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

EXAMINER
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POND, ROBERT M

ART UNIT	PAPER NUMBER
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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.

<b>Office Action Summary</b>	<b>Application No.</b> 14/230,762	<b>Applicant(s)</b> MIKKELSEN ET AL.	
	<b>Examiner</b> ROBERT POND	<b>Art Unit</b> 3684	<b>AIA (First Inventor to File) Status</b> 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 9/05/14.  
☐ 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) 1-17 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5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.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) 1-17 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](http://www.uspto.gov/patents/init_events/pph/index.jsp) or send an inquiry to [PPHfeedback@uspto.gov](mailto: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 9/12/14;10/23/14;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 date for claims 1-4, 7-10 and 13-15 is 26 October 2001. The effective priority date for claims 5, 6, 11, 12, 16 and 17 is 26 June 2002.

#### ***Response to Reply***

All pending claims 1-17 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. In Fritsch, consumers 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. For

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instance, a consumer may browse through artists, tracks or albums, pre-listen to a portion of the song and purchase the selected song either by downloading the digital data to her computer hard drive or by placing a mail order for a compact disk (CD). A specially encoded or encrypted MP3 files called "NETrax" are delivered from a server over the Internet or cable services to the end consumers' home PC, see col. 2, line 64-col. 3, line 9. The server is a node on a global computer-implemented network, such as the Internet. As known to those skilled in the art, a network router may be used to connect the server to the Internet for controlling the flow of data. Also connected to the Internet is a plurality of nodes, such as personal computers, Web devices, etc., under control by the users (hereinafter collectively referred to as PC users). It is implied that the "etc" aspect of this applies to the cellular telephone previously grouped with personal computers and web devices and therefore the methods pertaining to using the personal computer likewise apply to the cellular telephone.

### ***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 1-17 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 1 is directed to a process. Additionally, the claim is directed to wirelessly delivering compressed audio/video files to a wireless device 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 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

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website via the wireless device. Interaction with a computer (inherent in claim 1) organizes the interaction of the wireless device under control of a user in order to successfully request and receive the compressed files. Given that the method of claim 1 is designed to facilitate the purchase of the compressed 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 the compressed digital audio and/or visual file for access over the Internet; wherein the compressed digital audio and/or visual file comprises at least one of a full, partial, or segment of: a song, a musical score, a musical composition, a ringtone, a video or video segment, a movie or movie segment, a film or film segment, 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;

providing a visual image associated with the compressed digital audio and/or visual file for selection of the compressed digital audio and/or visual file;

receiving a first request from the wireless device means for the visual image;

transmitting the visual image to the wireless device means based on the received first request;

receiving a second request from the wireless device means selecting the compressed digital audio and/or visual file; and

transmitting the compressed digital audio and/or visual file to the wireless device means using orthogonal frequency-division multiplex (OFDM) modulation over a cellular data connection based on the received second request.

The elements of the instant process, when taken alone, each execute in a manner routinely and conventionally expected of these elements. That is, a first and a second request for a digital file is received and the requested digital files are transmitted.

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 compressed audio/video file to a cell phone) 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 compressed audio/video file to a cell phone) 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.



### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the claims at issue are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the reference application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO internet Web site contains terminal disclaimer forms which may be used. Please visit <http://www.uspto.gov/forms/>. The filing date of the application will

determine what form should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to <http://www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp>.

2. Claims 1-17 are rejected on the ground of nonstatutory double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,548,875. Although the claims at issue are not identical, they are not patentably distinct from each other because rejected claims 1, 7 and 13 produce a similar outcome using the same computing structures.

### ***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 1-4, 7-10 and 13-15 are rejected under 35 USC 103(a) as being unpatentable over Fritsch, US 6,247,130 IDS filed 05 May 2014 previously applied, in view of Kontio et al., US 2005/0004875 “Kontio” previously applied.**

Fritsch teaches 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,

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cellular telephone, etc., to obtain a variety of services and products. For instance, a consumer may browse through artists, tracks or albums, pre-listen to a portion of the song and purchase the selected song either by downloading the digital data to her computer hard drive or by placing a mail order for a compact disk (CD). A specially encoded or encrypted MP3 files called "NETrax" are delivered from a server over the Internet or cable services to the end consumers' home PC, see col. 2, line 64-col. 3, line 9. Please note: MP3 is short for MP(EG) Layer 3, a type of audio data compression that can reduce digital sound files by a 12:1 ratio with virtually no loss in quality. See excerpt from Random House Webster's Computer & Internet Dictionary, Third Edition, Philip E. Margolis, 1999.

Fritsch's invention is directed to, among other things, a network-based system for distribution of musical products over a network, such as the Internet for example. The system includes a server platform for processing user requests and other information associated with the operation of the system. The server is connected to a database, which may be remote or local, for storing data. The stored data represents digitized songs, text associated with each song such as track name, album name, artist name, lyrics, etc., image data, graphics, etc., see at least col. 3, lines 10-18.

The server is a node on a global computer-implemented network, such as the Internet. As known to those skilled in the art, a network router may be used to connect the server to the Internet for controlling the flow of data. Also connected to the Internet is a plurality of nodes, such as personal computers, Web devices, etc.,

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under control by the users (hereinafter collectively referred to as PC users). The PC users communicate with the server using dial-up modems, cable modems, IDSN, DSL, etc., and using browser programs executing on their personal computers or other Internet-compatible devices, as well known to those skilled in the art.

Communication links or sessions are established between the PC users and the server, via the Internet, when the PC users log onto the web site hosted by the server, see col. 3, lines 19-33. Fritsch further discloses:

- Regarding claim 1:
  - providing the compressed digital audio and/or visual file for access over the Internet;

Consumers may access a 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 including audio and visual files, see at least Figs. 1C, 2A, 4D-4L; col. 2, line 64-col. 3, line 18 (songs and image data). A specially encoded or encrypted MP3 files called "NETrax" are delivered from a server over the Internet or cable services to the end consumers' home PC, see col. 2, line 64-col. 3, line 9. Please note: MP3 is short for MP(EG) Layer 3, a type of audio data compression that can reduce digital sound files by a 12:1 ratio with virtually no loss in quality. See excerpt from Random House Webster's Computer & Internet Dictionary, Third Edition, Philip E. Margolis, 1999.

- wherein the compressed digital audio and/or visual file comprises at least one of a full, partial, or segment of: a song, a musical score, a musical composition, a ringtone, a video or video segment, a movie or movie segment, a film or film segment, 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,

For instance, a consumer may browse through artists, tracks or albums, pre-listen to a portion of the song and purchase the selected song either by downloading the digital data to her computer hard drive or by placing a mail order for a compact disk (CD).

- providing a visual image associated with the compressed digital audio and/or visual file for selection of the compressed digital audio and/or visual file; receiving a first request from the wireless device means for the visual image; transmitting the visual image to the wireless device means based on the received first request;

Fritsch: As illustrated in Fig. 1C, the first request would be for the visual image. If interested in a song, the PC user has the option of clicking on a song to "pre-listen" to it--hearing a 20-second clip, for example--as illustrated in FIG. 1C, see at least col. 4, line 65-col. 5, line 1. Stored data represents digitized songs, text associated with each song e.g. track

name, album name, artist name, lyrics, image data, graphics etc., see at least col. 3, lines 15-18. Another first request could be for the sound clip associated with visual image illustrated in various figures.

- receiving a second request from the wireless device means selecting the compressed digital audio and/or visual file;

Fritsch: When the PC user has developed a satisfactory list, she can submit her order by clicking on the "Purchase Items" button, as illustrated in FIG. 1E showing the magnified right portion of the screen, including the shopping basket. Note: The second request would be for the full audio file. The purchased items will be delivered immediately over the Internet to the user's computer if the selected music is in downloadable digital format. The user can then listen to the song at her computer or download it onto a portable player, see at least col. 5, lines 10-20.

- transmitting the compressed digital audio and/or visual file to the wireless device means over a cellular data connection based on the received second request.

Fritsch: The purchased items will be delivered immediately over the Internet to the user's computer if the selected music is in downloadable digital format. The user can then listen to the song at his computer, see at least col. 3, lines 7-8 (encoded MP3 files); col. 5, lines 10-20. Fritsch: 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, see at least col. 2, line 64-col. 3, line 9.

Fritsch teaches all the above as noted under the 103(a) rejection as it pertains delivering encoded or encrypted digital audio files or any other digital files from a server to user's device over a wired or wireless network, and specifically mentions i) purchased items will be delivered immediately over the Internet to the user's computer if the selected music is in downloadable digital format. The user can then listen to the song at his computer, see at least col. 5, lines 10-20, and ii) delivering compressed audio using MP3 files. Kontio teaches techniques 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 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

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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 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 Fritsch 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 Fritsch system, methods and device using Kontio's techniques would permit storing at least a portion of an audio file in the wireless device and would further avoid interference and signal multipath problems using OFDM.

The following are rejected based on the teachings and rationale applied above to claim 1 and as further taught and suggested by Fritsch and Kontio:

- Regarding claim 2: device means is a cell phone.

Fritsch: 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, see at least col. 2, line 64-col. 3, line 9.

- Regarding claims 3 and 4: storing at least a portion of the compressed digital audio and/or visual file on the cell phone.

Fritsch: 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, see at least col. 2, line 64-col. 3, line 9. The user can then listen to the song at his computer or download it onto a portable

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player, see at least col. 5, lines 10-20. As described above, once the PC user purchases a song or album in digital format, she can download the purchased music to her PC many times, See at least col. 8, lines 8-10.

- Regarding claim 7: Rejection is based on the teachings and rationale applied to claim 1 and dependents of claim 1.
- Regarding claims 8-10: Rejections are based on the teachings and rationale applied to claims 1, 7 and dependents of claim 1 having similar subject matter.
- Regarding claim 13: Rejection is based on the teachings and rationale applied to claim 1 and dependents of claim 1. In Fritsch, the first request is a request for a portion or clip of an audio file. The second request would be for the full audio file.
- Regarding claims 14-15: Rejections are based on the teachings and rationale applied to claims 1, 13 and dependents of claim 1 having similar subject matter.

**4. Claims 5, 6, 11, 12, 16 and 17 are rejected under 35 USC 103(a) as being unpatentable over Fritsch, US 6,247,130 IDS filed 05 May 2014 previously applied, and Kontio, US 2005/0004875 previously applied, further in view of Chen et al., US 2003/0115041 "Chen" previously applied.**

Regarding claims 5 and 6: Fritsch and Kontio teach and suggest all the above as noted under the 103(a) rejection as it pertains delivering compressed digital audio

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files or any other digital files from a server to user's device over a wired or wireless network, and specifically mentions i) purchased items will be delivered immediately over the Internet to the user's computer if the selected music is in downloadable digital format. The user can then listen to the song at his computer, see at least col. 5, lines 10-20, and ii) delivering MP3 files. Likewise Chen teaches a wired or wireless communication connection from one computing entity to another computing entity that delivers compressed audio or video information or other data in a modulated data signal, see at least abstract; 0084. A computer processes audio information as a series of numbers representing the audio information. For example, a single number can represent an audio sample, which is an amplitude (i.e., loudness) at a particular time. Several factors affect the quality of the audio information, including sample depth, sampling rate, and channel mode. Sample depth (or precision) indicates the range of numbers used to represent a sample. The more values possible for the sample, the higher the quality is because the number can capture more subtle variations in amplitude. For example, an 8-bit sample has 256 possible values, while a 16-bit sample has 65,536 possible values. The sampling rate (usually measured as the number of samples per second) also affects quality. The higher the sampling rate, the higher the quality because more frequencies of sound can be represented. Some common sampling rates are 8,000, 11,025, 22,050, 32,000, 44,100, 48,000, and 96,000 samples/second. Mono and stereo are two common channel modes for audio. In mono mode, audio information is present in one channel. In stereo mode, audio information is present two



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channels usually labeled the left and right channels. Other modes with more channels, such as 5-channel surround sound, are also possible. Table 1 shows several formats of audio with different quality levels, along with corresponding raw bit rate costs. Compression (also called encoding or coding) decreases the cost of storing and transmitting audio information by converting the information into a lower bit rate form. Compression can be lossless (in which quality does not suffer) or lossy (in which quality suffers). Decompression (also called decoding) extracts a reconstructed version of the original information from the compressed form.

Quantization is a conventional lossy compression technique. There are many different kinds of quantization including uniform and non-uniform quantization, scalar and vector quantization, and adaptive and non-adaptive quantization. Quantization maps ranges of input values to single values. For example, with uniform, scalar quantization by a factor of 3.0, a sample with a value anywhere between -1.5 and 1.499 is mapped to 0, a sample with a value anywhere between 1.5 and 4.499 is mapped to 1, etc. To reconstruct the sample, the quantized value is multiplied by the quantization factor, but the reconstruction is imprecise. Continuing the example started above, the quantized value 1 reconstructs to  $1 \times 3 = 3$ ; it is impossible to determine where the original sample value was in the range 1.5 to 4.499.

Quantization causes a loss in fidelity of the reconstructed value compared to the original value. Quantization can dramatically improve the effectiveness of subsequent lossless compression, however, thereby reducing bit rate, see at least 0006-0012. Chen further teaches an MP3 encoder can use any of several different

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coding channel modes, including single channel, two independent channels (left and right channels), or two jointly coded channels (sum and difference channels). If the encoder uses jointly coded channels, the encoder computes a set of scale factors for each of the sum and difference channels using the same techniques that are used for left and right channels, see at least 0049; 0050; 0052; 0076 (improvement and efficient coding). Also see 0051; 0092; 0106; 0131; 0134; 0158; 0149 for streaming audio. sampling/sample rates, see at least 0006-0008; 0012; 0014; 0036; 0092; 0093; 0094; 0102; 0109; 0169; 0171; normalizing, see at least 0097; 0159; 0161; 0163; 0164; 0167; 0169; 0172); mono, see at least 0042; 0043; 0049; 0095; 0118; filter/filtering, see at least 0036; 0046.

One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of delivering compressed digital audio comprising optimizing the digital audio and/or visual file as taught by Chen would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Chen to the teachings of Fritsch 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 Fritsch system and methods using Chen's techniques would deliver compressed digital audio and/or visual files using a scheme to improve or optimize the delivered files.

Regarding claims 11-12: Rejections are based on the teachings and rationale applied to claims 1, 7 and dependents of claim 1 having similar subject matter.

Regarding claims 16-17: Rejections are based on the teachings and rationale applied to claims 1, 13 and dependents of claim 1 having similar subject matter.

### ***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

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automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ROBERT POND/  
Primary Examiner, Art Unit 3684  
November 4, 2014