such as a wireless local area network or a wireless personal area network. Examples of wireless, wide area network architectures to which the invention applies

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include Global System for Mobile Communication (GSM), IS-136 TDMA-based Digital Advanced Mobile Phone Service (DAMPS), Personal Digital Cellular (PDC), IS-95 CDMA-based cdmaOne System, General Packet Radio Service (GPRS) and broadband wireless systems such as W-CDMA, and Broadband GPRS. Examples of short-range wireless systems to which the invention applies include the Bluetooth Standard, the IEEE 802.11 Wireless LAN Standard the HIPERLAN Standard, the IEEE 802.15 Wireless Personal Area Network (WPAN) standard, the Infrared Data Association (IrDA) standard, the Digital Enhanced Cordless Telecommunications (DECT) standard, the Shared Wireless Access Protocol (SWAP) standard, the Japanese 3rd Generation (3G) wireless standard, and the Multimedia Mobile Access Communication (MMAC) Systems standard of the Japanese Association of Radio Industries and Businesses, see at least 0059. Kontio further teaches:

- Browsing content catalog: The mobile device or mobile terminal communicating with distributing computer via a mobile computing network, see at least 0044; 0048; 0071 (receiver protocol engine executed by the mobile device); 0228. When the user carries receiving terminal 140 into the communication range of retail content service 110, the user can browse the content of retail content service 110 by sending catalog request 211 to content catalog 210 and receiving catalog response 212 from content catalog 210. In one embodiment, the format of catalog request 211 and catalog response 212 complies with either wireless access protocol (WAP) or

- hypertext transfer protocol (HTTP), see at least 0089. Note: mobile device/receiving terminal are processor-based.
- OFDM: The IEEE 802.11 Wireless LAN Standard defines at least two different physical (PHY) specifications and one common medium access control (MAC) specification. The IEEE 802.11(a) Standard is designed for either the 2.4 GHz ISM band or the 5 GHz U-NII band, and uses orthogonal frequency division multiplexing (OFDM) to deliver up to 54 Mbps data rates. The IEEE 802.11(b) Standard is designed for the 2.4 GHz ISM band and uses direct sequence spread spectrum (DSSS) to deliver up to 11 Mbps data rates. The IEEE 802.11 Wireless LAN Standard describes two major components, the mobile station and the fixed access point (AP). IEEE 802.11 ad hoc networks have an independent configuration where the mobile stations communicate directly with one another, without support from a fixed access point. The IEEE 802.11 standard provides wireless devices with service inquiry features similar to the Bluetooth inquiry and scanning features. IEEE 802.11 ad hoc networks support distributed activities similar those of a Bluetooth piconet, except that they have ten times the communications range, see 0022. The HIPERLAN standard provides a wireless LAN with a high data rate of up to 54 Mbps and a medium-range of 50 meters. HIPERLAN wireless LANs provide multimedia distribution with video quality of service (QoS), reserved spectrum, and good in-building propagation. There are two HIPERLAN standards. HIPERLAN Type 1 is a dynamic, priority driven

channel access protocol similar to wireless Ethernet. HIPERLAN Type 2 is a reserved channel access protocol similar to a wireless version of asynchronous transfer mode (ATM). Both HIPERLAN Type 1 and HIPERLAN Type 2 use dedicated spectrum at 5 GHz. HIPERLAN Type 1 uses an advanced channel equalizer to deal with inter-symbol interference and signal multipath. HIPERLAN Type 2 avoids these interference problems by using orthogonal frequency division multiplex (OFDM) and a frequency transform function. The HIPERLAN Type 2 specification offers options for bit rates of 6, 16, 36, and 54 Mbps. The physical layer adopts an OFDM multiple carrier scheme using 48 carrier frequencies per OFDM symbol. Each carrier may then be modulated using binary phase shift keying (BPSK), quadrature phase shift keying (QPSK), or quadrature amplitude modulation (QAM) formats of 16-QAM or 64-QAM to provide different data rates. The modulation schemes chosen for the higher bit rates achieve throughput in the range 30-50 Mbps, see 0024; 0026.

- Distribution: Distribution by sharing access to the content is accomplished by a digital voucher that is stored in the mobile, wireless device. The digital voucher authorizes the mobile, wireless device to access to a specified primary or secondary content that may be located elsewhere in the network. The mobile, wireless device can download a copy of portions or all of the content to be viewed, played, or executed, depending on the terms specified in the voucher. The principles of the invention apply even where the voucher

and the content are located in any other nodes in the network, see at least Fig. 2; 0032; 0088-0092.

- Player: To prevent the widespread infringement of the copyright of digital content such as movies, music, or electronic books, different content protection and digital rights management systems have emerged. There is a common requirement for all those systems; they need to bind the content to something. There have been many arguments over whether the right thing to do is to bind the content to a piece of equipment (such as a certain PC, for instance), the media on which the content is stored (memory card or hard disk, for instance) or to the user. This invention makes this no longer an "either-or" situation by allowing content to be bound to a multitude of identities. The presence of even one of those identities will enable the usage of the content, see at least 0257. When a file containing a piece of content is originally purchased (e.g. downloaded from the Web), it is encrypted with a randomly chosen Content Key. The Content Key is then encrypted with a multitude of different IDs such as Device ID, Media ID and User ID. All those encrypted versions of the Content Key are then attached to the content. The content can then be freely moved around in the encrypted format. When it is time to use the content, the player software then tries the Device ID, the Media ID and the User ID as keys for decrypting the Encrypted Content Key. As long as even one of those identities matches, the correct Content Key is recovered and the content can be decrypted, see at least 0258. Also see at

least Fig. 3A (Play Directive 331); 0032 (content viewed, played or executed); 0095 (play directive); 0108; 0109; 0110.

One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of transmitting to the wireless device using OFDM in order to avoid interference and signal multipath problems as taught by Kontio would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Kontio to the teachings of Gudorf would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.* The Gudorf system, methods and device using Kontio's techniques would permit storing a data file in the wireless device and would further avoid interference and signal multipath problems using OFDM.

- 4. Claims 9 and 10 are rejected under 35 USC 103(a) as being unpatentable over Gudorf, US 2002/0116082 previously applied, and Kontio, US 2005/0004875 previously applied, as applied to claim 7 further in view of Nathan et al., US 6,182,126 "Nathan" previously applied.**

Gudorf and Kontio teach and suggest all the above as noted under the 103(a) rejection as it pertains to i) uploading by a user a data file, e.g. music, song and/or

clip, to private storage at a website server, ii) downloading one or more of the stored data files to a device of the user, and iii) communicating between user devices and the website server/storage using a computer communications network having wireless communication means, e.g. internet capable wireless phone, or wired communication means. Additionally in Gudorf, the user will access the content server and obtain a list of music selections which are available for use (step 302 of FIG. 4). For example, a list of the songs, their descriptions and prices may be sent as a web page to end user computer 60. The user selects the songs that they would like and then transmits that information, along with their User ID, to the content server 70 (step 304). For example, "User 2" may indicate that they wish to listen to "Song X". Upon receiving the name of the song from the user, processor 101 then extracts the file associated with the song from the song bank 400 (step 306). The process then proceeds as if the song had been uploaded by the user, i.e. the processor 101 checks the size of the selected song against the space remaining available to the user (step 209). If there is enough room, the song is stored in the area allocated to the particular user (step 210) as schematically indicated by the dashed arrow in FIG. 5. Accordingly, in this embodiment, even when a copy of the song is available on the server, yet another copy of the song will be stored in the user's space in user storage area 110. The database may also be contained at a separate site or server, such as server 71 of FIG. 1, see at least 0040. In Nathan, techniques are implemented in a digital home audiovisual information recording and playback apparatus that includes a microprocessor associated, through a digital

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interface, with a display, through another interface with sound playback structure and through a telecommunications interface with structure for loading audio selection or visual selection digital information, see at least abstract; col. 1, line 40- col. 2, line 47. Nathan continues with: in this screen the user can purchase one or more musical pieces which have been offered to him based on a list which is resident in the apparatus and which is updated during communication with the distribution server center. Search on this list takes place by title, artist, category, alphabetical order and by release date, see at least col. 11, lines 62-63. It would have been obvious to one of ordinary skill in the art at time of invention to ascertain displaying release dates in chronological order, given the system can display in alphabetical order. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of displaying a search list based on alphabetical order or chronological order as taught and suggested by Nathan would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Nathan to the teachings of Gudorf and Kontio would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems.

Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.* The Gudorf-Kontio system and methods using Nathan's techniques would permit the user to access the content server and obtain a list of music selections in alphabetical order or chronological order.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT POND whose telephone number is (571)272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jason Dunham can be reached on 571-272-8109. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ROBERT POND/
Primary Examiner, Art Unit 3684
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