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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/015,063	06/23/2022	7233790	22104.12R	8395
22913	7590	08/17/2022		
Workman Nydegger 60 East South Temple Suite 1000 Salt Lake City, UT 84111			EXAMINER HENEGHAN, MATTHEW E	
			ART UNIT	PAPER NUMBER
			3992	
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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.



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***EX PARTE* REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/015,063 .

PATENT UNDER REEXAMINATION 7233790 .

ART UNIT 3992 .

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Order Granting Request For Ex Parte Reexamination	Control No. 90/015,063	Patent Under Reexamination 7233790	
	Examiner MATTHEW E HENEGHAN	Art Unit 3992	AIA (FITF) Status No

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

The request for *ex parte* reexamination filed 06/23/2022 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) ☐ PTO-892, b) ☒ PTO/SB/08, c) ☐ Other: _____

1. ☒ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

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cc:Requester (if third party requester)

ORDER GRANTING EX PARTE REEXAMINATION

Notice of Pre-AIA or AIA Status

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

Ex Parte Reexamination

A third party, Unified Patents, LLC, has requested *ex parte* reexamination of claims 1, 2, 4, 8, and 9 of U.S. Patent No. 7,233,790.

A substantial new question of patentability affecting claims 1, 2, 4, 8, and 9 of United States Patent Number 7,233,790 is raised by the request for *ex parte* reexamination.

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 7,233,790 (hereinafter the '790 patent) throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c).

References

The following references have been supplied by the third party requester for proposed grounds of rejection:

U.S. Patent Application Publication No. 2002/0078178 to Senoh (hereinafter (Senoh))

U.S. Patent No. 6,035,339 to Agraharam et al. (hereinafter Agraharam)

U.S. Patent No. 6,421,726 to Kenner et al. (hereinafter Kenner)

U.S. Patent No. 6,345,279 to Li et al. (hereinafter Li)

None of these references have been considered in a previous examination or final district court judgment.

Prosecution History

The '790 patent was originally filed as Application No. 10/600,746 on 19 June 2003, having claims 1-11. The application claimed priority to Provisional Patent Applications 60/393,024; 60/392,383; 60/393,041; and 60/392,999, all filed on 28 June 2002.

In a non-final office action mailed by the Office on 20 October 2006, claims 1-4 and 9 were rejected under 35 U.S.C. 102(e) over U.S. Patent No. 6,912,385 to Namba et al. (hereinafter Namba) or, alternatively, U.S. Patent Application Publication No.

2003/0060188 to Gidron et al. (hereinafter Gidron). Claims 5-8, 10, and 11 were indicated as containing allowable subject matter, without explanation.

The Applicant responded on 22 January 2007, cancelling claims 1-4, amending claim 9, and adding claims 12-18.

The Office mailed a Notice of Allowance on 16 March 2007. The Examiner stated that the claims were allowable because:

“The prior art fails to disclose a method and system of accessing content on a wireless communication device, that specifically includes receiving and storing a plurality of different implementations of the items of content. Neither does the prior art teach maintaining a catalog describing the items of content.”

The patent was issued on 19 June 2007.

Independent Claims of the '790 Patent

Ex parte reexamination has been requested for the following four independent claims:

1. A method of providing access to content for use on wireless communication devices,
the method comprising:

receiving and storing a plurality of items of content to be made available for use in
wireless communication devices used by a plurality of wireless services
subscribers, including receiving a plurality of different implementations of at least
one of the items of content, where each implementation of any given item of
content corresponds to a different set of device capabilities; and
maintaining a product catalog containing a description of the items of content, the
product catalog including, in association with each item of content, a reference to
each implementation of said item of content.

2. A method of providing access to digital content for use on wireless communication
devices, the method comprising:

receiving and storing in a server system a plurality of items of digital content to be made
available for use in wireless communication devices used by a plurality of
wireless services subscribers, including receiving and storing a plurality of
different implementations of at least one of the items of digital content, where
each implementation of any given item of digital content corresponds to a
different set of device capabilities;

operating the server system to maintain a product catalog containing a description of the items of digital content, wherein the product catalog includes, in association with each item of digital content, a reference to each implementation of said item of digital content;

receiving a request from a wireless device used by one of the subscribers;

in response to the request, selecting a portion of the product catalog to be presented to the subscriber, based on device capabilities of the wireless device used by the subscriber; and

presenting the selected portion of the product catalog to the subscriber via a wireless network, such that the selected portion, as presented to the subscriber, provides only a single description of each item of digital content in said portion, regardless of the number of implementations of each said item.

8. A system comprising:

a network interface through which to communicate over a communication network; and

a download manager to

receive and store a plurality of items of content to be made available for use in wireless communication devices used by a plurality of wireless telecommunications subscribers, including receiving a plurality of different implementations of at least one of the items of content, where each implementation of any given item of content corresponds to a different set of device capabilities; and

maintain a product catalog containing a description of the items of content, the product catalog including, in association with each item of content, a reference to each implementation of said item of content.

9. A system comprising:

a processor; and

a storage facility accessible to the processor and containing code which, when executed by the processor, causes the processing system to

receive and store a plurality of items of digital content to be made available for use in wireless communication devices used by a plurality of wireless telecommunications subscribers, including receiving and storing a plurality of different implementations of at least one of the items of digital content, where each implementation of any given item of digital content corresponds to a different set of device capabilities;

maintain a product catalog containing a description of the items of digital content, wherein the product catalog includes, in association with each item of digital content, a reference to each implementation of said item of digital content;

receive a request from a wireless device used by one of the subscribers;

in response to the request, select a portion of the product catalog to be presented to the subscriber, based on device capabilities of the wireless device used by the subscriber; and

cause the selected portion of the product catalog to be presented to the subscriber via a wireless telecommunications network, such that the selected portion, as presented to the subscriber, provides only a single description of each item of digital content in said portion, regardless of the number of implementations of each said item.

Substantial New Questions of Patentability (SNQ)

Senoh

Senoh discloses a content distribution system (see abstract) in which the content server generates and sends a catalog that includes content ID and content type. This was not taught by the art of record that was considered by the original examiner. It is AGREED that a reasonable examiner would consider Senoh, in conjunction with any of Agraharam, Kenner, and/or Li, important in determining patentability for claims 1, 2, 4, 8, and/or 9. A Substantial New Question of Patentability is therefore established.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW E HENEGHAN whose telephone number is (571)272-3834. The examiner can normally be reached M-F 8-5.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Fuelling can be reached on (571)270-1367. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit: <https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197

Art Unit: 3992

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

/MATTHEW E HENEGHAN/

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