PTO/SB/06 (07-06)
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PATENT APPLICATION FEE DETERMINATION RECORD

Substitute for Form PTO-875

Application or Docket Number	Filing Date	☐ To be Mailed
11/116,783	04/28/2005	

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	SMALL ENTITY ☒ RATE ($)	SMALL ENTITY ☒ FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	OTHER THAN SMALL ENTITY FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A			N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =		OR	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =			X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).						
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))							
			TOTAL			TOTAL	

* If the difference in column 1 is less than zero, enter "0" in column 2.

APPLICATION AS AMENDED – PART II

AMENDMENT 04/10/2009

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	SMALL ENTITY RATE ($)	SMALL ENTITY ADDITIONAL FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	OTHER THAN SMALL ENTITY ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 16	Minus	** 34	= 0	X $26 =	0	OR	X $ =	
Independent (37 CFR 1.16(h))	* 1	Minus	***5	= 0	X $110 =	0	OR	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)	OR	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =		OR	X $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =		OR	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Legal Instrument Examiner:
/DORIS M. KING/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PLUS Search Results for S/N 11116783, Searched Wed May 06 07:54:40 EDT 2009

The Patent Linguistics Utility System (PLUS) is a USPTO automated search system for U.S. Patents from 1971 to the present PLUS is a query-by-example search system which produces a list of patents that are most closely related linguistically to the application searched. This search was prepared by the staff of the Scientific and Technical Information Center, SIRA.

20050262257 91
20080222235 60
20080195743 59
20090043906 59
6574618 57
20010034736 57
4029573 47
4136720 47
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20010037399 47
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20080008458 24
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20080310722 24
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PLUS Search Results for S/N 11116783, Searched Wed May 06 07:54:30 EDT 2009

The Patent Linguistics Utility System (PLUS) is a USPTO automated search system for U.S. Patents from 1971 to the present PLUS is a query-by-example search system which produces a list of patents that are most closely related linguistically to the application searched. This search was prepared by the staff of the Scientific and Technical Information Center, SIRA.

20050262257 99
5928331 42
20080195743 92
20090043906 92
4541854 64
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20020083183 46
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20030004882 46
20030009538 46
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Advisory Action Before the Filing of an Appeal Brief	**Application No.** 11/116,783	**Applicant(s)** MAJOR ET AL.	
	Examiner NINOS DONABED	**Art Unit** 2444	

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

THE REPLY FILED 10 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: *NONE*.
   Claim(s) rejected: *2-21,23-26,35-38 and 40-45*.
   Claim(s) withdrawn from consideration: *NONE*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

/N. D./
Examiner, Art Unit 2444

Continuation of 13. Other: Regarding at least claim 44, the phrase "wherein the web server is without specialized server-side intelligence to respond to said requesting" changes the scope of the claims and would require further search and consideration on behalf of the Examiner.

With regards to Applicant's arguments, Applicant suggests that "Hughes fails to teach automatically and progressively requesting by the media player from the server ... subsequent portions of the video from different ones of the copies dependent upon successive determinations by the media player to shift the playback quality ... to achieve continuous playback of the video using portions of the highest quality one of the copies,". Examiner points to at least the Li reference paragraphs [0007] - [0014] which contain automatically and progressively shifting between different quality files. Furthermore Examiner concludes that these limitations are taught by Dankworth (U.S. Patent Application 20040031054), Roth (U.S. Patent Application Publication 2004000310, and NPL "Intelligent Streaming" by Bill Birney. Furthermore Applicant argues that the references do not teach "divided into portions". Examiner points to already cited Hughes page 4 paragraph [0037], which teaches portions of video files. Since there is switching between the different portions there has to be some sort of time indexing being done. Furthermore the Examiner also concludes that the Dankworth, Roth and Birney reference teaches this limitation. All limitations of the claimed invention are taught by the prior art of record. Furthermore the limitations are also taught in the Dankworth, Roth, and Bimey references which the Examiner has provided in order to further the prosecution of the case.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	8532P001	5535

8791 7590 05/12/2009

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
05/12/2009	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.

Notice of References Cited	Application/Control No. 11/116,783	Applicant(s)/Patent Under Reexamination MAJOR ET AL.	
	Examiner NINOS DONABED	Art Unit 2444	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2004/0031054	02-2004	Dankworth et al.	725/86
*	B	US-2004/0003101	01-2004	Roth et al.	709/231
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	Intellegent Streaming, Bill Birney, May 2003, Microsoft
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

SEARCHED			
Class	Subclass	Date	Examiner
709	246	05/07/2008	ND

SEARCH NOTES		
Search Notes	Date	Examiner
See EAST Search History	05/07/2008	ND
Conducted double patenting search	05/07/2008	ND
Consulted with SPE William Vaughn	11/13/2008	ND
See updated EAST search	12/13/2009	ND
Consulted with SPE William Vaughn regarding Final	02/12/2009	ND
Consulted with SPE William Vaughn regarding Advisory	03/29/2009	ND
Consulted with SPE William Vaughn regarding Advisory	5/7/2009	ND
Consulted with Primary Paul Kang	02/10/2009	ND

INTERFERENCE SEARCH			
Class	Subclass	Date	Examiner

PTO/SB/06 (07-06)
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PATENT APPLICATION FEE DETERMINATION RECORD

Substitute for Form PTO-875

Application or Docket Number	Filing Date	☐ To be Mailed
11/116,783	04/28/2005	

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	SMALL ENTITY ☒ RATE ($)	SMALL ENTITY ☒ FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	OTHER THAN SMALL ENTITY FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A			N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =		OR	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =			X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).						
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))							
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT 06/22/2009	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	SMALL ENTITY RATE ($)	SMALL ENTITY ADDITIONAL FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	OTHER THAN SMALL ENTITY ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 21	Minus	** 34	= 0	X $26 =	0	OR	X $ =	
Independent (37 CFR 1.16(h))	* 1	Minus	***5	= 0	X $110 =	0	OR	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	

AMENDMENT	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)	OR	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =		OR	X $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =		OR	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))									
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
					TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Legal Instrument Examiner:
/DIANE WILLIAMS/

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

AMENDMENTS

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of the claims in the application:

Listing of Claims:

1-19. (Canceled)

20. (Currently amended) A method for presenting rate-adaptive streams, the method comprising:

streaming by a media player operating on an end user station a video from a ~~server~~ set of one or more servers, ~~wherein the video has a playback duration,~~ wherein each of a plurality of different copies of the video ~~are stored on the server, wherein each of the different copies is~~ encoded ~~and compressed~~ at ~~according to a~~ different bit rates ~~rate and includes the entire playback duration of the video, wherein the different copies are divided into portions~~ is stored as multiple files on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies~~, wherein corresponding portions of the different copies~~ have the same time index in relation to the beginning of the video, and wherein the streaming comprises:

requesting by the media player a plurality of sequential ~~portions~~ ones of the files of ~~a first~~ one of the copies ~~encoded and compressed at a first of the bit rates~~ from the ~~server~~ set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes;

automatically ~~and progressively~~ requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from ~~different ones~~ one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically ~~and progressively~~ requesting including,

regularly generating a set of one or more ~~performance~~ factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and

making the successive determinations to shift the playback quality based on at least one of the ~~performance~~set of factors to achieve continuous playback of the video using the files ~~portions~~ of the highest quality one of the copies determined sustainable at that time; and

presenting the video ~~to the user~~ by playing back with the media player on the end user station the requested ~~portions~~ files ~~from the different copies~~ in order of ascending playback time.

21. (Currently amended) The method of claim 20, ~~further comprising establishing the plurality of TCP connections with the server,~~ wherein said requesting the plurality of sequential ~~portions~~ ones of the files ~~of the first of the copies~~ includes requesting sub-parts of the ~~portions~~ files over different ones of the plurality of TCP connections, and wherein said ~~method~~presenting ~~further~~ includes reassembling the ~~portions~~ files from the received sub-parts.

22. (Canceled)

23. (Currently amended) The method of claim 20, wherein said ~~determining whether~~ making the successive determinations to shift ~~upshift or downshift~~ comprises:

upshifting to a higher quality one of the different copies when the at least one ~~performance~~ factor is greater than a first ~~selected~~ threshold; and

determining if the higher quality playback can be sustained.

24. (Currently amended) The method of claim 23, wherein said ~~determining whether~~ making the successive determinations to shift ~~upshift or downshift~~ comprises downshifting to a lower quality one of the different copies when the at least one ~~performance~~ factor is less than a second ~~selected~~ threshold.

25. (Currently amended) The method of claim 20, further comprising:

receiving user input to enable one of fast-forward, skip randomly, and rewind functionality; and

requesting ~~portions~~ files of the video at a specified time index that is not the next sequential time in the current playback.

26. (Currently amended) The method of claim [[22]] 20, ~~further comprising:~~ ~~———~~wherein said requesting the plurality of sequential one of the files includes ~~initially~~ requesting ~~portions of video~~ the files from a low quality ~~streamlets~~ one of the different copies to enable instant playback of the video[[;]], and wherein said automatically requesting includes ~~subsequent~~ upshifting to a higher quality one of the different copies ~~according to the performance factor after initially requesting portions of the video of the low quality~~.

27-34. (Canceled)

35. (Currently amended) The method of claim 20, ~~further comprising establishing the plurality of TCP connections with the server,~~ wherein said requesting the plurality of sequential ~~portions of the first of the copies~~ ones of the files includes requesting the plurality of sequential ~~portions~~ ones of the files over different ones of the plurality of TCP connections.

36. (Currently amended) The method of claim 20, ~~further comprising~~wherein said presenting comprises sequentially arranging the ~~received~~ requested ~~portions~~ files from the different copies in the order of ascending playback time for playback ~~on~~with the media player on the end user station.

37. (Currently amended) The method of claim 20, wherein said automatically ~~and progressively~~ requesting includes requesting sub-parts of the ~~portions~~ files over different ones of the plurality of TCP connections, and wherein said ~~method~~presenting ~~further~~ includes reassembling the ~~portions~~ files from the received sub-parts.

38. (Currently amended) The method of claim 20, wherein the at least one of the ~~performance factors~~set of factors ~~are~~is indicative of the available bandwidth of the plurality of TCP connections~~, and a current read ahead margin, wherein the current read ahead margin is a current amount of contiguous, sequentially arranged, un-played portions of the video for playback on the media player.~~

39. (Canceled)

40. (Currently amended) The method of claim 20, wherein the at least one of the ~~performance~~set of factors ~~are~~is indicative of latency of the requested ~~portions~~files, wherein the latency is a time measure between when ~~a request~~one of the requests is issued

and a time that response data of the ~~requested portions~~ request begins to arrive at the end user station.

41. (Currently amended) The method of claim 20, wherein the at least one of the ~~performance~~set of factors ~~are~~is indicative of time intervals between successive receive times for each response to the requested ~~portions~~ files.

42. (Currently amended) The method of claim 20, wherein the at least one of the ~~performance~~set of factors ~~are~~is indicative of delays or losses in one or more of the plurality of TCP connections.

43. (Currently amended) The method of claim 20, wherein at least one of the set of ~~server~~servers is a web server~~, and wherein the divided portions are stored in separate files on the web server~~.

44. (Currently amended) The method of claim [[20]] 43, wherein the ~~separate~~ files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to ~~retrieve~~respond to said requesting ~~the requested portions~~.

45. (Currently amended) The method of claim 20, wherein at least one of the set of ~~server~~servers is a cache server of a network infrastructure operator~~, and wherein the divided portions are stored in separate files on the cache server~~.

46. (New) The method of claim 20, wherein:

said generating the set of factors comprises:

monitoring time intervals between successive receive times for each of the requested files;

calculating a current performance ratio across a current window of the time intervals; and

calculating a current average of the performance ratio to obtain a current performance factor of the set of factors;

said making further comprises:

comparing the current performance factor with a set of one or more trigger thresholds; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing.

47. (New) The method of claim 20, wherein said making comprises:

comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing.

48. (New) The method of claim 20, wherein:

said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and

said automatically requesting comprises issuing for each of the files a request with the filename of that file.

49. (New) The method of claim 20, wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files.

50. (New) The method of claim 20, wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence.

REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Address to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

Application No. 11/116,783
Filing Date April 28, 2005
First Named Inventor R. Drew Major
Art Unit 2444
Examiner Name Donabed, Ninos J
Attorney Docket No. 8532P001
Confirmation No. 5535

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See instruction sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 C.F.R. § 1.114** – Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

   a. [ ] Previously submitted If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

      i. [ ] Consider the amendment(s)/reply under 37 C.F.R. § 1.116 previously filed on _____ (Any unentered amendment(s) referred to above will be entered. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

      ii. [ ] Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

      iii. [ ] Other _____

   b. [X] Enclosed
      i. [X] Amendment/Reply
      ii. [ ] Affidavit(s)/Declaration(s)
      iii. [ ] Information Disclosure Statement (IDS)
      iv. [ ] Other

2. **Miscellaneous**
   a. [ ] Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months. **Fee under 37 C.F.R. § 1.17(i) required)**
   b. [ ] Other _____

3. **Fees** The RCE fee under 37 C.F.R. § 1.17(e) is required by C.F.R. § 1.114 when the RCE is filed.
   a. [X] The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 02-2666
      i. [X] RCE fee required under 37 C.F.R. § 1.17(e)
      ii. [ ] Extension of time fee (37 C.F.R. §§ 1.136 and 1.17)
      iii. [ ] Processing fee under 37 CFR § 1.17(i) for Limited Suspension of Action
      iv. [ ] Other _____
   b. [ ] Checks in the amount of $_____ enclosed
   c. [ ] Payment by credit card (Form PTO-2038 enclosed)
      WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type) Kevin O. Grange Registration No. (Attorney/Agent) 60,793

Signature /Kevin O. Grange/ Date June 22, 2009

CERTFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

Signature /Kevin O. Grange/ Date June 22, 2009

Based on Form PTO/SB/30 (08-03) as modified by BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP on 09/10/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

R. Drew Major

Application No.: 11/116,783

Filed: April 28, 2005

Art unit: 2444

Examiner: Donabed, Ninos J.

For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Confirmation No.: 5535

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Kevin O. Grange/ 6-22-2009
Kevin O. Grange ***Date***

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

AMENDMENT AND RESPONSE TO FINAL OFFICE ACTION (RCE)

Examiner:

In response to the Final Office Action mailed on February 20, 2009 and the Advisory Actions mailed April 2, 2009 and May 12, 2009, Applicant respectfully requests that the Examiner consider the following amendments and the following remarks.

Amendments to the Claims are reflected in the listing of claims that begins on page 2 of this paper.

Remarks begin on page 9 of this paper.

Electronic Acknowledgement Receipt

EFS ID:	5561752
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	22-JUN-2009
Filing Date:	28-APR-2005
Time Stamp:	18:08:48
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$470
RAM confirmation Number	5576
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.16 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.20 (Post Issuance fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Continued Examination (RCE)	8532P001_RCE_Transmittal.pdf	20326 79a3a0b1168f6a4569eeb3e07960c1eabed77427	no	1
Warnings:					
This is not a USPTO supplied RCE SB30 form.					
Information:					
2	Extension of Time	8532P00_EOT_1_mo.pdf	11668 4b3a35af21d943f9d5ab16a53b838410c5901219	no	1
Warnings:					
Information:					
3		8532P001_Resp_and_RCE.pdf	99998 545006fb9b214a00e85050ad303e2dff2fd6f2aa	yes	18

Multipart Description/PDF files in .zip description

Document Description	Start	End
Amendment After Final	1	1
Claims	2	8
Applicant Arguments/Remarks Made in an Amendment	9	18

Warnings:					
Information:					
4	Fee Worksheet (PTO-875)	fee-info.pdf	31951 facf3670f89a9939e3dab1fcfe378216e90ecb6f	no	2
Warnings:					
Information:					
			Total Files Size (in bytes):	163943	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Leslie Rogan
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				
Extension - 1 month with $0 paid	2251	1	65	65

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Request for continued examination	2801	1	405	405
		Total in USD ($)		**470**

REMARKS

Applicants submitted an Amendment and Response after Final Action on March 14, 2009, to the Final Office Action mailed on February 20, 2009. An Advisory Action was mailed on April 2, 2009 indicating that the proposed amendments would not be entered. Applicants submitted another Amendment and Response after Final Action on April 10, 2009, to the Final Office Action mailed on February 20, 2009. An Advisory Action was mailed on May 12, 2009 indicating that the proposed amendments would not be entered. Applicants respectfully request that the March 14, 2009 and April 10, 2009 Amendment and Responses after Final Action not be entered with the accompanying Request for Continued Examination.

Claim Amendments

The amendments to claim 20 to change "a server" to "a set of one or more servers" and "the server" to "the set of servers" are broadening, and thus, are non-narrowing amendments. The amendments of claim 20 to change the language from "wherein different copies of the video" and "wherein each of the copies is encoded and compressed according to a different bit rate" to "wherein each of a plurality of different copies of the video encoded at different bit rates" are broadening, and thus, are non-narrowing. Similarly, the amendment of claim 20 to remove "wherein the video has a playback duration" and "includes the entire playback duration of the video" is broadening, and thus, is non-narrowing. The amendments to claim 20 to add "by the media player," are non-narrowing at least because they were inherently present. With regard to the first "by the media player," the claim already required "streaming by a media player operating on an end user station a video from the server," and "requesting … from the server." With regard to the second "by the media player," the "automatically requesting" directly followed the "requesting … from the server over a plurality of Transmission Control Protocol (TCP) connections," and thus is performed by the media player. With regard to the third "by the media player," the fact that the "automatically requesting" is performed by the media play means the "successive determinations" are by the media player. The amendments to claim 20 to change "a first of the copies" to "one of the copies" has been made because there is no specific recitation to a second of the

copies. These amendments are non-narrowing, since they have the same meaning. The amendments to claim 20 to remove "encoded and compressed at a first of the bit rates" is broadening, and thus, is non-narrowing. The amendments to claim 20 to remove "and progressively" are broadening, and thus, are non-narrowing. The amendments to claim 20 to change "performance factors" to "a set of one or more factors," to add the clause "wherein the set of one or more factors relate to the performance of the network," and to change making the successive determinations "based on at least one of the set of factors," are broadening, and thus, are non-narrowing amendments. The amendment to claim 20 to add "on the end user station" is non-narrowing at least because it was inherently present because claim 20 already recites "a media player operating on an end user station."

The amendment to claim 21 to remove "establishing the plurality of TCP connections with the server" is broadening, and thus, is a non-narrowing amendment. The amendment to claim 21 to remove "of the first of the copies" is broadening, and thus, is a non-narrowing amendment. Also, the amendment to claim 21 to change "wherein said method further includes" to "wherein said presenting includes" is non-narrowing at least because it already inherently referred to the "presenting" limitation of claim 21. Specifically, the claim already required "requesting *sub-parts of the portions*" as part of the streaming the video, and "presenting the video to the user by playing back … *the requested portions*." As such, the "reassembling" limitation of claim 21 already inherently modified the "presenting" limitation of claim 20.

The amendments to claims 23 and 24, changing "a first selected threshold" to "a first threshold" and changing "a second selected threshold" to "a second threshold," are non-narrowing at least because the word "selected" was removed. The amendments to claims 23 and 24, changing "performance factor" to "at least one factor," are non-narrowing at least because the word "performance" was removed. The amendments to the preamble of claims 23 and 24, changing "said determining whether to upshift or downshift" to "said making the successive determinations to shift," is non-narrowing at least because the original and amended language refers to the same limitation in claim 20.

As for claim 26, the amendment to remove "subsequent" is non-narrowing. Also, the amendments to claim 26 to change "initially requesting files" and "subsequently

upshifting," as modifying the limitations of "requesting … the plurality of sequential files" and "automatically requesting … subsequent files," respectively, are non-narrowing at least because they already inherently modified these limitations. The limitation of "initially requesting portions" already inherently referred to the "requesting" limitation in claim 20 and the limitation of "subsequently upshifting to a higher quality one" already inherently referred to the "automatically requesting" limitation in claim 20 (emphasis added). Also, the amendment to claim 26 to remove "according to the performance factor after initially requesting portions of the video of the low quality" is broadening, and thus, is a non-narrowing amendment. Finally, amending claim 26 to depend on 20 is non-narrowing because it now depends from the independent claim rather than another dependent claim.

The amendment to claim 35 to remove "establishing the plurality of TCP connections with the server" and "of the first of the copies" are broadening, and thus, are non-narrowing amendments. The amendment to claim 36 to change "wherein said method further includes" to "wherein said presenting includes" is non-narrowing because it inherently referred to the limitation already. Claim 20 already required presenting the video by playing back the requested portions "in order of ascending playback time." As such, it is clear that "sequentially arranging" already inherently referred to "presenting the video." The amendments to claim 36 to change "playback on the media player," to "playback with the media player on the end user station," are non-narrowing, since they have the same meaning. Also, the amendment to claim 37 to change "wherein said method further includes" to "wherein said presenting includes" is non-narrowing at least because the limitation already inherently referred to "said presenting" in claim 20. Specifically, the claim already required "requesting *sub-parts of the portions*" as part of the streaming the video, and "presenting the video by playing back … *the requested portions*."

The amendment to claim 38 to change the "performance factors" to "at least one of the set of factors," and to remove "a current read ahead margin" and the following limitation, are broadening, and thus, are non-narrowing amendments. The amendments in claims 40-42 to change the "performance factors" to "at least one of the set of factors," are broadening, and thus, are non-narrowing amendments. Also, the amendment to claim

40 to change the language "the requested portion" to "the request," is non-narrowing, since they inherently have the same meaning. The amendments to claims 43 and 45 to recite at least one of the set of servers is a web server or a cache server are broadening, and thus, are non-narrowing. The amendments to claim 44 to change "without server-side intelligence to retrieve the requested portions" to "without specialized server-side intelligence to respond to said requesting" are non-narrowing because the amendments further limit the negative limitation of the web server, which broadens the scope of the claim.

Response to Rejections under 35 U.S.C. § 112, first paragraph

Claim 39 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claim 39 has been canceled without prejudice.

Response to Rejections under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 20-26 and 35-45 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention.

1) "Performance Factors"

Regarding claims 20, 23-24, 26, and 38-42, the Examiner alleges that the phrase "performance factors" is vague and unclear. Applicant respectfully disagrees that the phrase "performance factors" is vague and unclear. However, in interest of advancing the claims to be in condition for allowance, Applicant respectfully amends claim 20 to overcome the Examiner's concern regarding "performance factors," as described below.

Claim 20 has been amended to recite "regularly generating *a set of one or more factors* indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, *wherein the set of one or more factors relate to the performance of the network*" and "making the successive determinations to shift the playback quality *based on at least one of the set of factors*" (emphasis added). Such amendment would encompass the Examiner's identified definition of "any factor which relates to the performance of the network in general" (see *FOA*, at page 3).

Applicant respectfully submits that the amendment is supported by the specification. Applicant respectfully submits that the specification describes various factors that can be generated, including, but not limited to, "a performance factor," according to receive times of each requested streamlet file (*Id.* at paragraphs 20, 51, and 68), "a performance factor" according to time intervals Δ between successive receive times for each requested streamlet file (*Id.* at paragraphs 51 and 68), "a current read ahead margin" for determining a trigger threshold (*Id.* at paragraph 71), "a current read ahead margin" for determining whether a higher quality stream is sustainable (*Id.* at paragraph 15), "a minimum safety margin" for determining a trigger threshold (*Id.* at paragraph 71), "a minimum safety margin" for determining whether a higher quality stream is sustainable (*Id.* at paragraph 15), and an amount of contiguously available requested portions stored in a staging module (*Id.*). These factors relate to the performance of the network in general. As such, the specification provides support for the amendment of "regularly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using files of the different bit rates, wherein the set of one or more factors relate to the performance of the network," as recited in claim 20.

Applicant respectfully submits that the specification describes making successive determinations to shift the playback quality based on at least one of the set of factors to archive continuous playback of the video. By way of example and not limitation, the specification describes in relation to Figure 7 that the *network behavior characteristics can fluctuate*, sometimes quite suddenly, the media player can compensate for this fluctuation by calculating a *performance factor*, and comparing the performance factor with a trigger threshold. *Id.* at pages 21-22, paragraphs 68-70. Although the specification describes specific algorithms to obtain a performance factor by calculating a geometric mean or average of the 'performance ratio' of the time intervals Δ between successive receive times for each streamlet file response, the specification also indicates that these algorithms can be "replaced by alternative streamlet monitoring solutions." *Id.* at page 22, paragraph 72. As such, the specification also provides support for using other monitoring solutions to obtain other factors which relate to the performance of the network in

general, such as, for example, factors that are indicative of latency, delays or losses of the requested portions[1], and available bandwidth of the TCP connections[2].

For the foregoing reasons, Applicant respectfully submits that claim 20, as amended, is not vague and unclear. Claims 22 and 39 have been canceled without prejudice. Claims 23-24, 26, 38, and 40-42 have been amended to correspondingly remove the term performance factor. Accordingly, Applicant respectfully submits that the amendments overcome the rejection under 35 U.S.C. §112, second paragraph, and requests that the rejections of claims 20, 23-24, 26, 38, and 40-42 under 35 U.S.C. § 112, second paragraph, be withdrawn.

2) "Requesting Sub-Parts"

Regarding claims 21 and 37, the Examiner alleges that the phrase "requesting sub-parts of the portions over different ones of the plurality of TCP connections" is vague and unclear. The Examiner interprets the term "sub-parts" to mean "any part of the copies of the video files." *FOA*, at page 3. Applicant respectfully submits that the claim language, as amended, requires that the "sub-parts" encompass **any part of the requested files of the video**, not just any part of the copies of the video files. By way of example and not limitation, the specification describes embodiments where the media player requests streamlet files, each streamlet file having a portion of the video, and those portions of the video can be requested by "requesting pieces of any streamlet file." Applicant's specification, at page 16, paragraph 56. The specification describes that streamlet files, for example, can be encapsulated as an independent media object, and can be any sized portion of the video contained in the original content file. *Id.* at page 12, paragraph 45. The content in a streamlet file (i.e., portion of the video) has a unique time index in relation to the beginning of the content contained in a stream, and has a duration of time

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[1]By way of example and not limitation, the specification describes latency of the requested streamlets, and delays or losses of the responses to the requests as *other factors in performance*, and proposes at least one embodiment where multiple TCP connections may be opened between the client and server to achieve the latency-reduction efficiency benefits of pipelining while not having serial dependency between requests in traditional pipelining. *Id.* at pages 17-18, paragraph 59-60.

[2] By way of example and not limitation, the specification describes that the available bandwidth of the user's network connection and how well the user's available bandwidth is used (i.e., efficiency) can constrain the quality of video that can be received for real time presentation, and proposes at least one embodiment where multiple responses may be in transit concurrently, assuring that communication bandwidth between the client module and the web server is always being utilized. *Id.* at page 17-18, paragraph 60.

(e.g., 2 seconds). *Id.* As set forth in claims 20, the "each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files… each of said files having a time index such that files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video." Claim 21 further recites "requesting sub-parts of the files over different ones of the plurality of TCP connections." By way of example and not limitation, the Applicant's specification indicates that the parts of these streamlet files of the video can be requested using parallel TCP connections, with each part requested on mutually independent TCP connections. *Id.* at page 16, paragraph 53, page 17, paragraph 57, and page 18, paragraph 61. Applicant's specification describes that "splitting the requested streamlet into smaller pieces or portions beneficially allows for an increased efficiency potential, and also eliminates problems associated with multiple full-streamlet requests sharing the bandwidth at any given moment." *Id.* Applicant has used "sub-parts" to distinguish the pieces or parts of the files of each copy of the video from the entire files themselves. As such, the sub-parts of the files of video encompass any part of the requested files of the video, not just "any part of any of the copies of the video files," as alleged by the Examiner. For these reasons, Applicant respectfully submits that claims 21 and 37 are not vague and unclear, and requests that the rejections of claims 21 and 37 under 35 U.S.C. § 112, second paragraph, be withdrawn.

3) "Plurality of TCP Connections"

Regarding claim 20, the Examiner alleges that the phrase "requesting by the media player a plurality of sequential portions of one of the copies encoded and compressed at one of the bit rates from the server over a plurality of Transmission Control Protocol (TCP) connections" is vague and unclear as it is not understood whether the plurality of connections is with a plurality of devices or just a single device. Applicant respectfully submits that Applicant's specification discloses both requesting files over multiple TCP connections from a single server and requesting files over multiple TCP connections from multiple servers, for example, at paragraphs 42, 49, 55, 57, and 60, and Figure 1. Because Applicant has disclosed that the plurality of connections can be with a plurality of devices or just a single device, Applicant is entitled to claim in such a manner. Accordingly, Applicant respectfully submits that claim 20 has

been amended to recite "*a set of one or more servers*," "*requesting by the media player* a plurality of sequential ones of the files … *from the set of servers* over a plurality of Transmission Control Protocol (TCP) connections," and "automatically *requesting by the media player from the set of servers over the plurality of TCP connections* …". The amendments recite that the plurality of TCP connections are connections that are established between the set of one or more servers and the media player. Applicant submits that claim 20, as amended, is not vague and unclear, and requests that the rejection of claim 20 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Response to Rejections under 35 U.S.C. § 103(a)

In the Final Office Action (*FOA*), the Examiner rejects claims 20-21, 23-24, 26, 35-38, and 40-44 under 35 U.S.C §103(a) as being unpatentable over *Hughes* in view of *Li* and further in view of *Gamble*, and claims 22, 25, 39, and 45 under 35 U.S.C §103(a) as being unpatentable over *Hughes* in view of *Li*, further in view of *Gamble*, and further in view of Official Notice.

Applicant respectfully submits that the previous claims were allowable over the rejections and would have been appealed but for the unconventional nature of the second advisory action listing prior art not previously cited or used as the basis for a rejection. Applicant respectfully submits that the claims as amended are allowable over all the art of record. Applicant respectfully submits that claim 20 recites the following limitations: "wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers," "each of said files having a time index such that files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning o the video," "requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes," and "automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies." Applicant respectfully submits that the art of

record does not teach at least these identified limitations of claim 20. Accordingly, Applicant requests that the rejection of claims 20-21, 23-24, 26, 35-38 and 40-45 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 21-26 and 35-50 depend from independent claim 20, which is patentable over the art of record, Applicant respectfully submits that dependent claims 21-26 and 35-50 are also patentable over the art of record. Accordingly, Applicant requests that the rejection of claims 20-21, 23-24, 26, 35-38 and 40-45 under 35 U.S.C. § 103(a) be withdrawn.

Response to Rejections under 35 U.S.C. § 103(a) using Official Notice

The *FOA* rejects claims 22, 25, 39, and 45 under 35 U.S.C §103(a) as being unpatentable over *Hughes* in view of *Li*, further in view of *Gamble*, and further in view of Official Notice. Claims 22 and 39 have been canceled without prejudice. Applicant respectfully disagrees with regard to the official notice, and, if the rejections to the independent claims are maintained, respectfully requests the Examiner produce authority for each of the factual assertions as required by *MPEP* 2144.03(C). In particular, Applicant respectfully submits that the Examiner provides documentary evidence, as well as point to some concrete evidence in the record in support of these finding. Also, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, Applicant respectfully submits that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. *MPEP* 2144.03(C).

CONCLUSION

It is respectfully submitted that in view of the amendments and remarks set forth herein, the rejections have been overcome, putting the claims in condition for allowance. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Dan DeVos at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: June 22, 2009

/Kevin O. Grange/

Kevin O. Grange
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Sunnyvale, CA 94085-4040
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Electronic Acknowledgement Receipt

EFS ID:	5561752
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	22-JUN-2009
Filing Date:	28-APR-2005
Time Stamp:	18:08:48
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$470
RAM confirmation Number	5576
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.16 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

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Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Continued Examination (RCE)	8532P001_RCE_Transmittal.pdf	20326 79a3a0b1168f6a4569eeb3e07960c1eabed77427	no	1
Warnings:					
This is not a USPTO supplied RCE SB30 form.					
Information:					
2	Extension of Time	8532P00_EOT_1_mo.pdf	11668 4b3a35af21d943f9d5ab16a53b838410c5901219	no	1
Warnings:					
Information:					
3		8532P001_Resp_and_RCE.pdf	99998 545006fb9b214a00e85050ad303e2dff2fd6f2aa	yes	18

Multipart Description/PDF files in .zip description

Document Description	Start	End
Amendment After Final	1	1
Claims	2	8
Applicant Arguments/Remarks Made in an Amendment	9	18

Warnings:					
Information:					
4	Fee Worksheet (PTO-875)	fee-info.pdf	31951 facf3670f89a9939e3dab1fcfe378216e90ecb6f	no	2
Warnings:					
Information:					
			Total Files Size (in bytes):	163943	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Attorney's Docket No.: 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

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

PETITION FOR EXTENSION OF TIME PURSUANT TO 37 C.F.R. § 1.136 (a)

Sir:

Applicant respectfully petitions pursuant to 37 CFR 1.136(a) for a one month extension of time to file this response to the Office Action mailed February 20, 2009 The extended period is set to expire on June 22, 2009. Authorization is given to charge the Applicant's Deposit Account No. 02-2666 in the amount of $65.00, to cover the fee for a one month extension of time.

Please charge any shortages and credit any overages to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: June 22, 2009

/Kevin O. Grange/
Kevin O. Grange
60,793

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

June 22, 2009
(Date of Deposit)
Kevin O. Grange
(Typed or printed name of person mailing correspondence)
/Kevin O. Grange/ June 22, 2009
(Signature of person mailing correspondence) (Date)

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	2019	709/231.ccls. and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:33
L2	9	1 and ((many or multiple or two) near4 tcp with stream$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:34
L3	2	1 and ((many or multiple or two) with tcp near3 connection with stream$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:34
L4	4	1 and ((many or multiple or two) with tcp near3 connection same stream $3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:34
L5	331	((many or multiple or two or plurality) with tcp near3 connection same stream $3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:35
L6	159	@ad<"20040430" and 5	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:35
L7	211	((many or multiple or plurality) with tcp near3 connection same stream $3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:35

L8	89	@ad<"20040430" and 7	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:35
L9	120	((multiple or plurality) with tcp near3 connection same stream$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:36
L10	42	@ad<"20040430" and 9	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:36
L11	3	"20030152036"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 13:50
L12	0	"20050262257".pn. and time near5 tcp	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 14:05
L13	1	"20050262257".pn. and time with tcp	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 14:05
L14	1	"20050262257".pn. and cache near4 server	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/08/03 14:12
S1	37	((R) near2 (MAJOR)).INV.	USPAT; USOCR	OR	ON	2009/05/05 16:26
S2	11	((MARK) near2 (HURST)).INV.	US-PGPUB; USPAT	OR	ON	2009/05/05 16:26
S3	94328	"709"/.ccls. or "725"/.ccls.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/05 16:26

S4	74757	"709"/.ccls.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/05 16:26
S5	20756	"725"/.ccls.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/05 16:27
S6	94328	S4 S5	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/05 16:27
S7	43	S1 S2	US-PGPUB; USPAT	OR	ON	2009/05/05 16:33
S8	99	(("(20050262257") or ("20080195743") or ("20090043906") or ("4541854") or ("6574618") or ("6757894") or ("7051315") or ("7197570") or ("20010034736") or ("20010037399") or ("20020087717") or ("20020087963") or ("20080222235") or ("3554451") or ("3640308") or ("4136720") or ("4157250") or ("4479909") or ("4505724") or ("4961535") or ("6802978") or ("20030085176") or ("20030235523") or ("20040255605") or ("20060242903") or ("7010598") or ("20040136327") or ("20050177853") or ("20060179154") or ("3800053") or ("4004594") or ("4346524") or ("4452256") or ("4932424") or ("5638834") or	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2009/05/06 13:33

		("5970626") or ("6918113") or ("6959320") or ("7043524") or ("7062567") or ("20020083183") or ("20020087883") or ("20020091763") or ("20020157089") or ("20020161908") or ("20030004882") or ("20030009538") or ("20040230971") or ("20080178298") or ("5928331") or (").pn.")). PN.				
S9	115	(("(20050262257") or ("20080222235") or ("20080195743") or ("20090043906") or ("6574618") or ("20010034736") or ("4029573") or ("4136720") or ("7197570") or ("20010037399") or ("3554451") or ("4004594") or ("4346524") or ("20020141582") or ("20080205389") or ("20090089422") or ("3633824") or ("3712548") or ("3872824") or ("4083745") or ("4116203") or ("4153204") or ("4231302") or ("4287719") or ("4326953") or ("4476001") or ("4658511") or ("4733818") or ("4915788") or ("4991632") or ("20040230971") or ("20050037200") or ("20090010426") or ("5296148") or ("6868299") or ("20030055882") or ("20030212610") or ("20040210335") or ("20080082507") or ("20080288977") or	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2009/05/06 13:34

		("6757894") or ("6889189") or ("20050071159") or ("20080008458") or ("20080162358") or ("20080310722") or ("20020023257") or ("20080032654") or ("20080244042") or ("7460958") or (").pn.")). PN.				
S10	185	S8 S9	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:34
S11	19	S10 and ((multiple or plurality or many or multi) near5 (file or video or movie or cop$4)) with stream$5	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:35
S12	460	(multi-rate or (multi near3 rate)) with stream$3	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:38
S13	258	(multi-rate or (multi near3 rate)) with stream$3 and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:42
S14	10	(multi-rate or (multi near3 rate)) with stream$3 same (shift$3 or $$$$$shift$3) and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:43
S15	141	((multi or multiple or many or plurality) near6 (copies or movie or video or audio or files)) with stream$3 same (shift$3 or $$$$$shift$3) and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:44

S16	0	((multi or multiple or many or plurality) near6 (copies or movie or video or audio or files)) with stream$3 same (shift$3 or $$$$$shift$3) same (media near3 player) and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:47
S17	2	((multi or multiple or many or plurality) near6 (copies or movie or video or audio or files)) with stream$3 same (shift$3 or $$$$$shift$3) same (player) and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:47
S18	24740	(multiple or different or plurality or many or three) near5 (encod$5 or rate or bit-rate or files or video or movie) with stream$3	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:49
S19	14369	(multiple or different or plurality or many or three) near5 (encod$5 or rate or bit-rate or files or video or movie) with stream$3 and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:49
S20	158	(multiple or different or plurality or many or three) near5 (encod$5 or rate or bit-rate or files or video or movie) with stream$3 with ($$$$$shift$3) and @ad<"20040430"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:49
S21	25	(different near5 (bit-rate or (bit near3 rate)) with (media or video) with bandwidth with stream$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:51
S22	49	((different or multi or multiple)near5 (bit-rate or (bit near3 rate) copies or version) with (media or video) with bandwidth with stream$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 13:54
S23	1	(intellegent near3 stream $3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 14:11

S24	4	"4220770".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 15:11
S25	5	"4200770".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 15:11
S26	3	"4218582".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 15:12
S27	243	"4424414"	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 15:15
S28	4	"4424414".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 15:16
S29	15	(multi-rate near5 stream $3).ti,ab.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 17:08
S30	27	(multiple near5 copies) with (encod$3 or rate or bit-rate) with (stream$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 17:12
S31	8	(multiple near5 copies) with (encod$3 or rate or bit-rate) with (stream$3) same bandwidth	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 17:13

S32	1014	(stream$3) with bandwidth with ($$$$shift $3 or switch$3)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 17:18
S33	14	(stream$3) with bandwidth with ($$$$shift $3 or switch$3) with ((multiple or three or different) near5 copies or file)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/06 17:19
S34	2	"6,167,052".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/07 13:29
S35	4	"6,167,052".pn. "6393485".pn.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/07 13:30
S36	1992	S35 co-location	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/07 13:30
S37	0	S35 and co-location	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/07 13:30
S38	0	S35 and colocation	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	ON	2009/05/07 13:30

8/3/2009 2:33:01 PM
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Notice of References Cited	Application/Control No. 11/116,783	Applicant(s)/Patent Under Reexamination MAJOR ET AL.	
	Examiner NINOS DONABED	Art Unit 2444	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2003/0152036	08-2003	Quigg Brown et al.	370/252
*	B	US-2003/0107994	06-2003	Jacobs et al.	370/235
*	C	US-2003/0081582	05-2003	Jain et al.	370/338
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	8532P001	5535

8791 7590 08/20/2009

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
08/20/2009	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.	Applicant(s)	
	11/116,783	MAJOR ET AL.	
	Examiner	Art Unit	
	NINOS DONABED	2444	

-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 *22 June 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ 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

4)☒ Claim(s) *20,21,23-26,35-38 and 40-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20,21,23-26,35-38 and 40-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ 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).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

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).

a)☐ All b)☐ Some * c)☐ None of:

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) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Response to Amendment

This communication is in response to Applicant's RCE amendment dated 6/22/2009. Claims 22, 39 have been cancelled. Claims 20-21, 23-26, 35-38, 40-45 have been amended. Claims 46-50 have been added. Claims 20,21, 23-26,35-38 and 40-50 are pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 20,21, 23-26,35-38 and 40-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 20, the phrase "requesting by the media player a plurality of sequential portions ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes" is considered new matter as it is not explicitly or implicit provided in the original disclosure.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20,21, 23-26,35-38 and 40-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 20, the phrase “regularly generating a set of one or more factors" is vague and unclear because it is not known how often “regularly” encompasses. For the furthering of prosecution it will be taken to mean generating a set of one or more factors at any time set.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 20-21, 23-24, 26, 35-38, 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birney “Intelligent Streaming” in view of Quigg-Brown (United States Patent Application 2003/0152036.)

Regarding claim 20,

Birney teaches method for presenting rate-adaptive streams, the method comprising: **(See page 1, introduction, Birney.)**

streaming by a media player operating on an end user station a video from a set of one or more servers, wherein the video has a playback duration, wherein each of a plurality of different copies of the video encoded at different bit rates is stored as

multiple files on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video, and wherein the streaming comprises: **(See pages 1-2 (multi-bit rate encoding), Birney teaches multiple copies of the same stream being stored on a server at different bit rates with the same time index used to switch between the stream based on network bandwidth limitations)**

automatically requesting by the media player from the set of servers over the TCP connection subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically and requesting including, **(See pages 1-3 including multiple-bit-rate encoding and intelligent bandwidth control sections, Birney teaches seamlessly shifting the quality of stream dependent on current network conditions)**

regularly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and **(See pages 2-3 including multiple-bit-rate encoding and intelligent bandwidth control sections, Birney teaches determining bandwidth capabilities)**

making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files portions of the highest quality one of the copies determined sustainable at that time; and presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time.**(See pages 1-2, Birney teaches shifting playback quality to the highest quality dependent on network bandwidth.)**

Birney does not explicitly teach requesting by the media player a plurality of sequential portions ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes.

Quigg Brown teaches requesting by the media player a plurality of sequential portions ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes; **(See abstract and paragraphs [0028] – [0030])**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Quigg Brown with Birney because both deal with streaming of files. The advantage of incorporating requesting by the media player a plurality of sequential portions ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes of Quigg Brown into Birney is that it improves the data transfer rate by transferring the packets in parallel through the network. **(See paragraphs [0002] – [0005], Quigg brown.)**

Regarding claim 21,

Birney and Quigg Brown teach the method of claim 20,wherein said requesting the plurality of sequential ones of the files includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the portions files from the received sub-parts. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 23,

Birney and Quigg Brown teach the method of claim 20, wherein said determining making the successive determinations to shift comprises: upshifting to a higher quality one of the different copies when the at least one performance factor is greater than a first threshold; and determining if the higher quality playback can be sustained. **(See page 2 paragraphs 4-5, Birney)**

Regarding claim 24,

Birney and Quigg Brown teach the method of claim 23, wherein said determining making the successive determinations to shift comprises downshifting to a lower quality one of the different copies when the at least one performance factor is less than a second threshold. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 25,

Birney and Quigg Brown teach the method of claim 20, further comprising: receiving user input to enable one of fast-forward, skip randomly, and rewind functionality; and requesting files of the video at a specified time index that is not the next sequential time in the current playback. **(See page 3, Birney)**

Regarding claim 26,

Birney and Quigg Brown teach the method of claim 20, wherein said requesting the plurality of sequential one of the files includes requesting the files from a low quality one of the different copies to enable instant playback of the video, and wherein said automatically requesting includes upshifting to a higher quality one of the different copies. **(See page 2 paragraphs 1-4, Birney)**

Regarding claim 35,

Birney and Quigg Brown teach the method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections. **(See paragraphs [0002] – [0005], Quigg Brown)** See motivation for claim 20.

Regarding claim 36,

Birney and Quigg Brown teach the method of claim 20, wherein said presenting comprises sequentially arranging the received requested portions files from the different

copies in the order of ascending playback time for playback on with the media player on the end user station. **(See page 3 paragraphs 1-3, Birney)**

Regarding claim 37,

Birney and Quigg Brown teach the method of claim 20, wherein said automatically requesting includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 38,

Birney and Quigg Brown teach the method of claim 20, wherein the at least one of the set of is indicative of the available bandwidth of the plurality of TCP connections. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 40,

Birney and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when a one of the requests is issued and a time that response data of the begins to arrive at the end user station. **(See page 2 paragraphs 1-5, Birney)**

Regarding claim 41,

Birney and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files. **(See page 1 paragraphs 1-3, Birney)**

Regarding claim 42,

Birney and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 43,

Birney and Quigg Brown teach the method of claim 20, wherein at least one of the set of servers is a web server. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 44,

Birney and Quigg Brown teach the method of claim 43, wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to respond to said requesting. **(See page 2, Birney)**

Regarding claim 45,

Birney and Quigg Brown teach the method of claim 20, wherein at least one of the set of servers is a cache server of a network infrastructure operator. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 46,

Birney and Quigg Brown teach the method of claim 20, wherein: said generating the set of factors comprises: monitoring time intervals between successive receive times for each of the requested files (**See pages 1-2, Birney)**; calculating a current performance ratio across a current window of the time intervals; and calculating a current average of the performance ratio to obtain a current performance factor of the set of factors; said making further comprises: comparing the current performance factor with a set of one or more trigger thresholds(**See pages 1-2, Birney)**; and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (**See pages 2, Birney**)

Regarding claim 47,

Birney and Quigg Brown teach the method of claim 20, wherein said making comprises: comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video

received by the media player for playback at a current playback time index; and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing. **(See page 1 and 2 paragraphs 2-5, Birney)**

Regarding claim 48,

Birney and Quigg Brown teach the method of claim 20, wherein: said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and said automatically requesting comprises issuing for each of the files a request with the filename of that file. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 49,

Birney and Quigg Brown teach the method of claim 20, wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files. **(See page 2 paragraphs 1-3, Birney)**

Regarding claim 50,

Birney and Quigg Brown teach the method of claim 20, wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence. **(See page 2 paragraphs 2-5, Birney)**

Response to Arguments

3. Applicant's arguments with respect to claims 20-21, 23-26, 35-38, 40-45 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any response to this Office Action should be **faxed** to (571) 272-8300 or **mailed** to:

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Hand-delivered responses should be brought to
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NINOS DONABED whose telephone number is (571)270-3526. The examiner can normally be reached on Monday-Friday, 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. 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.

/N. D./
Examiner, Art Unit 2444
/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	02/13/2009								
	1	-								
	2	-								
	3	-								
	4	-								
	5	-								
	6	-								
	7	-								
	8	-								
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	27	-								
	28	-								
	29	-								
	30	-								
	31	-								
	32	-								
	33	-								
	34	-								
	35	✓								
	36	✓								

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=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	02/13/2009								
	37	✓								
	38	✓								
	39	-								
	40	✓								
	41	✓								
	42	✓								
	43	✓								
	44	✓								
	45	✓								
	46	✓								
	47	✓								
	48	✓								
	49	✓								
	50	✓								

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

SEARCHED

Class	Subclass	Date	Examiner
709	246	05/07/2008	ND

SEARCH NOTES

Search Notes	Date	Examiner
See EAST Search History	05/07/2008	ND
Conducted double patenting search	05/07/2008	ND
Consulted with SPE William Vaughn	11/13/2008	ND
See updated EAST search	12/13/2009	ND
Consulted with SPE William Vaughn regarding Final	02/12/2009	ND
Consulted with SPE William Vaughn regarding Advisory	03/29/2009	ND
Consulted with SPE William Vaughn regarding Advisory	5/7/2009	ND
Consulted with Primary Paul Kang	02/10/2009	ND
See updated east search	7/30/2009	ND
Consulted with SPe William Vaughn regarding search	7/30/2009	ND

INTERFERENCE SEARCH

Class	Subclass	Date	Examiner

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Leslie Rogan
Attorney Docket Number:	8532P001

Filed as Large Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

R. Drew Major

Application No.: 11/116,783

Filed: April 28, 2005

For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Examiner: Donabed, Ninos J.

Art unit: 2444

Confirmation No.: 5535

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Kevin O. Grange/ October 22, 2009
Kevin O. Grange ***Date***

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

AMENDMENT AND RESPONSE TO OFFICE ACTION

Examiner:

In response to the Office Action mailed on August 20, 2009, Applicant respectfully requests that the Examiner consider the following amendments and the following remarks.

Amendments to the Claims are reflected in the listing of claims that begins on page 2 of this paper.

Remarks begin on page 8 of this paper.

Listing of Claims:

1-19. (Canceled)

20. (Currently amended) A method for presenting rate-adaptive streams, the method comprising:

streaming by a media player operating on an end user station a video from a set of one or more servers, wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video, and wherein the streaming comprises:

requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes;

automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including,

~~regularly~~ repeatedly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and

making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time; and

presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time.

21. (Previously presented) The method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts.

22. (Canceled)

23. (Previously presented) The method of claim 20, wherein said making the successive determinations to shift comprises:

upshifting to a higher quality one of the different copies when the at least one factor is greater than a first threshold; and

determining if the higher quality playback can be sustained.

24. (Previously presented) The method of claim 23, wherein said making the successive determinations to shift comprises downshifting to a lower quality one of the different copies when the at least one factor is less than a second threshold.

25. (Previously presented) The method of claim 20, further comprising:

receiving user input to enable one of fast-forward, skip randomly, and rewind functionality; and

requesting files of the video at a specified time index that is not the next sequential time in the current playback.

26. (Previously presented) The method of claim 20,

wherein said requesting the plurality of sequential one of the files includes requesting the files from a low quality one of the different copies to enable instant playback of the video, and wherein said automatically requesting includes-upshifting to a higher quality one of the different copies.

27-34. (Canceled)

35. (Previously presented) The method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections.

36. (Previously presented) The method of claim 20, wherein said presenting comprises sequentially arranging the requested files from the different copies in the order of ascending playback time for playback with the media player on the end user station.

37. (Previously presented) The method of claim 20, wherein said automatically requesting includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts.

38. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of the available bandwidth of the plurality of TCP connections.

39. (Canceled)

40. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station.

41. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files.

42. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections.

43. (Previously presented) The method of claim 20, wherein at least one of the set of servers is a web server.

44. (Previously presented) The method of claim 43, wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to respond to said requesting.

45. (Previously presented) The method of claim 20, wherein at least one of the set of servers is a cache server of a network infrastructure operator.

46. (Previously presented) The method of claim 20, wherein:

said generating the set of factors comprises:

monitoring time intervals between successive receive times for each of the requested files;

calculating a current performance ratio across a current window of the time intervals; and

calculating a current average of the performance ratio to obtain a current performance factor of the set of factors;

said making further comprises:

comparing the current performance factor with a set of one or more trigger thresholds; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing.

47. (Previously presented) The method of claim 20, wherein said making comprises:

comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing.

48. (Previously presented) The method of claim 20, wherein:

said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and

said automatically requesting comprises issuing for each of the files a request with the filename of that file.

49. (Previously presented) The method of claim 20, wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files.

50. (Previously presented) The method of claim 20, wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence.

REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action.

Response to Rejections under 35 U.S.C. § 112, first paragraph

Claims 20, 21, 23-26, 35-38, and 40-50 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. In particular, the Examiner states that the phrase "requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes" is considered new matter as it is not explicitly or implicitly provided in the original disclosure. Applicant respectfully disagrees because the Applicant's specification provides express support in both the detailed description section and the figures.

By way of example and not limitation, Applicant's specification indicates that "each of the streams is a copy of the content file." Applicant's specification, paragraph 44, Fig. 2b. Applicant's specification also indicates that a stream is "divided into a plurality of streamlets 212." *Id.* at 45. Regarding "streamlets" Applicant's specification describes that a "streamlet refers to any sized portion of the content file 200," that "[e]ach streamlet 212 may comprise a portion of the content contained in stream 210, encapsulated as an independent media object," and that "[t]he content in a streamlet 212 may have a unique time index in relation to the beginning of the content contained in stream 210." *Id.* at paragraph 45. The specification also describes the streamlets may be "files," and "may be identified with a unique filename." *Id.* at paragraphs 49 and 52. Since each streamlet has a unique time index in relation to the beginning of the content contained in the stream, and since each streamlet may be a file, each file has a time index. Applicant's specification describes that the client module requests streamlets, for example, from a web server, or from any of the plurality of web servers. *Id.* at paragraphs 42 and 49. Moreover, the specification provides that files can be requested based on time indexes. Applicant's specification describes an example where the "agent

controller module 402 may *request the streamlets 212 that correspond to time index intervals of 30 seconds*," and an example where "the agent controller module 402 may be configured to *pre-request streamlets 212 corresponding to specified index points* within the content." *Id.* at page 15, paragraph 53. As such, Applicant's specification provides support for "requesting … a plurality of sequential ones of the files of one of the copies from the set of servers … based on the time indexes," as recited in claim 20.

Applicant's specification also describes that "the client module 114 is configured to use multiple TCP connections between the client module 114 and the web server 116 or web cache." *Id.* at paragraph 57. As described in the Applicant's specification, the client module 114 also includes "a media player." *Id.* at paragraph 50. As such, Applicant's specification provides that the media player, which is operating on the end user station, performs streaming by "requesting … a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes," as recited in claim 20. Accordingly, Applicant respectfully requests that the rejection of claims 20, 21, 23-26, 35-38, and 40-50 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Response to Rejections under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 20, 21, 23-26, 35-38, and 40-50 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. In particular, the examiner states that "the phrase 'regularly generating a set of one or more factors' is vague and unclear because it is not known how often 'regularly' encompasses," and that the phrase "will be taken to mean generating a set of one or more factors at any time set" (Office Action, page 3). Applicant respectfully submits that claim 20 has been amended to recite "repeatedly generating a set of one or more factors." Applicant respectfully submits that the Applicant's specification provides support for the amendment, for example, at pages 20-22, paragraphs 68-72, Figure 7. In addition to this phrase, claim 20 also recites "making the *successive determinations* to shift the playback quality *based on at least one of the set of factors*." Because more than one determination is made and the determinations are based on the set of factors, the set of one or more

factors are generated more than once. As such, the phrase "repeatedly generating" means that the set of factors are generated more than once, not just "at any time set," as alleged by the Examiner. Applicant respectfully submits that the phrase "repeatedly generating a set of one or more factors" is not vague and unclear. Accordingly, Applicant respectfully requests that the rejection of claims 20, 21, 23-26, 35-38, and 40-50 under 35 U.S.C. §112, second paragraph, be withdrawn.

Response to Rejections under 35 U.S.C. § 103(a)

Claims 20-21, 23-24, 26, 35-38, and 40-44 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Birney "Intelligent Streaming" (hereinafter "Birney"), in view of U.S. Patent Publication No. 2003/0152036 to Quigg-Brown et al. (hereinafter "Quigg-Brown"). Applicant respectfully submits that the combination of cited references fails to teach all the limitations of the claim.

Quigg-Brown Fails to Teach "Requesting by the Media Player" (First Occurrence)

Regarding the first of two occurrences of the "requesting by the media player" limitation, the Examiner states that "Birney does not explicitly teach requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes," *but alleges that Quigg-Brown teaches this limitation*, citing the abstract and paragraph 28-30 (Office Action, page 5). Applicant respectfully disagrees.

Quigg-Brown is directed to "[a] method, system, and apparatus for improving data transfer rate over a network" by dividing a piece of data, i.e., a file, into a number of packets, and if the number of packets exceeds a threshold number, transferring the divided packets "in parallel over a plurality of network connections," ideally TCP/IP connections (Quigg-Brown, Abstract, Figure 8).

First, although Quigg-Brown teaches transferring packets in parallel over a plurality of network connections, Quigg-Brown fails to teach "**requesting … a plurality of sequential ones of the files** of one of the copies from the set of servers over a plurality of [TCP] connections," as recited in the claim. In particular, Quigg-Brown teaches that "an application or a user at client station 500 *issues a request to server 510 for data, a file*

or an application," not issuing a request for multiple files from the server 510 over a plurality of TCP connections between the client 500 and server 510 (*Id.* at paragraph 31). At best, Quigg-Brown teaches how to transmit a single logical data stream to a target system over multiple TCP connections once the file or application has been requested. Quigg-Brown expressly teaches that "[w]hen an application is sending a single logical data stream over multiple data paths, the receiver has to be able to reconstruct the data stream from the multiple paths," and thus, uses "two-byte identification 708 of the IP header as a counter to allow for the reconstruction of the data" (paragraph 36). Quigg-Brown gives the following example.

> For example, suppose a data stream is being transmitted using five TCP connections (i.e., TCP connections 1 - 5), packet P_1 may be transmitted over TCP connection 1 using 1234 as an IP identification number. P_2, P_3, P_4 and P_5 may be transmitted over TCP connections 2, 3, 4 and 5 with IP identifications 1235, 1236, 1237 and 1238, respectively. The next group of packets (i.e., P_6 - P_{10}) may be transmitted over TCP connections 1 - 5 using IP identifications 1239 - 1244 etc. (paragraph 36).

Quigg-Brown, however, does not teach requesting one of the files over TCP connection 1, another file over TCP connection 2, another file over TCP connection 3, and so on. As such, Quigg-Brown fails to "**requesting … a plurality of sequential ones of the files** of one of the copies from the set of servers over a plurality of [TCP] connections," as recited in the claim.

Birney Fails to Teach "Requesting by the Media Player" (Second Occurrence)

Moreover, the Examiner indicates that Birney fails to explicitly teach the limitation of "**requesting by the media player** a plurality of sequential ones of the files of one of the copies **from the set of servers over a plurality of [TCP] connections** based on the time indexes" (the first occurrence of "requesting by the media player")(*Id.* at page 5). Yet, in what appears to be a contradictory statement, the Examiner alleges that Birney teaches the limitation of "automatically **requesting by the media player from the set of servers over the plurality of TCP connections** subsequent portions of the video by requesting for each such portion one of the files from one of the copies…" (the second occurrence of "requesting by the media player")(Office Action, page 4). Applicant acknowledges that these are two separate limitations of the claim and include

different language. As noted in bold, however, these limitations have similar language of "requesting by the media player" "from the set of servers over the plurality of TCP connections;" while the one limitation indicates that "a plurality of sequential ones of the files of one of the copies" is requested, while the other indicates that "for each [subsequent portion of the video] one of the files from one of the copies" is requested. Despite the Examiner's allegation that Birney teaches the "automatically requesting" limitation (second occurrence), Applicant respectfully submits that Birney fails to teach at least the highlighted language of both limitations (first and second occurrences).

In particular, Birney teaches that in order to use "intelligent streaming with multiple-bit-rate streams, the *content must be hosted on a Windows Media server*" (paragraph 14). Since the content must be hosted by the Window Media server, the configuration of Birney is a *push-based configuration* in which a specialized server, i.e., a Windows Media Server, automatically detects the changes in bandwidth and selects or switches to the stream "that is the most appropriate for current bandwidth conditions." (Birney, paragraph 7). Since the configuration of Birney is a push-based configuration, the server "selects and delivers the stream with the most appropriate bit rate" (*Id.)*, and *the client does not request the stream with the most appropriate bit rate*. The Examiner already acknowledges that Birney fails to teach the first of these two limitations, namely the "requesting by the media player" limitation (Office Action, page 5). Applicant respectfully submits that Birney fails to teach both limitations because Birney fails to teach "**requesting by the media player**" either "a plurality of sequential ones of the files of one of the copies" or "one of the files from one of the copies," as recited in claim 20. It should also be noted that although Birney briefly suggests that, instead of using a Windows media server, the multiple-bit-rate streams can be played locally or from a web server, Birney expressly states that "*only the highest bit rate streams will play*" when played locally or from a web server (paragraph 14). This means that the single file will play *without intelligent streaming* to adjust "the properties of a stream to maximize the quality of the user experience" (paragraphs 1 and 14). Since only the highest bit rate stream will play when played from a web server, Birney fails to teach "**requesting by the media player**" either "a plurality of sequential ones of the files of one of the copies" or "one of the files from one of the copies," as recited in claim 20.

The combination of Birney and Quigg-Brown Fails to Teach "Requesting by the Media Player" (Both Occurrences)

Not only do the cited references individually fail to teach either occurrence of the "requesting by the media player" limitations, the combination of the cited references fails to teach either of these limitations. When combining the teachings of Quigg-Brown with Birney's teachings of a push-based media server, the combination fails to teach "**requesting by the media player a plurality of sequential ones of the files** of one of the copies **from the set of servers over a plurality of [TCP] connections** based on the time indexes," (first occurrence) because the resulting combination would be a media server that is a capable of pushing data to the client by dividing the data "into a number of packets," making "a determination … as to whether the number of packets exceeds a threshold number," and, if so, transferring the packets "in parallel over a plurality of [TCP/IP] connections" (*Id.* at paragraph 8), bracketed material added. Similarly, the combination fails to teach "**automatically requesting by the media player from the set of servers over the plurality of TCP connections** subsequent portions of the video by requesting for each such portion one of the **files from one of the copies**" (second occurrence).

Birney Fails to Teach "Stored as Multiple Files"

The Examiner alleges that Birney teaches that "each of a plurality of different copies of the video encoded at different bit rates is **stored as multiple files** on the set of servers" (Office Action, pages 3-4). In particular, the Examiner states that "Birney teaches *multiple copies of the same stream being stored on a server at different bit rates* with the same time index used to switch between the streams based on network bandwidth limitations." *Id.* Applicant respectfully submits that the Examiner fails to establish that Birney teaches this limitation because the Examiner seems to ignore the words of the limitation that each of the different copies of the video "**is stored as multiple files**." Birney teaches that the "content must be encoded as a multiple-bit-rate stream," which includes "a number of discrete, user-definable audio and video streams [that] are encoded into a *single Windows Media stream*" (paragraph 6, emphasis added, bracketed material added). Birney expressly teaches that the multiple-bit-rate stream (paragraph 6), which includes the streams encoded at different bit rates, is created and

managed as "*a single file*" (paragraph 11). As such, in contrast to the Examiner's allegation that Birney teaches this limitation, Birney expressly teaches that all of the different bit-rate streams are stored and managed as "*a single file*," not multiple files. Not only does Birney fails to teach that all of the different bit-rate streams are stored as multiple files, Birney also fails to teach that *each* of these different bit-rate streams, which make up the multiple-bit-rate stream, is stored as multiple files. As such, Applicant respectfully submits that Birney fails to teach at least the limitation of "**each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files** on the set of servers."

Quigg-Brown Fails to Teach "Stored as Multiple Files"

Quigg-Brown, which has been used by the Examiner for only the first occurrence of the "Requesting by a Media Player" limitation, fails to cure the deficiency regarding "stored as multiple files," noted above with respect to Birney. Applicant respectfully submits that Quigg-Brown fails to teach that "each of a plurality of different copies of the video encoded at different bit rates **is stored as multiple files** on the set of servers" because Quigg-Brown is silent regarding encoding video at different bit rates and storing each of the different copies as multiple files on the servers. As such, Applicant respectfully submits that Quigg-Brown fails to cure this deficiency of Birney.

Birney Fails to Teach "Time Indexes"

Birney also fails to teach that "each of said files [has] **a time index**," and "requesting … a plurality of sequential ones of the files of one of the copies … **based on the time indexes**." As stated above, the Examiner alleges that Birney teaches that the "same time index is used to switch between the stream based on network bandwidth limitations" (Office Action, page 4). Applicant respectfully disagrees with the Examiner's characterization of the reference because *Birney is silent regarding time indexes*. Not only does Birney fail to teach that each of the different bit-rate streams of Birney is stored as multiple files on the set of servers, as described above, Birney also fails to teach that *the single file has any time indexes* or that the *different bit-rate streams within the single file have any time indexes*. In addition, nothing in Birney teaches or suggests that the client requests the video based on time indexes.

Even if, for the sake of argument, time indexes were used "to switch between the streams," as alleged by the Examiner, because Birney only has a single file, these alleged time indexes of Birney do not constitute the claimed "time indexes." Each of the claimed "time indexes" corresponds to one of the multiple files of each of the different copies, where each file yields a portion of the video; whereas the alleged time indexes of Birney could not correspond to one of multiple files because there is only a single file in Birney.

As such, Birney fails to teach that "each of said files [has] **a time index**," and "requesting … a plurality of sequential ones of the files of one of the copies … **based on the time indexes**," as recited in claim 20.

Quigg-Brown Fails to Teach "Time Indexes"

Quigg-Brown, which has been used by the Examiner for only the first occurrence of the "Requesting by a Media Player" limitation, fails to cure the deficiencies regarding "time indexes" noted above with respect to Birney. Quigg-Brown fails to teach that "each of said files [has] **a time index**," and "requesting … a plurality of sequential ones of the files of one of the copies … **based on the time indexes**" because Quigg-Brown is silent regarding the files having time indexes. As such, Applicant respectfully submits that Quigg-Brown fails to cure these deficiencies of Birney.

Birney Fails to Teach "Making the Successive Determinations" by the Media Player

The Examiner also alleges that Birney teaches the limitation of "making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time," stating that "Birney teaches shifting the playback quality to the highest quality dependent on network conditions." (Office Action, page 5). Applicant respectfully submits that the Examiner fails to establish that Birney teaches this limitation because the Examiner seems to ignore that "making the successive determinations to shift the playback quality" is performed "**by the media player**." In particular, the claim recites "automatically requesting **by the media player** … dependent upon **successive determinations by the media player** to shift the playback quality to a higher or lower quality one of the different copies, said

automatically requesting including, … **making the successive determinations to shift the playback quality**."

In most strategies presented in Birney, the "*server automatically detects*" the current available bandwidth and determines which stream to use (paragraph 7). In one strategy, however, Birney indicates that the media server *and* the client automatically determine the current available bandwidth (*Id.*). The media server, in this strategy, however, still is the one that "selects and delivers the stream with the most appropriate bit rate" (*Id.*), and the client does not request the most appropriate bit rate based on the current available bandwidth. As such, none of the strategies presented in Birney teaches or suggests that the client alone determines which stream is the most appropriate for current bandwidth conditions, and which stream to request. Birney goes on further to stress the importance that "the content *must be hosted on a Windows Media Server* and played in Windows Media Player," in order to use intelligent streaming with multiple-bit-rate streams (paragraph 14, emphasis added). When played locally or from a web server (instead of a Windows media server), intelligent streaming cannot be accomplished (*Id.*). Thus, Birney describes the server, <u>not</u> the client, as having the intelligence for performing "intelligent streaming" to determine whether to switch "to a stream with a lower bit rate" or "to a stream with a higher bit rate," even though the client may be used to determine the current available bandwidth between server and client. Accordingly, Birney fails to teach "**automatically requesting by the media player** … subsequent portions of the video by requesting for each such portion one of the files from one of the copies **dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies**," and "**making the successive determinations [by the media player] to shift the playback quality** based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time," as recited in claim 20.

<u>Quigg-Brown Fails to Teach "Making the Successive Determinations" by the Media Player</u>

Quigg-Brown, which has been used by the Examiner for only the first occurrence of the "Requesting by a Media Player" limitation, fails to cure the deficiencies regarding

"making the successive determinations" by the media player noted above with respect to Birney. Quigg-Brown also fails to teach "automatically requesting **by the media player** … dependent upon **successive determinations by the media player** to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including, … **making the successive determinations to shift the playback quality**" because Quigg-Brown is silent regarding making determinations to shift the playback quality.

For the foregoing reasons, Applicant respectfully submits that the combination of cited references fails to teach all the limitations of claim 20. Accordingly, Applicant requests that the rejection of claims 20-21, 23-26, 35-38, and 40-50 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

It is respectfully submitted that in view of the amendments and remarks set forth herein, the rejections have been overcome, putting the claims in condition for allowance. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Dan DeVos at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: October 22, 2009

/Kevin O. Grange/

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Electronic Acknowledgement Receipt

EFS ID:	6315401
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	22-OCT-2009
Filing Date:	28-APR-2005
Time Stamp:	19:11:10
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$180
RAM confirmation Number	4945
Deposit Account	022666
Authorized User	

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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Filed (SB/08)	8532P001_IDS_and_1449.pdf	57540 1f5044579fbc7ebe9230b37871052eddf6f075d5	no	3
Warnings:					
Information:					
This is not an USPTO supplied IDS fillable form					
2		8532P001_Resp_to_OA.pdf	97993 42ade2efa21a0f8fbfd103cea22a8c3fa34fe5ac	yes	18

Multipart Description/PDF files in .zip description		
Document Description	**Start**	**End**
Amendment/Req. Reconsideration-After Non-Final Reject	1	1
Claims	2	7
Applicant Arguments/Remarks Made in an Amendment	8	18

Warnings:					
Information:					
3	Fee Worksheet (PTO-875)	fee-info.pdf	30164 3d029f84b801f7f92bc79193f939ace8fac1934b	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	185697		

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If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

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PATENT APPLICATION FEE DETERMINATION RECORD

Substitute for Form PTO-875

Application or Docket Number	Filing Date	☐ To be Mailed
11/116,783	04/28/2005	

APPLICATION AS FILED – PART I

	(Column 1)	(Column 2)	SMALL ENTITY ☒		OR	OTHER THAN SMALL ENTITY	
FOR	NUMBER FILED	NUMBER EXTRA	RATE ($)	FEE ($)		RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A			N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A			N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A			N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =		OR	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =			X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).						
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))							
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	10/22/2009	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	SMALL ENTITY RATE ($)	ADDITIONAL FEE ($)	OR	OTHER THAN SMALL ENTITY RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 21	Minus	** 34	= 0	X $26 =	0	OR	X $ =	
	Independent (37 CFR 1.16(h))	* 1	Minus	***5	= 0	X $110 =	0	OR	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))									
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
						TOTAL ADD'L FEE	0	OR	TOTAL ADD'L FEE	

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =		OR	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =		OR	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))									
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							OR		
						TOTAL ADD'L FEE		OR	TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

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The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

Legal Instrument Examiner:
/CORALIA BETANCOURT/

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Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Complete if Known

Application Number	11/116,783
Filing Date	April 28, 2005
First Named Inventor	Major, R. Drew
Group Art Unit	2444
Examiner Name	Donabed, Ninos

Sheet 1 of 1

Attorney Docket No: 8532P001

US PATENT DOCUMENTS

Examiner Initial *	Cite No [1]	USP Document Number	Publication or Issue Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-20030005455A1	01/02/2003	Bowers	
		US-20040054551A1	03/18/2004	Ausubel, et al.	
		US-20040143672A1	07/22/2004	Padmanabham, et al.	
		US-20040170392	09/02/2004	Lu, et al.	
		US-20080162713	07/03/2008	Bowra, et al.	
		US-6486803B1	11/26/2002	Luby, et al.	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No [1]	Foreign Patent Document — Country Code/Number/Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T [2]

OTHER DOCUMENTS -- NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No [1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T [2]

EXAMINER **DATE CONSIDERED**

Based on PTO/SB/08A(09-06) - Substitute Disclosure Statement Form (PTO-1449) as modified by BSTZ 03/26/07

* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. [1] Applicant's unique citation designation number (optional) [2] Applicant is to place a check mark here if English language Translation is attached

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

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

INFORMATION DISCLOSURE STATEMENT

Sir:

Enclosed is a copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 together with copies of the documents cited on that form, except for copies not required to be submitted (e.g., copies of U.S. patents and U.S. published patent applications need not be enclosed for applications filed after June 30, 2003). It is respectfully requested that the cited documents be considered and that the enclosed copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 be initialed by the Examiner to indicate such consideration and a copy thereof returned to applicant(s).

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

October 22, 2009
(Date of Deposit)

Kevin O. Grange
(Typed or printed name of person mailing correspondence)

/Kevin O. Grange/ 10-22-09
(Signature of person mailing correspondence) (Date)

Pursuant to 37 C.F.R. § 1.97, the submission of this Information Disclosure Statement is not to be construed as a representation that a search has been made and is not to be construed as an admission that the information cited in this statement is material to patentability.

Pursuant to 37 C.F.R. § 1.97, this Information Disclosure Statement is being submitted under one of the following (as indicated by an "X" to the left of the appropriate paragraph):

_____ 37 C.F.R. §1.97(b).

__X__ 37 C.F.R. §1.97(c). If so, then enclosed with this Information Disclosure Statement is one of the following:

__X__ A statement pursuant to 37 C.F.R. §1.97(e) or

____ **The Director is Authorized to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. § 1.17(p).**

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(1) A statement pursuant to 37 C.F.R. §1.97(e); and

(2) **Authorization to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. §1.17(p) for submission of the Information Disclosure Statement.**

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: Oct. 22, 2009

/Kevin O. Grange/
Kevin O. Grange
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1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Enclosed is a copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 together with copies of the documents cited on that form, except for copies not required to be submitted (e.g., copies of U.S. patents and U.S. published patent applications need not be enclosed for applications filed after June 30, 2003). It is respectfully requested that the cited documents be considered and that the enclosed copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 be initialed by the Examiner to indicate such consideration and a copy thereof returned to applicant(s).

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

November 6, 2009.
(Date of Deposit)
Kevin O. Grange
(Typed or printed name of person mailing correspondence)

/Kevin O. Grange/ 11-6-09
(Signature of person mailing correspondence) (Date)

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Pursuant to 37 C.F.R. § 1.97, this Information Disclosure Statement is being submitted under one of the following (as indicated by an "X" to the left of the appropriate paragraph):

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__X__ 37 C.F.R. §1.97(c). If so, then enclosed with this Information Disclosure Statement is one of the following:

____ A statement pursuant to 37 C.F.R. §1.97(e) or

_X_ **The Director is Authorized to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. § 1.17(p).**

_____ 37 C.F.R. §1.97(d). If so, then enclosed with this Information Disclosure Statement are the following:

(1) A statement pursuant to 37 C.F.R. §1.97(e); and

(2) **Authorization to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. §1.17(p) for submission of the Information Disclosure Statement.**

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: Nov. 6, 2009

/Kevin O. Grange/
Kevin O. Grange
Reg. No. 60,793

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

Substitute for Form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(use as many sheets as necessary)*				Application Number	11/116,783
				Filing Date	April 28, 2005
				First Named Inventor:	R. Drew Major
				Art Unit	2444
				Examiner Name	Donabed, Ninos J
Sheet	**1**	**of**	**1**	Attorney Docket Number	8532P001

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		PCT Notification of Transmittal of the International Search Report and Written Opinion of the International Searching Authority, for PCT/US05/15091, October 29, 2007, 8 pages.	
		PCT Notification of Transmittal of International Preliminary Report on Patentability, for PCT/US05/15091, October 29, 2007, 6 pages.	
		Office Action for 11/673,483, July 9, 2009, 14 pages.	
		Office Action for 11/673,483, February 3, 2009, 9 pages.	
		ALBANESE, Andres, et al. "Priority Encoding Transmission", TR-94-039, August 1994, 36 pages, International Computer Science Institute, Berkeley, California.	
		PURI, Rohit, et al. "Multiple Description Source Coding Using Forward Error Correction Codes", October 1999, 5 pages, Department of Electrical Engineering and Computer Science, University of California, Berkeley, California.	
		GOYAL, Vivek K., "Multiple Description Coding: Compression Meets the Network", September 2001, pages 74-93, IEEE Signal Processing Magazine.	

Examiner Signature		Date Considered	

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SENT FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Based on Form PTO/SB/08A (08-03) as modified by BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP on 09/10/03.

Electronic Acknowledgement Receipt

EFS ID:	6411245
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	06-NOV-2009
Filing Date:	28-APR-2005
Time Stamp:	18:50:32
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$180
RAM confirmation Number	4765
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.16 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.20 (Post Issuance fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Filed (SB/08)	8532P001_IDS_and_1449.pdf	66683 947c2d4d39d8a5a0d31508d0c392f844465e4bba	no	3
Warnings:					
Information:					
This is not an USPTO supplied IDS fillable form					
2	NPL Documents	NPL_8532P001_PCT_ISR.pdf	322319 dc6553e8e36f851f1c7350952f06e1faa11e3c58	no	8
Warnings:					
Information:					
3	NPL Documents	NPL_8532001PCT_Report_on_Patentability.pdf	240374 8ccefb1294879f34706021427679209b7ad19441	no	6
Warnings:					
Information:					
4	NPL Documents	NPL_Multiple_Description_Coding_Compression_Meets_the_Network.pdf	1352328 45f963c2b903a3e4c3016cc9303957fc09a82f97	no	20
Warnings:					
Information:					
5	NPL Documents	NPL_Multiple_Description_Source_Coding_using_Forward_error_correction_codes.pdf	132985 bba2f7dde2930a43125e61bca616d4b9a90fccad	no	5
Warnings:					
Information:					
6	NPL Documents	NPL_OA_P002_020309.pdf	280230 8e48353ec5541a3ba0c2c8d4666128a6084 9bef2	no	9
Warnings:					
Information:					
7	NPL Documents	NPL_OA_P002_070909.pdf	446647 5a852d4d30fc3a518eb8ba1dea31bc9774e6c0de	no	14
Warnings:					
Information:					

8	NPL Documents	NPL_Priority_Encoding.pdf	332434 9c242701f9e5e378fe58fcdfdda7336655d33154	no	36
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Information:					
9	Fee Worksheet (PTO-875)	fee-info.pdf	30165 1e97f3c1958e95b2d3ae08517976a6541135efa6	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	3204165		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Leslie Rogan
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Dianne Nethery
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

Substitute for Form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Complete if Known	
Application Number	11/116,783
Filing Date	April 28, 2005
First Named Inventor:	R. Drew Major
Art Unit	2444
Confirmation No.	5535
Examiner Name	Donabed, Ninos J.
Attorney Docket Number	8532P001

Sheet	1	of	1

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (If known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-			
		US-			
		US-			
		US-			
		US-			
		US-			
		US-			
		US-			

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No.[1]	Foreign Patent Document Country Code[3] Number[4] Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		WICKER, Stephen B., "ERROR CONTROL SYSTEMS for Digital Communication and Storage", Prentice-Hall, Inc., New Jersey, USA, 1995 (Book: see NPL's Parts 1-6)	

Examiner Signature		Date Considered	

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

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If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Based on Form PTO/SB/08A (08-03) as modified by BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP on 09/10/03.

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

INFORMATION DISCLOSURE STATEMENT

Sir:

Enclosed is a copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 together with copies of the documents cited on that form, except for copies not required to be submitted (e.g., copies of U.S. patents and U.S. published patent applications need not be enclosed for applications filed after June 30, 2003). It is respectfully requested that the cited documents be considered and that the enclosed copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 be initialed by the Examiner to indicate such consideration and a copy thereof returned to applicant(s).

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

November 9, 2009.
(Date of Deposit)
Kevin O. Grange
(Typed or printed name of person mailing correspondence)

/Kevin O. Grange/ 11-9-09
(Signature of person mailing correspondence) (Date)

Pursuant to 37 C.F.R. § 1.97, the submission of this Information Disclosure Statement is not to be construed as a representation that a search has been made and is not to be construed as an admission that the information cited in this statement is material to patentability.

Pursuant to 37 C.F.R. § 1.97, this Information Disclosure Statement is being submitted under one of the following (as indicated by an "X" to the left of the appropriate paragraph):

_____ 37 C.F.R. §1.97(b).

__X__ 37 C.F.R. §1.97(c). If so, then enclosed with this Information Disclosure Statement is one of the following:

____ A statement pursuant to 37 C.F.R. §1.97(e) or

__X__ **The Director is Authorized to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. § 1.17(p).**

_____ 37 C.F.R. §1.97(d). If so, then enclosed with this Information Disclosure Statement are the following:

(1) A statement pursuant to 37 C.F.R. §1.97(e); and

(2) **Authorization to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. §1.17(p) for submission of the Information Disclosure Statement.**

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: Nov. 9, 2009

/Kevin O. Grange/
Kevin O. Grange
Reg. No. 60,793

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

Electronic Acknowledgement Receipt

EFS ID:	6421582
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Dianne Neathery
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	09-NOV-2009
Filing Date:	28-APR-2005
Time Stamp:	21:04:00
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Filed (SB/08)	8532P001_IDS_1449Form_11_09_2009.pdf	94789 4687731cfc92ef3f9ed13aa0fccca435fc101e7e	no	3

Warnings:	
Information:	

This is not an USPTO supplied IDS fillable form					
2	NPL Documents	NPL_Error_Control_Systems_Part_1.PDF	3050132 29a0dfc4c3d0d983e47a1449aef07dab7ae8d97b	no	85
Warnings:					
Information:					
3	NPL Documents	NPL_Error_Control_Systems_Part_2.PDF	3071026 cc29e9f23696cc500d99fc7a0aac1686a29a85fc	no	81
Warnings:					
Information:					
4	NPL Documents	NPL_Error_Control_Systems_Part_3.PDF	4055424 50c94b03ec528c1707f6c349e183cacd0439c583	no	89
Warnings:					
Information:					
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Warnings:					
Information:					
6	NPL Documents	NPL_Error_Control_Systems_Part_5.PDF	14409798 0ab86162be3baf253480d1734421573cf267e115	no	91
Warnings:					
Information:					
7	NPL Documents	NPL_Error_Control_Systems_Part_6.pdf	8577814 97eb7bd84dd620ce68af0852bb2d81d0319aa360	no	68
Warnings:					
Information:					
8	Fee Worksheet (PTO-875)	fee-info.pdf	30227 658d8d84f6065114ff7d55b9ca2ba7b2a144eec6	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	40153712		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Dianne Neathery
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

Electronic Acknowledgement Receipt

EFS ID:	6421787
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Dianne Neathery
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	09-NOV-2009
Filing Date:	28-APR-2005
Time Stamp:	21:32:33
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$180
RAM confirmation Number	6173
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)					
File Listing:					
Document Number	**Document Description**	**File Name**	**File Size(Bytes)/ Message Digest**	**Multi Part /.zip**	**Pages (if appl.)**
1	Fee Worksheet (PTO-875)	8532P001_Fee_Transmittal_11_09_2009.pdf	30249 85934244981860387 08fd0a4316abca51b2e9adf	no	2
Warnings:					
Information:					
2	Fee Worksheet (PTO-875)	fee-info.pdf	30228 29671959797c6c8bd989d8e2157c6675785 3f3de	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	60477		

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New Applications Under 35 U.S.C. 111

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Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Dianne Neathery
Attorney Docket Number:	8532P001

Filed as Large Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	02/04/2010								
	1	-								
	2	-								
	3	-								
	4	-								
	5	-								
	6	-								
	7	-								
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	20	✓								
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	27	-								
	28	-								
	29	-								
	30	-								
	31	-								
	32	-								
	33	-								
	34	-								
	35	✓								
	36	✓								

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	02/04/2010								
	37	✓								
	38	✓								
	39	-								
	40	✓								
	41	✓								
	42	✓								
	43	✓								
	44	✓								
	45	✓								
	46	✓								
	47	✓								
	48	✓								
	49	✓								
	50	✓								

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	8532P001	5535

8791 7590 02/22/2010

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
02/22/2010	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.	Applicant(s)	
	11/116,783	MAJOR ET AL.	
	Examiner	Art Unit	
	NINOS DONABED	2444	

-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 *22 October 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ 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

4)☒ Claim(s) *20,21,23-26,35-38 and 40-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20-21, 23-26. 35-38. 40-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ 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).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

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).

a)☐ All b)☐ Some * c)☐ None of:

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) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/22/2009, 11/6/2009,11/9/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Response to Amendment

This communication is in response to Applicant's amendment dated 10/22/2009. Claims 20,21, 23-26,35-38 and 40-50 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 20-21, 23-26, 35-38, 40-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birney "Intelligent Streaming" in view of Kalra (United Stated Patent 6490627) further in view of Quigg-Brown (United States Patent Application 2003/0152036.)

Regarding claim 20,

Birney teaches a method for presenting rate-adaptive streams, the method comprising:

streaming by a media player operating on an end user station a video from a set of one or more servers, wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on

playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video, and wherein the streaming comprises: **(See pages 1-2 (multi-bit rate encoding), Birney teaches multiple copies of the same stream being stored on a server at different bit rates with the same time index used to switch between the stream based on network bandwidth limitations)**

repeatedly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and **(See pages 2-3 including multiple-bit-rate encoding and intelligent bandwidth control sections, Birney teaches determining bandwidth capabilities)**

making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files portions of the highest quality one of the copies determined sustainable at that time; and presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time.**(See pages 1-2, Birney teaches shifting playback quality to the highest quality dependent on network bandwidth.)**

Birney further teaches a client and a server working together to automatically determine the available bandwidth and based on this working together adjusting to a higher or lower quality stream **(See pages 2-4, Birney)**

While the implication of Birney is that both the server and the client work together to determine a quality of stream, Birney does not explicitly state that this is done by the media player acting alone.

Kalra teaches requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers; **(See figure 16A1 and column 15 line 56 - column 16 line 60, Kalra teaches requesting by a client media player one of the adaptive streams/copies based on the client capabilities)**

automatically requesting by the media player from the set of servers subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including, **(See figure 16A1 and column 15 line 56 - column 16 line 60, Kalra teaches automatically requesting by the media player higher or lower quality data based on a quality factor)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Kalra with Birney because both deal with streaming different quality of streaming content to a client device from a server. The advantage of incorporating requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers; automatically requesting by the media player from the set of servers subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the

playback quality to a higher or lower quality one of the different copies, said automatically requesting of Kalra into Birney is that sata streams accessed by client from server are tailored to match profile of each client, such that best stream combinations are provided to maximize resolution of 3D, audio and video components thus making the system more robust and efficient. **(See column 1, Kalra)**

Birney and Kalra do not explicitly teach one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections.

Quigg-Brown teaches teach one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections **(See abstract and paragraphs [0028] – [0030])**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Quigg Brown with Birney because both deal with streaming of files. The advantage of incorporating one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections of Quigg Brown into Birney is that it improves the data transfer rate by transferring the packets in parallel through the network. **(See paragraphs [0002] – [0005], Quigg brown.)**

Regarding claim 21,

Birney, Kalra, and Quigg Brown teach the method of claim 20,wherein said requesting the plurality of sequential ones of the files includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the portions files from the received sub-parts. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 23,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said determining making the successive determinations to shift comprises: upshifting to a higher quality one of the different copies when the at least one performance factor is greater than a first threshold; and determining if the higher quality playback can be sustained. **(See page 2 paragraphs 4-5, Birney)**

Regarding claim 24,

Birney, Kalra, and Quigg Brown teach the method of claim 23, wherein said determining making the successive determinations to shift comprises downshifting to a lower quality one of the different copies when the at least one performance factor is less than a second threshold. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 25,

Birney, Kalra, and Quigg Brown teach the method of claim 20, further comprising: receiving user input to enable one of fast-forward, skip randomly, and rewind functionality; and requesting files of the video at a specified time index that is not the next sequential time in the current playback. **(See page 3, Birney)**

Regarding claim 26,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said requesting the plurality of sequential one of the files includes requesting the files from a low quality one of the different copies to enable instant playback of the video, and wherein said automatically requesting includes upshifting to a higher quality one of the different copies. **(See page 2 paragraphs 1-4, Birney)**

Regarding claim 35,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections. **(See paragraphs [0002] – [0005], Quigg Brown)** See motivation for claim 20.

Regarding claim 36,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said presenting comprises sequentially arranging the received requested portions files from

the different copies in the order of ascending playback time for playback on with the media player on the end user station. **(See page 3 paragraphs 1-3, Birney)**

Regarding claim 37,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said automatically requesting includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 38,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of is indicative of the available bandwidth of the plurality of TCP connections. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 40,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when a one of the requests is issued and a time that response data of the begins to arrive at the end user station. **(See page 2 paragraphs 1-5, Birney)**

Regarding claim 41,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files. **(See page 1 paragraphs 1-3, Birney)**

Regarding claim 42,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 43,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein at least one of the set of servers is a web server. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 44,

Birney, Kalra, and Quigg Brown teach the method of claim 43, wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to respond to said requesting. **(See page 2, Birney)**

Regarding claim 45,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein at least one of the set of servers is a cache server of a network infrastructure operator. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 46,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein: said generating the set of factors comprises: monitoring time intervals between successive receive times for each of the requested files (**See pages 1-2, Birney)**; calculating a current performance ratio across a current window of the time intervals; and calculating a current average of the performance ratio to obtain a current performance factor of the set of factors; said making further comprises: comparing the current performance factor with a set of one or more trigger thresholds(**See pages 1-2, Birney)**; and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (**See pages 2, Birney**)

Regarding claim 47,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said making comprises: comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video

received by the media player for playback at a current playback time index; and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing. **(See page 1 and 2 paragraphs 2-5, Birney)**

Regarding claim 48,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein: said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and said automatically requesting comprises issuing for each of the files a request with the filename of that file. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 49,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files. **(See page 2 paragraphs 1-3, Birney)**

Regarding claim 50,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence. **(See page 2 paragraphs 2-5, Birney)**

Response to Arguments

Applicant's arguments filed 10/22/2009 have been fully considered but they are not persuasive.

- Applicant's Argument: The Applicant argues that the prior art of record does not teach “the copies of the video is stored as multiple files”.

Examiner’s Response: Examiner respectfully disagrees and points to pages 2-3 of Birney. The passage clearly teaches that discrete streams with different quality bit rates are stored on the server. A discrete stream corresponds directly to multiple files with different bit rate encoding. For at least the above mentioned reasons, the prior art of record does indeed cover the claim limitations.

- Applicant's Argument: The Applicant argues that the prior art of record does not teach “time indexes”.

Examiner’s Response: Examiner respectfully disagrees and points to page 2 of Birney. The passage clearly teaches that multiple steams are encoded and a media player/server adjust the stream based on bandwidth and other conditions which may impact a user’s viewing of a video. The way multi bit encoding works is; say for example a medium stream is being sent to a client from a server and at a time if 25 minutes 35 seconds, the bandwidth suddenly drops; the client/server then will determine that a low quality stream should now be used and **seamlessly** switch the video to low quality after

the determination is made at, for example, 25 minutes 40 seconds. The low quality stream will pick up at the **time** that the medium stream stops. Therefore a **time index** is being used in order to **seamlessly** switch stream qualities. For at least the above mentioned reasons, the prior art of record does indeed cover the claim limitations.

- Applicant's Argument: The Applicant argues that the prior art of record does not teach "making the successive determinations [by the media player] to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time".

Examiner's Response: Examiner respectfully disagrees and points to pages 2-3 of Birney and figure 16A1 and column 15 line 40 – column 16 line 49, Kalra. The passages clearly teach that a media player along with a server make the successive determination based on a client profile to shift the quality of stream sent to the client from the server. For at least the above mentioned reasons, the prior art of record does indeed cover the claim limitations.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/6/2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

MADE FINAL. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this Office Action should be **faxed** to (571) 272-8300 or **mailed** to:

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Hand-delivered responses should be brought to
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NINOS DONABED whose telephone number is (571)270-3526. The examiner can normally be reached on Monday-Friday, 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. 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.

/N. D./
Examiner, Art Unit 2444
/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

Substitute for Form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(use as many sheets as necessary)*				Application Number	11/116,783
				Filing Date	April 28, 2005
				First Named Inventor:	R. Drew Major
				Art Unit	2444
				Examiner Name	Donabed, Ninos J
Sheet	**1**	**of**	**1**	Attorney Docket Number	8532P001

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		PCT Notification of Transmittal of the International Search Report and Written Opinion of the International Searching Authority, for PCT/US05/15091, October 29, 2007, 8 pages.	
		PCT Notification of Transmittal of International Preliminary Report on Patentability, for PCT/US05/15091, October 29, 2007, 6 pages.	
		Office Action for 11/673,483, July 9, 2009, 14 pages.	
		Office Action for 11/673,483, February 3, 2009, 9 pages.	
		ALBANESE, Andres, et al. "Priority Encoding Transmission", TR-94-039, August 1994, 36 pages, International Computer Science Institute, Berkeley, California.	
		PURI, Rohit, et al. "Multiple Description Source Coding Using Forward Error Correction Codes", October 1999, 5 pages, Department of Electrical Engineering and Computer Science, University of California, Berkeley, California.	
		GOYAL, Vivek K., "Multiple Description Coding: Compression Meets the Network", September 2001, pages 74-93, IEEE Signal Processing Magazine.	

Examiner Signature	/Ninos Donabed/	Date Considered	02/04/2010

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SENT FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

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ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /N.D

Substitute for Form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Complete if Known	
Application Number	11/116,783
Filing Date	April 28, 2005
First Named Inventor:	R. Drew Major
Art Unit	2444
Confirmation No.	5535
Examiner Name	Donabed, Ninos J.
Attorney Docket Number	8532P001

Sheet	**1**	**of**	**1**

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (If known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-			
		US-			
		US-			
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		US-			

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No.[1]	Foreign Patent Document Country Code[3] Number[4] Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		WICKER, Stephen B., "ERROR CONTROL SYSTEMS for Digital Communication and Storage", Prentice-Hall, Inc., New Jersey, USA, 1995 (Book: see NPL's Parts 1-6)	

Examiner Signature	/Ninos Donabed/	Date Considered	02/04/2010

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

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ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /N.D

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

SEARCHED

Class	Subclass	Date	Examiner
709	246	05/07/2008	ND

SEARCH NOTES

Search Notes	Date	Examiner
See EAST Search History	05/07/2008	ND
Conducted double patenting search	05/07/2008	ND
Consulted with SPE William Vaughn	11/13/2008	ND
See updated EAST search	12/13/2009	ND
Consulted with SPE William Vaughn regarding Final	02/12/2009	ND
Consulted with SPE William Vaughn regarding Advisory	03/29/2009	ND
Consulted with SPE William Vaughn regarding Advisory	5/7/2009	ND
Consulted with Primary Paul Kang	02/10/2009	ND
See updated east search	7/30/2009	ND
Consulted with SPe William Vaughn regarding search	7/30/2009	ND
Consulted SPE William Vaughn regarding Final	2/4/2010	nd

INTERFERENCE SEARCH

Class	Subclass	Date	Examiner

Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Complete if Known

Application Number	11/116,783
Filing Date	April 28, 2005
First Named Inventor	Major, R. Drew
Group Art Unit	2444
Examiner Name	Donabed, Ninos

Sheet 1 of 1

Attorney Docket No: 8532P001

US PATENT DOCUMENTS

Examiner Initial *	Cite No [1]	USP Document Number	Publication or Issue Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-20030005455A1	01/02/2003	Bowers	
		US-20040054551A1	03/18/2004	Ausubel, et al.	
		US-20040143672A1	07/22/2004	Padmanabham, et al.	
		US-20040170392	09/02/2004	Lu, et al.	
		US-20080162713	07/03/2008	Bowra, et al.	
		US-6486803B1	11/26/2002	Luby, et al.	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No [1]	Foreign Patent Document Country Code/Number/Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T [2]

OTHER DOCUMENTS -- NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No [1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T [2]

EXAMINER /Ninos Donabed/ **DATE CONSIDERED** 02/04/2010

Based on PTO/SB/08A(09-06) - Substitute Disclosure Statement Form (PTO-1449) as modified by BSTZ 03/26/07

* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. [1] Applicant's unique citation designation number (optional) [2] Applicant is to place a check mark here if English language Translation is attached

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /N.D

REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks.

- The Office Action, in the "Response to Arguments" section, does not address the Applicant's or arguments made regarding "**Requesting by the Media Player**." In particular, the Applicant made various arguments, including the arguments presented in the following sections "Quigg-Brown Fails to Teach 'Requesting by the Media Player' (First Occurrence)," "Birney Fails to Teach 'Requesting by the Media Player' (Second Occurrence)," and the "Combination of Birney and Quigg-Brown Fails to Teach 'Requesting by the Media Player" (Both Occurrences)."
- The Office Action, in the "Response to Arguments" section argues that page 2-3 of Birney teaches that discrete streams with different quality bit rates are stored on the server, and that a discrete stream corresponds directly to multiple files with different bit rate encoding. It appears, however, that the Office Action ignores the wording of the claims that each of the different copies of the video is "stored as multiple files," as well as the arguments presented in Applicant's previous response on this matter, labeled **"Birney Fails to Teach 'Stored as Multiple Files'."** The cited section of Birney expressly states that "a number of discrete, user-definable audio and video streams are encoded into a single Windows Media stream," which is managed as "a single file" (paragraph 11). The Office Action also fails to address the argument that "**Quigg-Brown Fails to Teach 'Stored as Multiple Files'."** Thus, the Office Action has failed to establish a prima facie rejection on this matter.
- The Office Action, in the "Response to Arguments" section concludes that the word **"seamlessly"** in Birney means that time indexes are used, providing a self-generated example of how the Examiner believes intelligent streaming works without any supporting evidence. Since Birney is silent regarding "time indexes," it appears that the Office Action relies on personal knowledge to support that finding of what is known in the art. To rely on personal knowledge, the Office Action would need to take Official Notice under MPEP 2144.03(C) so that the Applicant can challenge the Official Notice. If the Office Action intended the response on this matter to be considered as taking Official Notice, the Applicant respectfully challenges the Official Notice, requesting that the Examiner provide documentary evidence, as well as point to some concrete evidence in the record in support of these finding. Also, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, Applicant respectfully submits that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. *MPEP* 2144.03(C). Thus, the Office Action has failed to show that Birney teaches the claimed "time indexes."
- Even if, for the sake of argument, the Office Action were to present a reference for the challenge of the Official Notice noted above, this reference would not only have to teach "time indexes," but also that each of the "time indexes" corresponds to one of the ***multiple*** files of each of the different copies, where each file yields a portion of the video, as claimed, since Birney is deficient on this issue. In particular, the Office Action, in the "Response to Arguments" section does not address the alternative argument presented in the section **"Birney Fails to Teach 'Time Indexes,'"** which

indicates that even if time indexes were to be used in Birney, these alleged time indexes of Birney could not correspond to one of multiple files of a copy because *there is only a single file in Birney*. In contrast, claim 20 recites "each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video."

- The Office Action, in the "Response to Arguments" section seems to miss the point of Applicant's arguments regarding **"Making the Successive Determinations."** In particular, the Office Action seems to ignore that even if the client helps determine the bandwidth between the client and server in Birney, the server is the one performing the "intelligent streaming" to push the lower or higher bit rate stream to the client. Birney does not teach that the claim language of the media player requesting files from the servers "dependent upon successive determinations by the media player."

In addition to the arguments presented above in the bullet points, Applicant respectfully incorporates by reference the arguments presented in the remarks of the Applicant's previous response, filed Oct. 22, 2009, which provide a detailed analysis that supports the briefly stated arguments above.

From the bullet point items described above, there is clearly a basis for appeal since the Office Action is incomplete and insufficient. Applicant respectfully requests that the Examiner reconsider the sufficiency of the Office Action and reopen prosecution to issue a new or supplemental Office Action that cures the deficiencies or issue a notice of allowance. Clearly the bullet point items also show (as well as the incorporated arguments) that the claims are clearly patentable over the cited references and that a notice of allowance should be issued.

CONCLUSION

It is respectfully submitted that in view of the amendments and remarks set forth herein, the rejections have been overcome, putting the claims in condition for allowance. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Kevin Grange at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: February 25, 2010

/Kevin O. Grange/

Kevin O. Grange
Reg. No. 60,793

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

Electronic Acknowledgement Receipt

EFS ID:	7089175
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	25-FEB-2010
Filing Date:	28-APR-2005
Time Stamp:	15:59:41
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		8532P001_Resp_to_FOA.pdf	40749 e57390e05ad29dbedce30a86510762c50e82b831	yes	4

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Amendment After Final	1	1
	Applicant Arguments/Remarks Made in an Amendment	2	4
Warnings:			
Information:			
	Total Files Size (in bytes):	40749	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

R. Drew Major

Application No.: 11/116,783

Filed: April 28, 2005

For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Examiner: Donabed, Ninos J.

Art unit: 2444

Confirmation No.: 5535

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Kevin O. Grange/ Feb. 25, 2010
Kevin O. Grange ***Date***

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

RESPONSE TO FINAL OFFICE ACTION
under 37 C.F.R. § 1.116 – Expedited Procedure

Examiner:

In response to the Final Office Action mailed on February 22, 2010, Applicant respectfully requests that the Examiner consider the following following remarks.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	8532P001	5535

8791 7590 03/23/2010

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
03/23/2010	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.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 11/116,783	**Applicant(s)** MAJOR ET AL.	
	Examiner NINOS DONABED	**Art Unit** 2444	

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

THE REPLY FILED 25 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *None*.
   Claim(s) objected to: *None*.
   Claim(s) rejected: *20,21,23-26,35-38 and 40-50*.
   Claim(s) withdrawn from consideration: *None*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

/N. D./
Examiner, Art Unit 2444

Continuation of 13. Other: Applicant argues that the prior art of record "fails to teach "stored as multiple files".

Examiner respectfully disagrees and points to page 2 of Birney which teaches discrete streams of encoded data which constitute different bit rates. The claim calls for "video encoded at different bit rates is stored as multiple files" which is clearly covered by the discrete streams of encoded data.

Applicant argues that the prior art of record "fails to teach making successive determinations".

Examiner respectfully disagrees and points to 2-3 of Birney which shows that both the media player and the server are utilized to make the successive determinations. Since the claim is open-ended, the server and media player working in collaboration to make the successive determination is indeed covered by the prior art. Further see, figure 16A1 and column 15 line 40 - column 16 line 49, Kalra. The passages clearly teaches that a media player along with a server make the successive determination based on a client profile to shift the quality of stream sent to the client from the server.

Applicant argues that the prior art of record "fails requesting by the media player".

Examiner respectfully disagrees and points to pages 2-4 of Birney. This section teaches a client system running windows media player which requests a stream from the server and if the bandwidth can not support the quality video it works with the server and requests a different grade of video. This clearly covers the requesting by the media player limitation in the claims. .

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

R. Drew Major

Application No.: 11/116,783

Filed: April 28, 2005

For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Examiner: Donabed, Ninos J.

Art unit: 2444

Confirmation No.: 5535

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Kevin O. Grange/ Feb. 25, 2010
Kevin O. Grange ***Date***

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P.O. Box 1450
Alexandria, VA 22313-1450

OK TO ENTER: /N.D./

RESPONSE TO FINAL OFFICE ACTION
under 37 C.F.R. § 1.116 – Expedited Procedure

Examiner:

In response to the Final Office Action mailed on February 22, 2010, Applicant respectfully requests that the Examiner consider the following following remarks.

Pursuant to 37 C.F.R. § 1.97, the submission of this Information Disclosure Statement is not to be construed as a representation that a search has been made and is not to be construed as an admission that the information cited in this statement is material to patentability.

Pursuant to 37 C.F.R. § 1.97, this Information Disclosure Statement is being submitted under one of the following (as indicated by an "X" to the left of the appropriate paragraph):

_____ 37 C.F.R. §1.97(b).

_____ 37 C.F.R. §1.97(c). If so, then enclosed with this Information Disclosure Statement is one of the following:

____ A statement pursuant to 37 C.F.R. §1.97(e) or

____ **The Director is Authorized to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. § 1.17(p).**

__X__ 37 C.F.R. §1.97(d). If so, then enclosed with this Information Disclosure Statement are the following:

(1) A statement pursuant to 37 C.F.R. §1.97(e); and

(2) **Authorization to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. §1.17(p) for submission of the Information Disclosure Statement.**

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: April 22, 2010

/Kevin O. Grange/
Kevin O. Grange
Reg. No. 60,793

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

Substitute for form 1449A/PTO	*Complete if Known*	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(Use as many sheets as necessary)*	**Application Number**	11/116,783
	Filing Date	April 28, 2005
	First Named Inventor	Major, R. Drue
	Group Art Unit	2444
	Examiner Name	Donabed, Ninos J.
Sheet 1 of 1	Attorney Docket No: 8532P001	

US PATENT DOCUMENTS					
Examiner Initial *	Cite No [1]	USP Document Number	Publication or Issue Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-20030204519A1	10/30/2003	Sirivara, et al.	
		US-7408984B2	08/05/2008	Lu, et al.	

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No [1]	Foreign Patent Document Country Code/Number/Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T [2]

OTHER DOCUMENTS -- NON PATENT LITERATURE DOCUMENTS			
Examiner Initials*	Cite No [1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T [2]

EXAMINER **DATE CONSIDERED**

Based on PTO/SB/08A(09-06) - Substitute Disclosure Statement Form (PTO-1449) as modified by BSTZ 03/26/07

* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional) 2 Applicant is to place a check mark here if English language Translation is attached

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

INFORMATION DISCLOSURE STATEMENT

Sir:

Enclosed is a copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 together with copies of the documents cited on that form, except for copies not required to be submitted (e.g., copies of U.S. patents and U.S. published patent applications need not be enclosed for applications filed after June 30, 2003). It is respectfully requested that the cited documents be considered and that the enclosed copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 be initialed by the Examiner to indicate such consideration and a copy thereof returned to applicant(s).

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

April 22, 2010
(Date of Deposit)

Kevin O. Grange
(Typed or printed name of person mailing correspondence)

/Kevin O. Grange/ 4-22-2010
(Signature of person mailing correspondence) (Date)

Electronic Acknowledgement Receipt

EFS ID:	7472615
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange
Filer Authorized By:	
Attorney Docket Number:	8532P001
Receipt Date:	22-APR-2010
Filing Date:	28-APR-2005
Time Stamp:	23:18:12
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$180
RAM confirmation Number	6061
Deposit Account	022666
Authorized User	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)

1		8532P001_After-final_response.pdf	139490 4399b69bbad1679ac272a3e7eced4437aabdee22	yes	7

Multipart Description/PDF files in .zip description		
Document Description	**Start**	**End**
Amendment After Final	1	1
Applicant Arguments/Remarks Made in an Amendment	2	7

Warnings:

Information:

2	Information Disclosure Statement (IDS) Filed (SB/08)	8532P001_IDS_1449.pdf	156993 920984411eaca96030e62f2666563164f009bcd8	no	3

Warnings:

Information:

This is not an USPTO supplied IDS fillable form

3	Transmittal Letter	8532P001_Statement_Under_37_CFR_197e.pdf	62784 ba4fb24270b70b4fce53c54b2bca81ea2dacc175	no	2

Warnings:

Information:

4	Fee Worksheet (PTO-875)	fee-info.pdf	30129 20c0077c8eb6fe6ced262f72bb1ecd627b737677	no	2

Warnings:

Information:

Total Files Size (in bytes):	389396

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2144
Filed: April 28, 2005	
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

STATEMENT UNDER 37 C.F.R. §1.97(e)

Sir:

I hereby certify (as indicated by an "X" to the left of the appropriate paragraph):

_____ That each item of information contained in the accompanying Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the Information Disclosure Statement.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being submitted electronically via EFS on the date shown below.

/Kevin O. Grange/ April 22, 2010
Kevin O. Grange (Date)

__X__ That no item of information contained in the accompanying Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned attorney after making reasonable inquiry, no item of information contained in the Information Disclosure Statement was known to any individual designated in §1.56(c) more than three months prior to the filing the Information Disclosure Statement.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: April 22, 2010

/Kevin O. Grange/
Kevin O. Grange
Reg. No. 60,793

Customer No.: 8791
1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange
Attorney Docket Number:	8532P001

Filed as Large Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

R. Drew Major

Application No.: 11/116,783

Filed: April 28, 2005

For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Examiner: Donabed, Ninos J.

Art unit: 2444

Confirmation No.: 5535

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/Kevin O. Grange/ April 22, 2010
Kevin O. Grange ***Date***

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

RESPONSE TO FINAL OFFICE ACTION
under 37 C.F.R. § 1.116 – Expedited Procedure

Examiner:

In response to the Final Office Action mailed on February 22, 2010 and the Advisory Action mailed March 23, 2010, Applicant respectfully requests that the Examiner consider the following remarks.

REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks.

Arguments that Remain Unaddressed

- As a preliminary matter, the Advisory Action, in the Continuation section, only addresses three arguments presented in the Applicant's previous response, filed Feb. 24, 2010, failing to address the third and fourth bullet points regarding Birney's usage of "seamlessly," and failing to teach the claimed "time indexes." Applicant requests these be addressed because they will be raised if an appeal is necessary.

"Stored as Multiple Files"

- The Advisory Action, in the Continuation section, argues that page 2 of Birney teaches discrete streams of encoded data that constitute different bit rates, and alleges that the discrete streams "clearly cover" the claims language "video encoded at different bit rates is stored as multiple files." This does not properly address the wording of the claims that "**each of the different copies of the video** is stored as multiple files." Unlike the claimed invention, Birney expressly teaches that the discrete streams are in a single file, not that each discrete stream is stored as a separate file or that portions of each stream are stored in separate files. In particular, the cited section of Birney expressly states that "a number of discrete, user-definable audio and video streams are encoded into a single Windows Media stream," which is managed by the Windows Media server as "*a single file*" (paragraph 11).
- The Advisory Action uses the phrase "covered by," but the standards to use are novelty and nonobviousness. Regarding "multiple files," there is novelty as evidenced by the Examiner pointing at discrete streams, rather than the Examiner finding the claimed separate files in Birney. The Examiner fails to make a prima facie rejection of obviousness in both the Final Office Action and in the Advisory Action. Birney describes the use of a single file holding all of the streams, while Applicant claims multiple copies and that each copy is broken into multiple separate files (with details about portions of the video, alignment of potions of the different copies, of the media player requesting from different ones of the copies different ones of the files based on successive determination to create a stream and playback the video). Birney's Windows Media server selecting from different bit rate streams in a single file is different from the claimed media player's successive determinations/requesting of different files from a server, much less the files having the claimed characteristics. The entity making the decisions/requests is different, how the video is stored on the server is different, and how the video is requested is different. These differences are not obvious in view of Birney, evidenced in part by the claimed approach's benefits over Birney's approach (and Kalra does not make these claimed differences obvious, as described in more detail below). Unlike Birney or the alleged combination, which requires Windows Media Servers be used, the claimed separate files do not require a "specialized media server or server-side intelligence" to retrieve the separate files, or special media software to be stored in the servers that serve the video or that cache the video in the Internet (Applicant's Specification, page 14, paragraph 49); rather, the claimed manner allows for standard servers to be used. These standard servers are less expensive than specialized media

servers and are typically already part of the network. In addition, since the claimed manner can use standard web and cache servers of ISPs, the claimed manner can provide "a highly scalable solution" (*Id.*). One of ordinary skill in the art at the time reading Birney and the other available art would not have found the claimed invention obvious, but rather have implemented as Birney describes.

"Requesting by the Media Player" or "Successive Determinations by the Media Player"

- In the Final Office Action, it appears that the Examiner concedes that Birney fails to teach the two claim limitations of "requesting by the media player", since the Examiner's analysis in the Final Office Action only cites to Kalra for these two limitations. Yet, in the Advisory Action, the Examiner alleges again that pages 2-4 of Birney teaches a client running windows media player which requests a stream from the Windows Media server and alleges that "if the bandwidth can not support the quality video it works with the [Windows Media] server and requests a different grade of video" (Advisory Action, bracketed material added). Applicant respectfully disagrees with both positions taken in the Final Office Action and the Advisory Action. Regarding Birney, the media player does not work with the Windows Media server for intelligent streaming, the Windows Media server performs intelligent streaming on its own. This is an unsupported position exemplified by the Final Office Action pointing at two pages rather than a specific citation. There is no quote to support this—it is simply the Examiner reading things into the reference that are not present. In fact, Birney expressly teaches the opposite. Birney teaches that in order to use "intelligent streaming with multiple-bit-rate streams, the *content must be hosted on a Windows Media server*" (paragraph 14), and thus, is a push-based configuration in which a specialized server selects or switches to the stream "that is the most appropriate for current bandwidth conditions," (Birney, paragraph 7) not the media player working with the Windows Media server to request a different grade of video as alleged by the Examiner. In fact, Birney expressly teaches that after the Windows Media server and client determine the current available bandwidth, "the [Windows Media] server selects and delivers the stream with the most appropriate bit rate" (Birney page 2, Intelligent Bandwidth Control, item 1, bracketed material added). Although Birney describes both the media player and the Windows Media server being utilized to determine the bandwidth between the client and the Windows Media server, that is not the same thing as [the media player] requesting different parts of the video based on successively determining which bit rate to use (in Birney, this is done by the Window Media server alone). Therefore, regardless of whether the client helps the Windows Media server determine the current available bandwidth, the claim limitations are not met.
- Regarding Kalra, the Final Office Action alleges that Kalra teaches "requesting by a client media player one of the adaptive streams/copies based on the client capabilities," and that such teaching reads on the limitation of "requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers" (Final Office Action page 4). Applicant respectfully disagrees. Kalra also teaches a push-based configuration in which a client computer determines a user profile (CPU constraint and user's video quality preference) (steps 602A and 602B). Kalra, col. 15, line 56 to col. 16, line 60). After a connection is established between the adaptive stream server and the client computer (step 604), the client computer

sends the user profile to the adaptive stream server (step 606) and the adaptive stream server transmits the adaptive streams in accordance with the user profile thereafter (step 608). Contrary to the Examiner's allegation that Kalra teaches the "requesting" limitation, Kalra expressly teaches that after the client computer sends the user profile to the adaptive stream server, a user makes a selection of the particular sequence that he desires to see/her" (step 608) and that "[o]nce the adaptive stream server receives a profile from the user … it uses this information … **to make a determination of which streams to transmit"** to the client computer (col. 16, lines 32-36 and 50-55, emphasis added), rather than the client computer making multiple requests for the different files of the particular sequence based on successive determinations. This shows that the client computer makes an initial selection of the particular data to be streamed, and the adaptive stream server has the intelligence to determine which streams to transmit to the client computer using the user profile, which was previously determined prior to establishing a connection and making the initial selection. Thus, Kalra's adaptive streaming is also a push-based configuration in which a specialized server selects the appropriate streams to transmit to the client computer. Accordingly, Kalra fails to cure Birney's deficiencies regarding "requesting" and "successively determinations," as noted herein and in Applicant's previous responses, failing to make a prima facie rejection of obviousness.

- In addition, the Final Office Action alleges that Kalra teaches "automatically requesting by the media player higher or lower quality data based on a quality factor," and that such teaching reads on the "automatically requesting" limitation (Final Office Action page 4). Applicant respectfully disagrees. Regardless of whether the adaptive stream structure is modified to introduce a quality factor that, for a given DCT coefficient, uses the most significant bits for lower quality transmission and all bits for higher quality transmission, the client only makes an initial request for the particular sequence based on the user's selection at the client computer, and the adaptive stream server makes the determination of which streams to transmit to the client computer using the previously-determined user's profile. In addition, as noted above, the adaptive stream server is a specialized server that selects the appropriate streams to transmit to the client computer. Thus, Kalra fails to cure Birney's deficiencies regarding "automatically requesting," as noted herein and in Applicant's previous responses, failing to make a prima facie rejection of obviousness.
- The Advisory Action uses the term "covered by" instead of the standards of novelty and nonobviousness. There is novelty as evidenced by the Examiner implying that Birney does not teach these limitations by referring to Kalra in the Final Office Action (page 4) for these two "requesting by the media player" limitations. In addition, the Office Action fails to establish a prima facie case of obviousness. Applicant previously argued that Birney fails to teach these limitations, and, in response, the Final Office Action took the position that Kalra teaches these limitations. However, in the Advisory Action, the Examiner seems to return to the position that Birney teaches the "requesting by the media player" limitations, instead of Kalra doing so, as previously argued in the Final Office Action. Although switching positions is not necessarily improper, the one sentence explanation in the advisory action, failing to address Applicant's previous arguments regarding Birney, and pointing at two pages rather than a specific citation all show that the Examiner has failed to make a proper prima facie rejection of obviousness. As argued above,

not only has the Examiner failed to establish a prima facie rejection using Birney, the Examiner has failed to establish a prima facie rejection using Birney and Kalra as described herein.

"Making Successive Determinations"

- The Advisory Action argues that pages 2-3 of Birney show that both the media player and the Windows Media server are utilized to make the successive determinations, and alleges that, "since the claim is open-ended, the server and media player working in collaboration to make the successive determinations is indeed covered by the prior art."
- There is no basis for the position that the claim is open ended. This is just an attempt to make art apply to a claim which is allowable. The claim says "by the media player" in multiple places. For instance, the claim language requires that the media player requests files from the set of servers "dependent upon successive determinations by the media player." Also, as indicated above, the claim language requires the media player "requesting" the files from the different bit rate copies and making the "successive determinations" about which bit rate copy to use; these limitations are not obvious in view of Birney as previously described.
- In the alleged combination, Birney is used to chop up a video into segments, and then the segments are encoded at different bit rates as in Kalra. While this is a big stretch and Applicant does not agree, this still does not yield the claimed successive determinations and requesting by the media player. Specifically, the claimed successive determinations are which bit rate to use, not what the current available bandwidth is. In the combination where the client and the server decide the bandwidth together, the server on its own picks the bit rate and pushes the video. In other words, the client is not involved in the bit rate determination; and since the server is making the bit rate determinations, there is no need for the client to request subsequent parts of the video based on these successive determinations. The "factors" in the claim can include available bandwidth (see e.g., claim 38), and the claim is unspecific about how the factors are generated; but the claim is specific that the media player determines the bit rate copy and makes the requests to the set of servers. Thus, the bandwidth determinations cannot be equated to the bit rate copy determinations and requests by the media player to the set of servers.
- The claim language requires successive determinations, and requesting subsequent parts of the video based on the successive determinations, and thus there are multiple requests made the media player. Thus, some art that shows an initial request by the player cannot be used to find the claim obvious. Again, the Final Office Action fails to establish a prima facie case of obviousness. In the Final Office Action, after the admission that Birney fails to teach this limitation, the Office Action indicates that Kalra teaches the "requesting" limitations without specifically addressing how Kalra teaches *making successive determinations by the media player*. Then, in what appears to be a contradictory position in the Advisory Action, the Examiner cites Kalra, expressly stating that Kalra "clearly teaches that **a media player along with a server make the successive determinations** based on a client profile to shift the quality of stream sent to the client from the server" (Advisory Action page 2, emphasis added). Yet, this suggested combination would still result in the media player along with the server making the successive determinations, not the media player making the successive determinations. As such, Kalra fails to cure the

deficiencies of Birney regarding making successive determinations by the media player, and the Office Action fails to establish a prima facie obviousness rejection.

Possible Claim Amendments

- Applicant believes that the claim language is clear on its face, but if the following amendments would result in a notice of allowance, the Applicant is willing to make an amendment to claim 20 to recite "wherein each of the multiple files of a given one of said different copies yields a different portion of the video on playback," and/or "automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player alone to shift the playback quality to a higher or lower quality one of the different copies;" otherwise, Applicant is willing to appeal the claims as they currently stand. Applicant believes that such amendments are unnecessary since these are already implicitly present in the claims, and that such amendments would not require a new search.

In addition to the arguments presented above in the bullet points, Applicant respectfully incorporates by reference the arguments presented in the remarks of the Applicant's previous response, filed Oct. 22, 2009, which provide a detailed analysis that supports the briefly stated arguments above, as well as the remarks of the Applicant's previous response, filed February 24, 2010.

From the bullet point items described above, there is clearly a basis for appeal since the Final Office Action is incomplete and insufficient. Applicant respectfully requests that the Examiner reconsider the sufficiency of the Final Office Action and reopen prosecution to issue a new or supplemental Office Action that cures the deficiencies or issue a notice of allowance. Clearly, the bullet point items also show (as well as the incorporated arguments) that the claims are clearly patentable over the cited references and that a notice of allowance should be issued.

CONCLUSION

It is respectfully submitted that in view of the amendments and remarks set forth herein, the rejections have been overcome, putting the claims in condition for allowance. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Kevin Grange at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Date: April 22, 2010

/Kevin O. Grange/

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	8532P001	5535

8791 7590 05/17/2010

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

MAIL DATE	DELIVERY MODE
05/17/2010	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.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 11/116,783	**Applicant(s)** MAJOR ET AL.	
	Examiner NINOS DONABED	**Art Unit** 2444	

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

THE REPLY FILED 22 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *20-21, 23-26, 35-38, 40-50*.
   Claim(s) withdrawn from consideration: *none*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

/N. D./
Examiner, Art Unit 2444

Continuation of 13. Other: Applicant argues that the prior art of record does not explicitly teaches "stored as multiple files".

Examiner respectfully disagrees and again points to page 2 of Birney which teaches discrete streams of encoded data which constitute different bit rates. The claim calls for "video encoded at different bit rates is stored as multiple files" which is clearly covered by the discrete streams of encoded data. Again all of the streams are separate files, i.e. each stream is its own discrete file. These streams are individual files with different bit rates/

Applicant argues that the prior art of record "fails to teach making successive determinations".

Examiner again respectfully disagrees and points to 2-3 of Birney which shows that both the media player and the server are utilized to make the successive determinations. Since the claim is open-ended, the server and media player working in collaboration to make the successive determination is indeed covered by the prior art. Further see, figure 16A1 and column 15 line 40 - column 16 line 49, Kalra. The passages clearly teaches that a media player along with a server make the successive determination based on a client profile to shift the quality of stream sent to the client from the server. Again the server along with the client (media player) work together to determine which stream to send to the client. Both client and server help in making the successive determinations for the different streams.

Applicant again argues that the prior art of record fails to teach " requesting by the media player".
Examiner respectfully disagrees and points to pages 2-4 of Birney. This section teaches a client system running windows media player which requests a stream from the server and if the bandwidth can not support the quality video it works with the server and requests a different grade of video. This clearly covers the requesting by the media player limitation in the claims. Again the client running the media player software requests different versions of the content based on quality considerations such as bandwidth.

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:

R. Drew Major

Application No.: 11/116,783

Filed: April 28, 2005

For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Examiner: Donabed, Ninos J.

Art unit: 2444

Confirmation No.: 5535

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Kevin O. Grange/ April 22, 2010
Kevin O. Grange ***Date***

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

OK TO ENTER: /N.D./

RESPONSE TO FINAL OFFICE ACTION
under 37 C.F.R. § 1.116 – Expedited Procedure

Examiner:

In response to the Final Office Action mailed on February 22, 2010 and the Advisory Action mailed March 23, 2010, Applicant respectfully requests that the Examiner consider the following remarks.

Electronic Acknowledgement Receipt

EFS ID:	7677582
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	24-MAY-2010
Filing Date:	28-APR-2005
Time Stamp:	19:16:23
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$270
RAM confirmation Number	8896
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

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Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.20 (Post Issuance fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	8532P001_Notice_of_Appeal.pdf	246744 67904a55a65a540a1d1c5ae455c08fe4e7563193	no	2
Warnings:					
Information:					
2	Fee Worksheet (PTO-875)	fee-info.pdf	30147 36a7e45bef31bac31a28b67bef743880d058f83e	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	276891		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/31 (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Docket Number (Optional): 8532P001

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on May 24, 2010

Signature: /Leslie Rogan/

Typed or printed name: Leslie Rogan

In re Application of: R. Drew Major

Application Number	Filed
11/116,783	April 28, 2005

For: Apparatus, System, and Method for Adaprive-rate Shifting of Streaming Content

Art Unit	Examiner
2444	Donabed, Ninos J

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $ 540

☑ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: $ 270

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☑ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 02-2666 .

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☑ attorney or agent of record. Registration number 60793.

☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

/Kevin O. Grange/
Signature

Kevin O. Grange
Typed or printed name

408-720-8300
Telephone number

May 24, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Leslie Rogan
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Notice of appeal	2401	1	270	270
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
			Total in USD ($)	**270**

Attorney's Docket No.: 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: R. Drew Major Application No.: 11/116,783 Filed: April 28, 2005 For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	Examiner: Donabed, Ninos J Art Unit: 2444 Confirmation No.: 5535

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR EXTENSION OF TIME PURSUANT TO 37 C.F.R. § 1.136 (a)

Sir:

Applicant respectfully petitions pursuant to 37 CFR 1.136(a) for a three month extension of time to file the Appeal Brief. The extended period is set to expire on October 25, 2010. Authorization is given to charge the Applicant's Deposit Account No. 02-2666 in the amount of $555.00, to cover the fee for a three month extension of time.

Please charge any shortages and credit any overages to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: Oct. 25, 2010

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I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

October 25, 2010
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Attorney's Docket No.: 8532P001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
R. Drew Major *et al.*	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Group Art Unit: 2444
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

The Appellant submits the following Appeal Brief pursuant to 37 C.F.R. § 41.37(c) for consideration by the Board of Patent Appeals and Interferences. The Appellant authorizes the amount of $270.00 to cover the cost of filing the opening brief as required by 37 C.F.R. § 1.17(f) to be charged to Deposit Account No. 02-2666. If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666.

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I. REAL PARTY IN INTEREST

R. Drew Major and Mark B. Hurst, the parties named in the caption, transferred their rights to the subject Application through an assignment recorded on July 28, 2006 (Reel/Frame 018020/0750) in the patent application to Move Networks, Inc. of American Fork, Utah. Thus, as the owner at the time the brief is being filed, Move Networks, Inc. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS

Claims 20-21, 23-25, 35-38, and 40-50 are currently pending and rejected in the Application. Claims 1-19, 22, 27-34, and 39 are canceled. The Appellant respectfully appeals the rejections of claims 20-21, 23-25, 35-38, and 40-50.

IV. STATUS OF AMENDMENTS

No amendments were submitted after the Final Office Action, mailed February 22, 2010 ("Final Office Action").

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant respectfully submits that the following includes the claim language and citations that show where support for the claim language is found. Appellant respectfully submits that the citations should not be used to read limitations from the specification into the claims.

Claim 20 recites a method for presenting rate-adaptive streams (*See* Application, e.g., pgs. 6-7 ¶¶19-21, pgs. 20-23 ¶¶66-73, and Figs. 6 & 7), the method comprising: streaming by a media player operating on an end user station a video from a set of one or more servers (*See* e.g., pg. 11 ¶42, pg. 14, ¶50), wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers (*See* e.g., pgs. 11-12 ¶¶44-45,

and Figs. 2A-2C), wherein each of the multiple files yields a different portion of the video on playback (*See* e.g., pg. 11 ¶42 and 12 ¶45), wherein the multiple files across the different copies yield the same portions of the video on playback (*See* e.g., pgs. 11-12 ¶¶44-45), each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video (*See* e.g., pgs. 11-12 ¶¶44-45, and Figs. 2A-2C), and wherein the streaming comprises: requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes (*See* e.g., pgs. 15-17 ¶¶54-55, 57, and 60, and Figs. 4 and 6); automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies (*See* e.g., pgs. 20-22 ¶¶66, 68-72, and Figs. 6 and 7), said automatically requesting including, repeatedly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies (*See* e.g., pgs. 21-22 ¶¶69-72, Fig. 7), wherein the set of one or more factors relate to the performance of the network (*See* e.g., pgs. 21-22 ¶¶69-72); and making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time (*See* e.g., pgs. 21-22 ¶¶69-72, Fig. 7); and presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time (*See* e.g., pg. 15 ¶52, page 20, ¶52, Fig. 6).

Claim 23, which depends from claim 20, recites wherein said making the successive determinations to shift comprises: upshifting to a higher quality one of the different copies when the at least one factor is greater than a first threshold (*See* e.g., pgs. 5-6 ¶20, pgs. 21-22 ¶71, Fig. 7); and determining if the higher quality playback can be sustained (*See* e.g., pg. 5 ¶20, pgs. 21-22 ¶71, Fig. 7).

Claim 35, which depends from claim 20, recites wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections (*See* e.g., pgs. 17-18 ¶60).

Claim 40, which depends from claim 20, recites wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station (*See* e.g., pg. 3 ¶10, pg. 16, ¶56).

Claim 41, which depends from claim 20, recites wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files (*See* e.g., pg. 14 ¶51, pg. 16, ¶56, pg. 21, ¶68).

Claim 42, which depends from claim 20, recites wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections (*See* e.g., pgs. 2-3 ¶8, pg. 16, ¶56, pgs. 17-18, ¶59-60).

Claim 44, which depends from claim 20, recites wherein at least one of the set of servers is a web server (*See* e.g., pg. ¶11 42, pgs. 13-14 ¶49), wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP) (*See* e.g., pgs. 13-14 ¶49, pg. 16 ¶55), and wherein the web server is without specialized server-side intelligence to respond to said requesting (*See* e.g., pgs. 13-14 ¶49).

Claim 45, which depends from claim 20, recites wherein at least one of the set of servers is a cache server of a network infrastructure operator (*See* e.g., pgs. 13-14 ¶49).

Claim 46, which depends from claim 20, recites wherein: said generating the set of factors comprises: monitoring time intervals between successive receive times for each of the requested files (*See* e.g., pg. 14 ¶51, pgs. 20-21 ¶68, Fig. 7); calculating a current performance ratio across a current window of the time intervals (*See* e.g., pg. 21 ¶69, Fig. 7); and calculating a current average of the performance ratio to obtain a current performance factor of the set of factors (*See* e.g., pg. 21 ¶70, Fig. 7); and said making further comprises: comparing the current performance factor with a set of one or more trigger thresholds (*See* e.g., pg. 21 ¶71, Fig. 7); and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (*See* e.g., pg. 21 ¶71, Fig. 7).

Claim 47, which depends from claim 20, recites wherein said making comprises: comparing a current performance factor of the set of factors with a set of one or more trigger thresholds (*See* e.g., pg. 21 ¶71, Fig. 7), wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin (*See* e.g., pg. 21 ¶71, Fig. 7), wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index (*See* e.g., pg. 21 ¶71, Fig. 7); and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (*See* e.g., pg. 21 ¶71, Fig. 7).

Claim 48, which depends from claim 20, recites wherein: said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file (*See* pg. 15 ¶52), and said automatically requesting comprises issuing for each of the files a request with the filename of that file (*See* pg. 15 ¶52, pg. 16 ¶55, Fig. 7).

Claim 49, which depends from claim 20, recites wherein the set of servers includes a content server storing the multiple files of the different copies (*See* e.g., pg. 10-11 ¶¶41-42), and wherein the set of servers includes one or more cache servers caching at least some of the files (*See* e.g., pgs. 13-14 ¶49).

Claim 50, which depends from claim 20, recites wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence (*See* e.g., pgs. 13-14 ¶49).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues involved in this Appeal are as follows:

A. Whether claims 20-21, 25, 26, 36, 38, and 43 are obvious under 35 U.S.C. § 103(a) based on Birney, "Intelligent Streaming" ("Birney") in view of Kalra (U.S. 6,490,627) ("Kalra") and Quigg-Brown (U.S. Patent Publ. No. 2003/0152036) ("Quigg-Brown").

B. Whether claims 23-24 are obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

C. Whether claim 35 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

D. Whether claims 40-42 are obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

E. Whether claim 44 obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

F. Whether claims 45, 49, and 50 are obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

G. Whether claim 46 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

H. Whether claim 47 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

I. Whether claim 48 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

All of the claims do not stand or fall together. The basis for the separate patentability of the claims is set forth below.

VII. ARGUMENT

A. Rejection of Claim 20-21, 25, 26, 36, 38, and 43 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claims 20-21, 25, 26, 36, 38, and 43 stand rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. The Appellant respectfully requests that these rejections be reversed for at least the following reasons.

1. Independent Claim 20

By way of overview, discussed below are various arguments regarding specific claim language of the independent claim 20, including, for example, the portions of the video being stored in multiple files (*see* section VII.A.1.a of this Brief), alignment of the portions stored in the files of the different copies based on time index (*see* section VII.A.1.b of this Brief), the media player requesting from different ones of the copies different ones of the files (*see* section VII.A.1.c) based on successive determination to create a stream and playback the video (*see* sections VII.A.1. d of this Brief). Birney's Windows Media server uses a single file rather than multiple files, and thus the claimed manner of storing the video on the server is different (*see* section VII.A.1.a of this Brief). Since Birney does not have separate files, it is not surprising that Birney does not describe the claimed alignment of these files based on time indexes (*see* sections VII.A.1.b of this Brief). Furthermore, Birney's Windows Media server selects from different bit rate streams in the single file rather than: 1) the claimed client requesting the files (*see* sections VII.A.1.c of this Brief); and 2) the claimed client making the determinations to shift quality, and thus the entity making the decisions is different (*see* sections VII.A.1.d of this Brief). These differences are not obvious in view of Birney, evidenced in part by the claimed approach's benefits over Birney's approach. Furthermore, Kalra and Quigg-Brown do not make these claimed differences obvious, as described in more detail below (*see* section VII.A.1.a and VII.A.1.c of this Brief).

a. Independent claim 20 is not obvious because the cited references do not teach or suggest "wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers" and "the multiple files across the different copies yield the same portion of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video"

Independent claim 20 recites, among other limitations, "wherein each of a plurality of different copies of the video encoded at different bit rates ***is stored as multiple files*** on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video" [emphasis added].

1) The cited references do not teach "wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers" and "the multiple files across the different copies yield the same portion of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video"

The Examiner states that Birney teaches these aspects in pages 1-2 of Birney, stating that "Birney teaches multiple copies of the same stream being stored on a server at different bit rates with the same time index used to switch between the stream based on the network bandwidth limitations." *See* Final Office Action, page 3. The Examiner also states that "all of the streams are separate files, i.e., each stream is its own discrete file," and these streams "are individual files with different bit rates." *See* Second Advisory Action, mailed May 17, 2010 ("Second Advisory Action"), page 2. Appellant respectfully submits that the Examiner fails to establish that Birney teaches this limitation because the Examiner seems to ignore the words of the limitation that each of the different copies of the video "**is stored as multiple files**."

Birney teaches that the "content must be encoded as a multiple-bit-rate stream," which includes "a number of discrete, user-definable audio and video streams [that] are encoded into a *single Windows Media stream.*" *See* paragraph 6, emphasis added, bracketed material added. Birney expressly teaches that the multiple-bit-rate stream (*see* paragraph 6), which includes the streams encoded at different bit rates, is created and managed as "*a single file*" (*see* paragraph 11). As such, in contrast to the Examiner's allegation that Birney teaches this limitation, Birney expressly teaches that *all of the different bit-rate streams* are stored and managed as "*a single file*," not multiple files. Not only does Birney fails to teach that all of the different bit-rate streams are stored as multiple files, Birney also fails to teach that *each* of these different bit-rate streams, which make up the multiple-bit-rate stream, is stored as multiple files. This teaching is in direct contradiction to the Examiner's statements that "each stream is its own discrete file." *See* Second Advisory Action, page 2.

Moreover, regarding "multiple files," there is novelty as evidenced by the Examiner pointing at discrete streams, rather than the Examiner finding the claimed separate files in Birney.

For the foregoing reasons, Appellant respectfully submits that Birney fails to teach at least the limitations of "wherein each of a plurality of **different copies of the video encoded at different bit rates is stored as multiple files** on the set of servers" and "the multiple files across the different copies yield the same portion of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video." The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations.

2) The cited references fail to render independent claim 20 obvious "wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers" and "the multiple files across the different copies yield the same portion of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video"

The Examiner states in the Advisory Action, mailed March 23, 2010 ("First Advisory Action"), that page 2 of Birney teaches discrete streams of encoded data that constitute different bit rates, and alleges that the discrete streams "clearly cover" the claims language "video encoded at different bit rates is stored as multiple files." *See* First Advisory Action, continuation section. This does not properly address the wording of the claims that "**each of the different copies of the video** is stored as multiple files." As described above, unlike the claimed invention, Birney expressly teaches that the discrete streams are in a single file, not that each discrete stream is stored as a separate file or that portions of each stream are stored in separate files. In particular, the cited section of Birney expressly states that "a number of discrete, user-definable audio and video streams are encoded into a single Windows Media stream," which is managed by the Windows Media server as "*a single file.*" *See* Birney, paragraph 11. Moreover, the Examiner uses the phrase "covered by," but the standards to use are novelty (as addressed above) and nonobviousness.

The Examiner fails to make a prima facie rejection of obviousness in both the Final Office Action and in the First Advisory Action. Birney describes the use of a single file holding all of the streams, while Appellant claims multiple copies and that each copy is broken into multiple separate files. Unlike Birney or the alleged combination, whose single file approach requires Windows Media Servers be used, the claimed separate files do not require a "specialized media server or server-side intelligence" to retrieve the separate files, or special media software to be stored in the servers that serve the video or that cache the video in the Internet (*see* Appellant's Specification, page 14, paragraph 49); rather, the claimed manner allows for standard servers to be used. These standard servers are less expensive than specialized media servers and are typically already part of the network. In addition, since the claimed manner can

use standard web and cache servers of ISPs, the claimed manner can provide "a highly scalable solution" (*see id.*). One of ordinary skill in the art at the time reading Birney, Kalra and Quigg-Brown would not have found the claimed invention obvious, but rather have implemented as Birney describes.

b. Independent claim 20 is not obvious because the cited references do not teach or suggest alignment of the portions and requesting of the portions based on "Time Indexes."

Independent claim 20 recites, among other limitations, "**each of said files having a time index** such that the files whose playback is the same portion of the video for each of the different copies have the same **time index** in relation to the beginning of the video," and "requesting … the files … **based on the time indexes**" [emphasis added].

The Examiner states that that Birney teaches that the "same time index is used to switch between the stream based on network bandwidth limitations." *See* Final Office Action, page 4. Appellant respectfully disagrees with the Examiner's characterization of the reference because *Birney is silent regarding time indexes*. Not only does Birney fail to teach that each of the different bit-rate streams of Birney is stored as multiple files on the set of servers, as described above in section VII.A.1.a of this Brief, Birney also fails to teach that *the single file has any time indexes* or that the *different bit-rate streams within the single file have any time indexes*. In addition, nothing in Birney teaches or suggests that the client requests the video based on time indexes.

Even if, for the sake of argument, time indexes were used "to switch between the streams," as alleged by the Examiner, because Birney only has a single file, these alleged time indexes of Birney do not constitute the claimed "time indexes." Each of the claimed "time indexes" corresponds to one of the multiple files in each of the different copies, "such that the files whose playback is the same portion of the video for each of the different copies have the same **time index** in relation to the beginning of the video"; whereas the alleged time indexes of Birney could not correspond to one of multiple files because there is only a single file in Birney.

In the Final Office Action, the Examiner, relying on a sentence from Birney which states "intelligent streaming dynamically and seamlessly adjust the bit rate of the streaming content as the available bandwidth changes," argues the following:

> The passage [of page 2 in Birney] clearly teaches that multiple streams are encoded and a media player/server adjust the stream based on bandwidth and other conditions which may impact a user's viewing of a video. The way multi bit encoding works is; say for example a medium stream is being sent to a client from a server and at a time if 25 minutes 35 seconds, the bandwidth suddenly drops; the client/server then will determine that a low quality stream should now be used and **seamlessly** switch the video to low quality after the determination is mat at, for example, 25 minutes 40 seconds. The low quality stream will pick up at the **time** that the medium stream stops. Therefore a **time index** is being used in order to **seamlessly** switch stream qualities. (bolding in original)

In sum, the Examiner concludes that the word **"seamlessly"** in Birney means that time indexes are used, providing a self-generated example of how the Examiner believes intelligent streaming works without any supporting evidence. Since Birney is silent regarding "time indexes," it appeared that the Office Action was relying on personal knowledge to support that finding of what is known in the art, effectively taking Official Notice under MPEP 2144.03(C). The Appellant respectfully challenged the Official Notice, but no further documentary evidence has been proffered[1]. Thus, the Examiner has failed to show that Birney teaches the claimed "time indexes."

Moreover, even if, for the sake of argument, the Examiner were to present a reference for the challenge of the Official Notice noted above, this reference would not only have to teach "time indexes," but also that each of the "time indexes" corresponds to **one of the *multiple* files** in each of the different copies "such that the files whose playback is the same portion of the video for each of the different copies have the same **time index** in relation to the beginning of the video", as claimed, since Birney is deficient on this issue (as argued in Appellant's response filed Feb. 24, 2010). In particular, the Examiner, in the "Response to Arguments" section did not address an alternative argument presented in the section **"Birney Fails to Teach 'Time Indexes,'"** of Appellant's response filed Oct. 22, 2009, which indicates that even if time indexes were to be used in Birney, these alleged time indexes of Birney could not correspond to one of multiple files of a copy because *there is only a single file in Birney*.[2] In contrast, claim 20 recites "each of said files having a time index such that the files whose playback is the same portion of

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[1] Appellant respectfully notes that the Examiner has failed to address the above arguments made regarding "time indexes" in the First Advisory Action, mailed March 23, 2010, and the Second Advisory Action, mailed May 17, 2010.

[2] Appellant respectfully notes that the Examiner has failed to address the above arguments made regarding "seamlessly" in the First Advisory Action, mailed March 23, 2010, and the Second Advisory Action, mailed May 17, 2010.

the video for each of the different copies have the same time index in relation to the beginning of the video."

For the foregoing reasons, Appellant respectfully submits that Birney fails to teach not only that "each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video," and "requesting … a plurality of sequential ones of the files of one of the copies … **based on the time indexes**," as recited in independent claim 20. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations.

c. Independent claim 20 is not obvious because the cited references do not teach or suggest "Requesting by the Media Player a plurality of sequential ones of the files**" or "**automatically **requesting by the media player** … subsequent portions of the video **by requesting for each such portion one of the files from one of the copies** dependent upon **Successive Determinations by the Media Player"**

Independent claim 20 recites, among other limitations, "**requesting by the media player** a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes; automatically **requesting by the media player** from the set of servers over the plurality of TCP connections subsequent portions of the video **by requesting for each such portion one of the files from one of the copies** dependent upon successive determinations **by the media player** to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including …making the successive determinations to shift the playback quality."

1) The cited references do not teach "Requesting by the Media Player a plurality of sequential ones of the files**" or "**automatically **requesting by the media player** … subsequent portions of the video **by requesting for each such portion one of the files from one of the copies** dependent upon Successive Determinations **by the Media Player"**

The Examiner states that "[w]hile the implication of Birney is that both the server and the client work together to determine a quality of stream, Birney does not explicitly state that this is done by the media player acting alone." *See* Final Office Action, page 4. The Examiner, however, argues that Kalra teaches requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers, stating that "Kalra teaches requesting by a client media player one of the adaptive streams/copies based on the client capabilities." *See* Final Office Action, page 4, citing figure 16A1 and col. 14, line 56 to col. 16, line 60. Appellant respectfully disagrees, and this does not address "**requesting by the media player** … subsequent portions of the video **by requesting for each such portion one of the files from one of the copies," much less "**dependent upon **successive determinations by the media player** to shift the playback quality."

In the Final Office Action, it appears that the Examiner concedes that Birney fails to teach these claim limitations, since the Examiner's analysis in the Final Office Action only cites to Kalra for these limitations. Yet, in the First Advisory Action, the Examiner alleges again that pages 2-4 of Birney teaches a client running windows media player which requests a stream from the Windows Media server and alleges that "if the bandwidth can not support the quality video it works with the [Windows Media] server and requests a different grade of video." *See* First Advisory Action, bracketed material added. Appellant respectfully disagrees with both positions taken in the Final Office Action and the First Advisory Action.

Regarding Birney, the Windows Media server performs intelligent streaming (switching between different quality levels) on its own. The Examiner's unsupported position is exemplified by the Examiner pointing at two pages rather than a specific citation in the Final Office Action. There is no quote in Birney to support the Examiner's position —it is simply the Examiner reading things into the reference that are not present. In fact, Birney expressly teaches the opposite. Birney discusses the use of a regular web server and a Windows Media server.

When a regular web server is used "only the highest bit rate streams will play," meaning there will be no shifts to different bit streams and thus, no "intelligent streaming" (*See* paragraph 14); rather, shifts in bit rate (and thus, "intelligent streaming") requires the use of the specialized Windows Media server ("intelligent streaming with multiple-bit-rate streams, the *content must be hosted on a Windows Media server*." *See* paragraph 14). These teachings show that the Windows Media server makes the determinations to switch to the stream that is most appropriate for current bandwidth conditions, and, in response, pushes the appropriate data from the selected stream to the client. Regardless of whether the Windows Media server or regular web server is used, Birney's client does not have any intelligence to make the determinations to switch to a higher or lower quality stream or to request files from the selected stream.

In other words, Birney's approach for "intelligent streaming" requires a push-based configuration in which a specialized server selects or switches to the stream "that is the most appropriate for current bandwidth conditions," (*see* paragraph 7) not a pull-based configuration in which the media player selects and requests files from the selected one of the different copies, as claimed. In support of this position, Birney expressly teaches that after the Windows Media server and client determine the current available bandwidth, "the [Windows Media] *server selects and delivers the stream with the most appropriate bit rate*." *See* Birney page 2, Intelligent Bandwidth Control, item 1, emphasis and bracketed material added. Although Birney describes both the media player and the Windows Media server being utilized to determine the bandwidth between the client and the Windows Media server, that is not the same thing as the media player requesting different parts of the video based on successively determining which bit rate to use (in Birney, this is done by the Window Media server alone). Therefore, regardless of whether the client helps the Windows Media server determine the current available bandwidth, the claim limitations are not met.

Regarding Kalra, the Final Office Action alleges that Kalra teaches "requesting by a client media player one of the adaptive streams/copies based on the client capabilities," and that such teaching reads on the limitation of "requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers." *See* Final Office Action, page 4. In addition, the Final Office Action alleges that Kalra teaches "automatically requesting by the media player higher or lower quality data based on a quality factor," and that such teaching reads

on the "automatically requesting" limitation. *See* Final Office Action page 4. Appellant respectfully disagrees. Kalra, like Birney, also teaches a push-based configuration in which a client computer determines a user profile (CPU constraint and user's video quality preference) (steps 602A and 602B). *See* Kalra, col. 15, line 56 to col. 16, line 60. After a connection is established between the adaptive stream server and the client computer (step 604), the client computer sends the user profile to the adaptive stream server (step 606) and the adaptive stream server transmits the adaptive streams *in accordance with the user profile* thereafter (step 608). *See Id.* at col. 16, lines 30-36, emphasis added. Contrary to the Examiner's allegation that Kalra teaches the "requesting" limitation, Kalra expressly teaches that after the client computer sends the user profile to the adaptive stream server, a user makes a selection of the particular sequence that he desires to see/her" (step 608) and that "[o]nce the adaptive stream server receives a profile from the user … it uses this information … **to make a determination of which streams to transmit"** to the client computer (*see* col. 16, lines 32-36 and 50-55, emphasis added), rather than the client computer making multiple requests for the different files of the particular sequence based on successive determinations. This shows that the client computer makes an initial selection of the particular data to be streamed, and the adaptive stream server has the intelligence to determine which streams to transmit to the client computer using the user profile, which was previously determined prior to establishing a connection and making the initial selection. Thus, Kalra's adaptive streaming is also a push-based configuration in which a specialized server selects the appropriate streams to transmit to the client computer. Also, regardless of whether the adaptive stream structure is modified in Karla to introduce a quality factor that, for a given DCT coefficient, uses the most significant bits for lower quality transmission and all bits for higher quality transmission, the client only makes an initial request for the particular sequence based on the user's selection at the client computer, and the adaptive stream server makes the determination of which streams to transmit to the client computer using the previously-determined user's profile. Accordingly, Kalra fails to cure Birney's deficiencies regarding "**requesting by the media player** a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes; automatically **requesting by the media player** from the set of servers over the plurality of TCP connections subsequent portions of the video **by**

requesting for each such portion one of the files from one of the copies dependent upon **successive determinations by the media player** to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including …**making the successive determinations to shift the playback quality**."

For the foregoing reasons, Appellant respectfully submits that Birney and Kalra, either alone or in combination, are deficient relative to this claim language. The Examiner does not indicate and the Appellant does not discern any part of Quigg-Brown that cures the aforementioned deficiencies of Birney and Kalra regarding these limitations.

2) The cited references fail to render independent claim 20 obvious regarding "requesting …files over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes," and "automatically requesting … subsequent portions of the video by requesting for each such portion one of the files from one of the copies"

The Examiner states that "Birney and Kalra do not explicitly teach [requesting] one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections." *See* Final Office Action, page 5. The Examiner argues that Quigg-Brown teaches these limitations. *See* Final Office Action, page 5, citing Quigg-Brown Abstract, and paragraphs 28-30. Appellant respectfully disagrees.

Quigg-Brown is directed to "[a] method, system, and apparatus for improving data transfer rate over a network" by dividing a piece of data, i.e., a file, into a number of packets, and if the number of packets exceeds a threshold number, transferring the divided packets "in parallel over a plurality of network connections," ideally TCP/IP connections. *See* Quigg-Brown, Abstract, Figure 8.

Although Quigg-Brown teaches transferring packets in parallel over a plurality of network connections, Quigg-Brown fails to teach "**requesting … a plurality of sequential ones of the files** of one of the copies from the set of servers over a plurality of [TCP] connections," and "automatically requesting … from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting **for each such portion one of the files** from one of the copies," as recited in the claim. More specifically, Quigg-Brown teaches that "an

application or a user at client station 500 *issues a request to server 510 for data, a file or an application,*" and the server 510 sends multiple packets of the file or application in parallel back to the client station 500 *in response to the single request*, not that the client station 500 issues requests for multiple files from the server 510 over a plurality of TCP connections between the client 500 and server 510. *See* paragraph 31. At best, Quigg-Brown teaches how to transmit a single logical data stream to a target system over multiple TCP connections once the file or application has been requested. Quigg-Brown expressly teaches that "[w]hen an application is sending a single logical data stream over multiple data paths, the receiver has to be able to reconstruct the data stream from the multiple paths," and thus, uses "two-byte identification 708 of the IP header as a counter to allow for the reconstruction of the data." *See* paragraph 36. Quigg-Brown gives the following example.

> For example, suppose a data stream is being transmitted using five TCP connections (i.e., TCP connections 1 - 5), packet P_1 may be transmitted over TCP connection 1 using 1234 as an IP identification number. P_2, P_3, P_4 and P_5 may be transmitted over TCP connections 2, 3, 4 and 5 with IP identifications 1235, 1236, 1237 and 1238, respectively. The next group of packets (i.e., P_6 - P_{10}) may be transmitted over TCP connections 1 - 5 using IP identifications 1239 - 1244 etc.

See paragraph 36.

Quigg-Brown, however, does not teach requesting one of the files over TCP connection 1, another file over TCP connection 2, another file over TCP connection 3, and so on. In addition, Quigg-Brown does not teach requesting multiple files over TCP connection 1, multiple files over TCP connection 2, and so on. As such, Quigg-Brown fails to "**requesting … a plurality of sequential ones of the files** of one of the copies from the set of servers over a plurality of [TCP] connections," and "automatically requesting … from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting **for each such portion one of the files** from one of the copies," as recited in the independent claim 20.

Moreover, not only do the cited references individually fail to teach either occurrence of the "requesting by the media player" limitations, the combination of the cited references fails to teach either of these limitations. When combining the teachings of Quigg-Brown with Birney's teachings or Kalra's teachings of a push-based media server, the combination fails to teach the claimed invention because the resulting combination would be a media server that divides the data "into a number of packets," makes "a determination … as to whether the number of packets exceeds a threshold number," and, if so, pushes the packets to the client "in parallel over a plurality of [TCP/IP] connections." *See Id.* at paragraph 8, bracketed material added. Thus, what is requested is different (e.g., Quigg-Brown's single file *cf.* claimed "multiple files"), the number of requests is different (e.g., Quigg-Brown computer sending a single request cf. the claimed multiple requests for multiple files), and, most importantly, what the multiple TCP connections are used for is different (e.g., Quigg-Brown computer transmission a single request for a single file (presumably over a single TCP connection) and receipt of multiple packets over multiple TCP connections *cf.* the claimed multiple requests are transmitted over the multiple TCP connections). As such, the combination fails to teach "**requesting by the media player a plurality of sequential ones of the files** of one of the copies **from the set of servers over a plurality of [TCP] connections** based on the time indexes," (first occurrence) and "**automatically requesting by the media player from the set of servers over the plurality of TCP connections** subsequent portions of the video by requesting for each such portion one of the **files from one of the copies**" (second occurrence).

For the foregoing reasons, Appellant respectfully submits that the combination of cited references fails to teach "**requesting … sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes**," and "**automatically requesting … from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies**," as recited in independent claim 20.

d. Independent claim 20 is not obvious because the cited references do not teach or suggest "Making Successive Determinations."

Independent claim 20 recites, among other limitations, "automatically requesting by the media player …, said automatically requesting including, …**making the successive determinations to shift the playback quality** based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time."

The Examiner alleges that Birney teaches the limitation of "making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time," stating that "Birney teaches shifting the playback quality to the highest quality dependent on network conditions." *See* Final Office Action, page 3. Appellant respectfully submits that the Examiner fails to establish that Birney teaches this limitation because the Examiner seems to ignore that "making the successive determinations to shift the playback quality" is performed "**by the media player**." In particular, the claim recites "automatically requesting **by the media player** … dependent upon **successive determinations by the media player** to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including, … **making the successive determinations to shift the playback quality**."

In most strategies presented in Birney, the "*server automatically detects"* the current available bandwidth AND determines which stream to use. *See* Birney, paragraph 7. In one strategy, however, Birney indicates that the media server *and* the client automatically determine the current available bandwidth. *See id*. However, the media server, in this strategy, is the one that "selects and delivers the stream with the most appropriate bit rate" (*see id.*), and the client does not request the most appropriate bit rate based on the current available bandwidth. As such, none of the strategies presented in Birney teaches or suggests that the client alone determines which stream is the most appropriate for current bandwidth conditions, and which stream to request. Birney goes on further to stress the importance that "the content *must be hosted on a Windows Media Server* and played in Windows Media Player," in order to use intelligent streaming with multiple-bit-rate streams. *See* paragraph 14, emphasis added. When played

locally or from a web server (instead of a Windows media server), intelligent streaming cannot be accomplished. *See id.* Thus, Birney describes the server, not the client, as having the intelligence for performing "intelligent streaming" to determine whether to switch "to a stream with a lower bit rate" or "to a stream with a higher bit rate," even though the client may be used to determine the current available bandwidth between server and client. More specifically, the Examiner seems to be ignoring the fact that even if the client helps determine the bandwidth, the server is the one performing the "intelligent streaming" to push the lower or higher bit rate stream to the client.

The Examiner in the Second Advisory Action states[3]:

> Examiner again respectfully disagrees and points to 2-3 of Birney, which shows that both the media player and the server are utilized to make the successive determinations. **Since the claim is open-ended, the server and media player working in collaboration to make the successive determination is indeed covered by the prior art.** (emphasis added).

Appellant respectfully disagrees because there is no basis for the position that the claim is open ended. This is just an improper attempt to make art apply to a claim which is allowable. The claim says "**by the media player**" in multiple places. For instance, the claim language requires that the media player requests files from the set of servers "dependent upon successive determinations **by the media player**." Also, as indicated above, the claim language requires the media player "requesting" the files from the different bit rate copies and making the "successive determinations" about which bit rate copy to use; these limitations are not obvious in view of Birney as previously described in section VII.A.1.a and VII.A.1.c of this Brief.

Accordingly, Birney fails to teach "automatically requesting by the media player … subsequent portions of the video by requesting for each such portion one of the files from one of the copies **dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies**," and "**making the successive determinations [by the media player] to shift the playback quality** based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time," as recited in claim 20.

Regarding Kalra, the Examiner in the Second Advisory Action also states[4]:

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[3] The Examiner in the First Advisory Action recites the same quote.

> Further, see, figure 16A1 and column 15 line 40- column 16 line 49, Kalra. The passages clearly teaches that a media player along with a server make the successive determination based on a client profile to shift the quality of stream sent to the client from the server. Again the server along with the client (media player) work together to determine which stream to send to the client. **Both client and server help in making the successive determinations for the different streams.** (emphasis added).

In the alleged combination, Birney is used to chop up a video into segments, and then the segments are encoded at different bit rates as in Kalra. While this is a big stretch and Appellant does not agree, this still does not yield the claimed successive determinations and requesting by the media player. Specifically, the claimed successive determinations are determinations as to which bit rate to use, not what the current available bandwidth is. In the combination where the client and the server decide the bandwidth together, the server on its own picks the bit rate and pushes the video. In other words, the client is not involved in the bit rate determination; and since the server is making the bit rate determinations, there is no need for the client to request subsequent parts of the video based on these successive determinations. The claim is specific that the media player determines the bit rate copy and makes the requests to the set of servers. Thus, the bandwidth determinations cannot be equated to the bit rate copy determinations and requests by the media player to the set of servers.

e. Conclusion

In view of the foregoing, the Examiner fails to establish a prima facie case of obviousness, and the combination of cited references does not teach or suggest all the limitations of independent claim 20.

2. Dependent Claims 21, 25, 26, 36, 38, and 43

Claims 21, 25, 26, 36, 38, and 43 depend from the independent claim 20 and thus incorporate the respective limitations thereof. For at least the above reasons regarding the independent claim, the cited references fail to teach or suggest all the limitations of these dependent claims. Accordingly, the Appellant respectfully requests reversal of these rejections.

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[4] The Examiner in the First Advisory Action recites the same quote except for the last sentence.

B. Rejection of Claims 23-24 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claims 23-24 stand rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claims 23-24 depend from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations as described below. Dependent claim 23 recites "upshifting to a higher quality one of the different copies when the at least one factor is greater than a first threshold," and "**determining if the higher quality playback can be sustained**" [emphasis added].

Appellant respectfully submits that the language of claim 20 for making successive determinations and requesting files from one of the different copies dependent upon those successive determinations to shift the playback quality to a higher or lower quality one of the different copies has been discussed above with respect to section VII.A. Claim 23 introduces, in the context of upshifting to a higher quality one of the different copies, an additional, different check on whether to upshift to a higher quality as indicted by the use of different language for this additional, different check than that used in claim 20. Thus, when it is determined to upshift to a higher quality stream (see language in claim 20), the media player performs the additional, different check (see language of claim 23) to determine if the higher quality playback can be sustained before upshifting to the higher quality stream. It is beneficial to perform this additional check when upshifting to avoid immediate downshifting when the higher quality stream cannot be sustained. This can be used, for example, as a prediction or an early detection to normal shifting to reduce the number of upshifts that are made that require a subsequent downshift.

The Examiner states that page 2, paragraphs 4-5 of Birney teach this limitation. *See* Final Office Action, page 6. Appellant respectfully disagrees. Paragraphs 4-5 of Birney describe "intelligent bandwidth control" in which the Windows Media server detects a decrease in bandwidth and switches to a stream with a lower bit rate, and, when the bandwidth improves, the Windows Media server switches to a stream with a higher bit rate. *See* Birney, page 2, paragraphs 4-5. Birney teaches switching to a stream with a lower bit rate when bandwidth

decreases, and switching to a stream with a higher bit rate when the bandwidth improves. In fact, Birney provides additional details on the former, including that the client and Windows Media server can "intelligently degrade image quality in order to avoid buffering" (called streaming thinning). *See* bullet point #3. In addition, Birney describes that, in the context of when the bandwidth can no longer support streaming video, the Windows Media server maintains "a continuous audio stream" after the Windows Media server stops sending video frames." *See* bullet point #4 of page 2. Birney does not, however, teach any additional details on switching to a higher bit rate stream, but just that if the bandwidth improves the Windows Media server switches to a stream with a higher bit rate. More simply put, since Birney does not provide additional details on how it switches to a higher bit rate, Appellant is left to assume that if the bandwidth increases beyond an upper threshold, the Windows Media server shifts to a higher bit rate without contemplating an additional check to confirm the higher bit rate could be sustained. Whereas, claim 23 specifically recites the limitation of "making the successive determinations to shift the playback quality,"[5] as well as an additional, separate operation of "**determining if the higher quality playback can be sustained**." Thus, Birney fails to teach at least this limitation of claim 23.

Moreover, since Birney fails to teach or suggest this additional, different check, it is assumed that Birney would toggle up and down unnecessarily when the measure of the current bandwidth conditions is close to an upper threshold. In contrast, the claimed invention would be an improved system over Birney because the claimed invention performs the additional, different check when upshifting to a higher quality stream.

For the foregoing reasons, Birney fails to teach at least "**determining if the higher quality playback can be sustained**," as recited in claim 23. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations.

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[5] Appellant's specification describes and illustrates an embodiment in which one operation 710 is performed to determine whether to upshift to a higher quality, and if "yes," another operation 720 is performed to determine if the upshift can be sustained. *See* Application, Fig. 7, and pages 21-22, ¶71. Appellant's specification indicates that the determination of whether use of the higher quality stream is sustainable at operation 716 may be made by comparing an estimate of the higher quality stream's performance factor with the trigger threshold. *See id.*

In view of the foregoing, the combination of cited references does not teach or suggest all the limitations of dependent claim 23. Claim 24 depends from the dependent claim 23 and thus incorporates the respective limitations thereof. For at least the above reasons regarding the dependent claims 23-24, the cited references fail to teach or suggest all the limitations of these dependent claims. Accordingly, the Appellant respectfully requests reversal of these rejections.

C. Rejection of Claim 35 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claim 35 stands rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claim 35 depends from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations as described below. Dependent claim 35 recites "wherein said requesting the plurality of sequential ones of the files includes **requesting … the files over different ones of the plurality of TCP connections**." [emphasis added].

Applicant respectfully submits that independent claim 20 recites two different requesting steps, and it is only the first of those requesting steps that is addressed by claim 35. Specifically, the first requesting step in claim 20 is "requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections." Dependent claim 35 narrows this first requesting step of claim 20 by requiring multiple requests for the different files and that these multiple requests be sent over different ones of the multiple TCP connections. Quigg-Brown, however, does not send out multiple requests over different TCP connections. Rather, Quigg-Brown sends a single request (presumably over a single TCP connection) for a single file and the request may be fulfilled by sending multiple parts of the single file (i.e., divided packets) over different TCP connections in parallel. Thus, Quigg-Brown fails to teach at least this limitation of claim 35.

Moreover, The Examiner states that paragraphs 2-5 of Quigg-Brown teach this limitation. *See* Final Office Action, page 7. Appellant respectfully disagrees. As described above in section VII.A.1.c of this Brief, Quigg-Brown does not teach issuing multiple requests for multiple files

from the server 510 over multiple TCP connections between the client 500 and server 510; rather Quigg-Brown teaches that "an application or a user at client station 500 *issues a request to server 510 for data, a file or an application,*" and the server 510 sends multiple packets of the file or application in parallel back to the client station 500 *in response to the single request*. *See* paragraphs 31 and 36. Also, per the example given in paragraph 36, Quigg-Brown does not teach that one file is requested over TCP connection 1, another file over TCP connection 2, another file over TCP connection 3, and so on, or that multiple requests are sent over TCP connection 1, TCP connection 2, and so on. Thus, as previously described, what is requested is different (e.g., Quigg-Brown's single file *cf.* claimed "multiple files"), the number of requests is different (e.g., Quigg-Brown computer sending a single request *cf.* the claimed multiple requests for multiple files), and, most importantly, what the multiple TCP connections are used for is different (e.g., Quigg-Brown computer sending a single request for a single file (presumably over a single TCP connection) and receipt of multiple packets over multiple TCP connections *cf.* the claimed multiple requests are transmitted over the multiple TCP connections). As such, Quigg-Brown fails to "**requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections**," as recited in the dependent claim 35. The Examiner does not indicate and the Appellant does not discern any part of Birney or Kalra that cures the aforementioned deficiencies of Quigg-Brown regarding this limitation. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 35 and the cited references fail to teach at least these limitations of claim 35. Accordingly, the Appellant respectfully requests reversal of these rejections.

D. Rejection of Claims 40, 41, and 42 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claims 40, 41, and 42 stand rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claims 40, 41, and 42 depend from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20. The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the

limitations of the claims as described below. Claims 40, 41, and 42 do not stand or fall together. The basis for the separate patentability of claims 40, 41, and 42 is set forth below.

By way of overview, discussed below are various arguments regarding additional factors other than bandwidth fluctuations. For example, claims 40, 41, and 42 specifically claim "latency," "time intervals between successive receive times," and "delays or losses in one or more of the plurality of TCP connections." These measures are separate, different factors than the "available bandwidth of the plurality of TCP connections," recited in claim 38. Birney only addresses monitoring bandwidth fluctuations, and thus, fails to teach or suggest these other factors.

1. Dependent Claim 40

Dependent claim 40 recites "wherein the at least one of the set of factors **is indicative of latency of the requested files**, wherein the latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station" [emphasis added].

The Examiner states that page 2, paragraphs 1-5 of Birney teach this limitation. *See* Final Office Action, page 8. The cited passages, however, describe monitoring "bandwidth fluctuations" between the Windows Media server and the client, and, in response, adopting the best strategy as noted in bullet points 1-4 of page 2 of Birney. Appellant respectfully submits that the current available bandwidth, described in Birney, does not constitute the claimed "latency of the requested files," because "latency" is claimed as a different factor than "available bandwidth" (*see* claim 38).[6] More specifically, claim 40 recites that "**latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station**." This measure accounts for a different factor than bandwidth fluctuations, and thus improves performance when this different factor impacts the playback experience but there are not bandwidth fluctuations and/or when a jump to a higher/lower playback quality is made because there are both bandwidth fluctuations and

[6] Appellant respectfully notes that, by the doctrine of claim differentiation, the scope of claim 40 should be assumed to differ from the scope of claim 38, which recites "wherein the at least one of the set of factors is indicative of the **available bandwidth** of the plurality of TCP connections" [emphasis added]. The Examiner has already used the teachings of page 2 in an effort to satisfy the limitations of claim 38 regarding "available bandwidth" and has failed to show how Birney teaches that "**latency**" can be used as a different factor than "available bandwidth." *See* Final Office Action, page 8.

fluctuations in the latency. Nothing in Birney teaches or suggests that the Windows Media server, or the client, has the capability to determine time between when a request is issued and a time that response data begins to arrive at the client. As such, Birney fails to teach at least these limitations of claim 40. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding this limitation. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 40 and the cited references fail to teach or make obvious at least these limitations of claim 40. Accordingly, the Appellant respectfully requests reversal of these rejections.

2. Dependent Claim 41

Dependent claim 41 recites "wherein the at least one of the set of factors is **indicative of time intervals between successive receive times** for each response to the requested files" [emphasis added].

The Examiner again relies on page 2, paragraphs 2-5 of Birney to teach this limitation. *See* Final Office Action, page 9. Again, the cited passages, however, describe monitoring "bandwidth fluctuations" between the Windows Media server and the client, and, in response, adopting the best strategy as noted in bullet points 1-4 of page 2 of Birney. Appellant respectfully submits that the current available bandwidth, described in Birney, does not constitute the claimed "time intervals between successive receive times for each response to the requested files," because "time intervals between successive receive times for each response" is claimed as a different factor than "available bandwidth" (*see* claim 38).[7] This measure accounts for a different factor than bandwidth fluctuations, and thus improves performance when this different factor impacts the playback experience but there are not bandwidth fluctuations and/or when a jump to a higher/lower playback quality is made because there are both bandwidth fluctuations and fluctuations in the time intervals between the successive receive times. Nothing in Birney teaches or suggests that the Windows Media server, or the client, has the capability to determine the time intervals between successive receive times for each response to requested files. As such, Birney fails to teach at least this limitation of claim 41. The Examiner does not

[7] Appellant respectfully notes that, by the doctrine of claim differentiation, the scope of claim 40 should be assumed to differ from the scope of claim 38, which recites "wherein the at least one of the set of factors is indicative of the **available bandwidth** of the plurality of TCP connections" [emphasis added]. The Examiner has already used the teachings of page 2 to satisfy the limitations of claim 38 regarding "available bandwidth" and has failed to show how Birney teaches that "**time intervals between successive receive times**" can be used as a different factor than "available bandwidth." *See* Final Office Action, page 8.

indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding this limitation. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 41 and the cited references fail to teach or make obvious at least these limitations of claim 41. Accordingly, the Appellant respectfully requests reversal of these rejections.

3. Dependent Claim 42

Dependent claim 42 recites "wherein the at least one of the set of factors is indicative of **delays or losses in one or more of the plurality of TCP connections**" [emphasis added].

The Examiner again relies on page 2, paragraphs 2-5 of Birney to teach this limitation. *See* Final Office Action, page 9. Again, the cited passages, however, describe monitoring "bandwidth fluctuations" between the Windows Media server and the client, and, in response, adopting the best strategy as noted in bullet points 1-4 of page 2. Appellant respectfully submits that the current available bandwidth, described in Birney, does not constitute the claimed "delays or losses in one or more of the plurality of TCP connections," because "delays and losses" are claimed as a different factor than "available bandwidth" (*see* claim 38).[8] This measure accounts for a different factor than bandwidth fluctuations, and thus improves performance when this different factor impacts the playback experience but there are not bandwidth fluctuations and/or when a jump to a higher/lower playback quality is made because there are both bandwidth fluctuations and delays or losses in one or more of the plurality of TCP connections. Nothing in Birney teaches or suggests that the Windows Media server, or the client, has the capability to determine delays or losses in TCP connections. As such, Birney fails to teach at least these limitations of claim 42. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding this limitation. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 42 and the cited references fail to teach or make obvious at least these limitations of claim 42. Accordingly, the Appellant respectfully requests reversal of these rejections.

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[8] Appellant respectfully notes that, by the doctrine of claim differentiation, the scope of claim 40 should be assumed to differ from the scope of claim 38, which recites "wherein the at least one of the set of factors is indicative of the **available bandwidth** of the plurality of TCP connections" [emphasis added]. The Examiner has already used the teachings of page 2 to satisfy the limitations of claim 38 regarding "available bandwidth" and has failed to show how Birney teaches that "**delays and losses**" in TCP connections can be used as a different factor than "available bandwidth." *See* Final Office Action, page 8.

E. Rejection of Claim 44 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claim 44 stands rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claim 44 depends from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations as described below. Dependent claim 44 recites "wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is **without specialized server-side intelligence** to respond to said requesting" [emphasis added].

The Examiner states that page 2 of Birney teaches a web server without specialized server-side intelligence. *See* Final Office Action, page 9. Appellant respectfully disagrees because Birney expressly teaches the opposite. More specifically, Birney expressly teaches that if you use a regular web server "only the highest bit rate streams will play" (*see* paragraph 14), meaning there will be no shifts between streams for "intelligent streaming."

In contrast, Birney teaches that in order to use "intelligent streaming with multiple-bit-rate streams, the *content must be hosted on a Windows Media server.*" *See* paragraph 14. The Windows Media server is *a specialized server* because the Window Media server works with the *specialized single file created by the Windows Media server* that can only be served by the Windows Media server. *See* paragraph 14. In particular, Birney teaches that "the [Windows Media] server selects and delivers the stream with the most appropriate bit rate" (*see* Birney page 2, Intelligent Bandwidth Control, item 1, bracketed material added) to select or switch to the stream "that is the most appropriate for current bandwidth conditions" (*see* paragraph 7).

Moreover, because the claimed invention uses a web server that is without specialized server-side intelligence, the request for files can be standard HTTP requests. The Examiner states that page 2 of Birney teaches that the non-existent files are requested from the web server using HTTP. *See* Final Office Action, page 9. Appellant respectfully disagrees. There is novelty as evidenced by the Examiner implying that Birney teaches this limitation when the page, as well as the entire reference, fails to explicitly or implicitly teach that the claimed client requesting the

files from the Windows Media Server, much less using HTTP to make the requests for the files. Appellant also respectfully submits that one of ordinary skill in the art would not have reason to use HTTP type file requests when using the Windows Media server, because the Windows Media server is a specialized server with specialized server-side intelligence that pushes data to a client, as opposed to a pull-based configuration in which the media player request the files from the server using HTTP.

For the foregoing reasons, Birney fails to teach at least these limitations of claim 44. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 44 and the cited references fail to teach or make obvious at least these limitations of claim 44. Accordingly, the Appellant respectfully requests reversal of these rejections.

F. Rejection of Claims 45, 49, and 50 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claims 45, 49, and 50 stand rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claims 45, 49, and 50 depends from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations. Dependent claim 45 recites "wherein at least one of the set of servers is **a cache server** of a network infrastructure operator" [emphasis added]. Dependent claim 49 recites "wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes **one or more cache servers caching at least some of the files**" [emphasis added]. Dependent claim 50 recites "wherein the multiple files are independently cacheable by **a cache server without specialized server-side intelligence**" [emphasis added]. Claim 20 clearly requires one or more content servers to store all of the multiple files of the different copies. Claim 23, however, specifically recites "a content server" and "one or more cache servers," where the latter can cache some of the multiple files of the different copies, such as, for example, the recently requested ones of the

multiple files. To put it another way, the content server stores all the files of the different copies and serves up these files when they are individually requested, and the cache servers can cache the more recently requested ones of the files.

The Examiner states that page 2 of Birney teaches these limitations. *See* Final Office Action, pages 9-10, and 11. Appellant respectfully disagrees because Birney is silent as to using cache servers. Regarding the "cache server," there is novelty as evidenced by the Examiner pointing at passages that describe the Windows Media server, rather than the Examiner finding the claimed "cache server" in Birney. Although Birney is silent regarding the use of "cache servers," if cache servers were used, they would have to be used in connection with the Windows Media server; otherwise, like when using regular web servers, "only the highest bit rate streams would play" when using cache servers, since the cache servers do not have the specialized server-side intelligence for "intelligent streaming." Accordingly, Birney fails to teach at least these limitations of claims 45, 49, and 50. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations. As such, the Examiner has failed to establish a prima facie case of obviousness for claims 45, 49, and 50 and the cited references fail to teach at least these limitations of claims 45, 49, and 50. Accordingly, the Appellant respectfully requests reversal of these rejections.

G. Rejection of Claim 46 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claim 46 stands rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claim 46 depends from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations. Dependent claim 46 recites:

> The method of claim 20, wherein:
> said generating the set of factors comprises:
> **monitoring time intervals between successive receive times** for each of the requested files;

calculating a current performance ratio across a current window of the time intervals; and

calculating a current average of the performance ratio to obtain a current performance factor of the set of factors;

said making further comprises:

comparing the current performance factor with a set of one or more trigger thresholds; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing. [emphasis added].

The Examiner states that pages 1-2 of Birney teach all the limitations of claim 46. *See* Final Office Action, page 10. The cited passages, however, describe monitoring "bandwidth fluctuations" between the Windows Media server and the client, and, in response, adopting the best strategy as noted in bullet points 1-4 of page 2. Appellant respectfully submits that nothing in Birney teaches that the Windows Media server, or the client, has the capability to monitor "**time intervals between successive receive times for each response to the requested files**," much less the capability to calculate "**a current performance ratio** across a current window of the time intervals," and to calculate "**a current average of the performance ratio** to obtain a current performance factor of the set of factors," as recited in claim 46. As such, Birney fails to teach at least these limitations of claim 46. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 46 and the cited references fail to teach or make obvious at least these limitations of claim 46. Accordingly, the Appellant respectfully requests reversal of these rejections.

H. Rejection of Claim 47 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claim 47 stands rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claim 47 depends from claim 20, the Appellant respectfully requests reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations. Dependent claim 47 recites "comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, **wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin**, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index" [emphasis added].

The Examiner states that pages 1-2, paragraphs 2-5 of Birney teach all the limitations of claim 47. *See* Final Office Action, pages 10-11. Appellant respectfully disagrees because Birney is silent as to trigger thresholds, how the triggered thresholds are determined, as well as determining the trigger factors by "a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin," as recited in claim 47. In particular, Birney generically states that the Windows Media server uses intelligent streaming to adjust the bit rate of the content stream to counteract changes in the available bandwidth, but does not specifically teach how the available bandwidth is used to determine whether to adjust the bit rate or not. Birney does not discuss thresholds and how they are determined, much less determined by using the specifically claimed "read ahead margin," and "safety margin." As such, Birney fails to teach at least these limitations of claim 47. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding this limitation. As such, the Examiner has failed to establish a prima facie case of obviousness for claim 47 and the cited references fail to teach or make obvious at least these limitations of claim 47. Accordingly, the Appellant respectfully requests reversal of these rejections.

I. Rejection of Claim 48 under 35 U.S.C. § 103(a) Based on Birney, Kalra, and Quigg-Brown

Claim 48 stands rejected under 35 U.S.C. § 103(a) as being obvious over Birney, Kalra, and Quigg-Brown. Because claim 48 depends from claim 20, the Appellant respectfully requests

reversal of these rejections for at least the reasons set forth in section VII.A of this Brief with respect to independent claim 20.

The Appellant also respectfully requests reversal of these rejections because the cited references do not teach or suggest all the limitations. Dependent claim 48 recites "said requesting comprises issuing for each of the plurality of sequential ones of the files **a request with the filename of that file**, and said automatically requesting comprises issuing for each of the files **a request with the filename of that file**" [emphasis added].

The Examiner states that page 2, paragraphs 2-5 of Birney teach all the limitations of claim 48. *See* Final Office Action, page 11. Appellant respectfully disagrees because Birney is silent as to *issuing a request for each of the files with the filename of that file*. Not only does Birney fail to teach "requesting by the media player," as set forth in section VII.A.1.c of this Brief, the cited passages do not explicitly or implicitly teach that the media player requests the files by issuing requests with the filenames of those files. As such, Birney fails to teach at least these limitations claim 48. The Examiner does not indicate and the Appellant does not discern any part of Kalra or Quigg-Brown that cures the aforementioned deficiencies of Birney regarding these limitations. As such, the cited references fail to teach or make obvious at least these limitations of claim 48. Accordingly, the Appellant respectfully requests reversal of these rejections.

In view of the foregoing, the Appellant respectfully requests that the Board overturn the above rejections.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: October 25, 2010

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted to the United States Patent and Trademark Office electronically via EFS Web on the date shown below.

/Kevin O. Grange/ Oct. 25, 2010
Name Date

VIII. CLAIMS APPENDIX

1-19. (Canceled)

20. (Previously presented) A method for presenting rate-adaptive streams, the method comprising:

streaming by a media player operating on an end user station a video from a set of one or more servers, wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video, and wherein the streaming comprises:

requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes;

automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including,

regularly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and

making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time; and

presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time.

21. (Previously presented) The method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts.

22. (Canceled)

23. (Previously presented) The method of claim 20, wherein said making the successive determinations to shift comprises:

upshifting to a higher quality one of the different copies when the at least one factor is greater than a first threshold; and

determining if the higher quality playback can be sustained.

24. (Previously presented) The method of claim 23, wherein said making the successive determinations to shift comprises downshifting to a lower quality one of the different copies when the at least one factor is less than a second threshold.

25. (Previously presented) The method of claim 20, further comprising:

receiving user input to enable one of fast-forward, skip randomly, and rewind functionality; and

requesting files of the video at a specified time index that is not the next sequential time in the current playback.

26. (Previously presented) The method of claim 20,

wherein said requesting the plurality of sequential one of the files includes requesting the files from a low quality one of the different copies to enable instant playback of the video, and wherein said automatically requesting includes upshifting to a higher quality one of the different copies.

27-34. (Canceled)

35. (Previously presented) The method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections.

36. (Previously presented) The method of claim 20, wherein said presenting comprises sequentially arranging the requested files from the different copies in the order of ascending playback time for playback with the media player on the end user station.

37. (Previously presented) The method of claim 20, wherein said automatically requesting includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts.

38. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of the available bandwidth of the plurality of TCP connections.

39. (Canceled)

40. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station.

41. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files.

42. (Previously presented) The method of claim 20, wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections.

43. (Previously presented) The method of claim 20, wherein at least one of the set of servers is a web server.

44. (Previously presented) The method of claim 43, wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to respond to said requesting.

45. (Previously presented) The method of claim 20, wherein at least one of the set of servers is a cache server of a network infrastructure operator.

46. (Previously presented) The method of claim 20, wherein:

said generating the set of factors comprises:

monitoring time intervals between successive receive times for each of the requested files;

calculating a current performance ratio across a current window of the time intervals; and

calculating a current average of the performance ratio to obtain a current performance factor of the set of factors;

said making further comprises:

comparing the current performance factor with a set of one or more trigger thresholds; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing.

47. (Previously presented) The method of claim 20, wherein said making comprises:

comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index; and

determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing.

48. (Previously presented) The method of claim 20, wherein:

said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and

said automatically requesting comprises issuing for each of the files a request with the filename of that file.

49. (Previously presented) The method of claim 20, wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files.

50. (Previously presented) The method of claim 20, wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence.

IX. EVIDENCE APPENDIX

No related evidence exists.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings exist.

Electronic Acknowledgement Receipt

EFS ID:	8695176
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange
Filer Authorized By:	
Attorney Docket Number:	8532P001
Receipt Date:	25-OCT-2010
Filing Date:	28-APR-2005
Time Stamp:	23:33:37
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$825
RAM confirmation Number	10139
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Extension of Time	8532P001_3_mo_EOT.pdf	11635 8ba4d016f3d02e4917919108c458f02e126ca8a4	no	1
Warnings:					
Information:					
2	Appeal Brief Filed	8532P001_Appeal_Brief.pdf	330931 508bc5b2f4294ae8b0641233912c5d0a0cfe3b17	no	46
Warnings:					
Information:					
3	Fee Worksheet (PTO-875)	fee-info.pdf	32026 db5ec128e998abd57119168b39549648b0368d08	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	374592		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Filing a brief in support of an appeal	2402	1	270	270
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 3 months with $0 paid	2253	1	555	555
Miscellaneous:				
			Total in USD ($)	**825**

Substitute for Form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(use as many sheets as necessary)*				Application Number	11/116,783
				Filing Date	April 28, 2005
				First Named Inventor:	Major, R. Drew
				Art Unit	2444
				Examiner Name	Donnabed, Ninos J.
Sheet	1	**of**	1	Attorney Docket Number	8532P001

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (If known)		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-	6,389,473	05/14/2002	Carmel et al.	
		US-	7,818,444	10/19/2010	Brueck, et al.	
		US-				
		US-				

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] Number[4] Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		Notice of Allowance for 11/673,483, August 5, 2010, 7 pages.	

Examiner Signature		Date Considered	

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SENT FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Based on Form PTO/SB/08A (08-03) as modified by BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP on 09/10/03.

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

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

INFORMATION DISCLOSURE STATEMENT

Sir:

Enclosed is a copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 together with copies of the documents cited on that form, except for copies not required to be submitted (e.g., copies of U.S. patents and U.S. published patent applications need not be enclosed for applications filed after June 30, 2003). It is respectfully requested that the cited documents be considered and that the enclosed copy of Information Disclosure Citation Form PTO-1449 or PTO/SB/08 be initialed by the Examiner to indicate such consideration and a copy thereof returned to applicant(s).

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date shown below.

October 26, 2010
(Date of Deposit)

Leslie Rogan
(Typed or printed name of person mailing correspondence)

/Leslie Rogan/ October 26, 2010
(Signature of person mailing correspondence) (Date)

Pursuant to 37 C.F.R. § 1.97, the submission of this Information Disclosure Statement is not to be construed as a representation that a search has been made and is not to be construed as an admission that the information cited in this statement is material to patentability.

Pursuant to 37 C.F.R. § 1.97, this Information Disclosure Statement is being submitted under one of the following (as indicated by an "X" to the left of the appropriate paragraph):

_____ 37 C.F.R. §1.97(b).

_____ 37 C.F.R. §1.97(c). If so, then enclosed with this Information Disclosure Statement is one of the following:

_____ A statement pursuant to 37 C.F.R. §1.97(e) or

_____ **The Director is Authorized to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. § 1.17(p).**

__X__ 37 C.F.R. §1.97(d). If so, then enclosed with this Information Disclosure Statement are the following:

(1) A statement pursuant to 37 C.F.R. §1.97(e); and

(2) **Authorization to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. §1.17(p) for submission of the Information Disclosure Statement.**

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: October 26, 2010 /Kevin O. Grange/

Kevin O. Grange
Reg. No. 60,793

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Electronic Patent Application Fee Transmittal

Application Number:	11116783
Filing Date:	28-Apr-2005
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Filer:	Kevin Grange/Leslie Rogan
Attorney Docket Number:	8532P001

Filed as Small Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

Electronic Acknowledgement Receipt

EFS ID:	8708631
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	26-OCT-2010
Filing Date:	28-APR-2005
Time Stamp:	21:21:40
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$180
RAM confirmation Number	6406
Deposit Account	022666
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.16 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.20 (Post Issuance fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	8532P001_1-97e_Statement.pdf	13254 5667775ff406d906b23fbce7af4b62541f088b76	no	2
Warnings:					
Information:					
2	Information Disclosure Statement (IDS) Filed (SB/08)	8532P001_IDS_w_statement.pdf	123396 9afea17ca1425948fe71f1cd9ca97e39f9595a0f	no	3
Warnings:					
Information:					
This is not an USPTO supplied IDS fillable form					
3	NPL Documents	P002_NOA_8-5-10.pdf	331992 38fc5e6c552ba2acc12fbf993069365b247b4e34	no	7
Warnings:					
Information:					
4	Fee Worksheet (PTO-875)	fee-info.pdf	30163 29fcf8b51ed4c06df8aab99e70666e135af14995	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	498805		

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J
Application No.: 11/116,783	Art Unit: 2444
Filed: April 28, 2005	
For: APPARATUS, SYSTEM AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

STATEMENT UNDER 37 C.F.R. §1.97(e)

Sir:

I hereby certify (as indicated by an "X" to the left of the appropriate paragraph):

____ That each item of information contained in the accompanying Information Disclosure Statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the Information Disclosure Statement.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on October 26, 2010.
(Date of Deposit)

Leslie Rogan
(Typed or printed name of person mailing correspondence)

/Leslie Rogan/
(Signature of person mailing correspondence)

__X__ That no item of information contained in the accompanying Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned attorney after making reasonable inquiry, no item of information contained in the Information Disclosure Statement was known to any individual designated in §1.56(c) more than three months prior to the filing the Information Disclosure Statement.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: Oct. 26, 2010

/Kevin O. Grange/
Kevin O. Grange
Reg. No. 60,793

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(408) 720-8300

Attorney's Docket No. 8532P001 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:	
R. Drew Major	Examiner: Donabed, Ninos J.
Application No.: 11/116,783	Art Unit: 2454
Filed: April 28, 2005	Confirmation No.: 5535
For: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Sir:

Pursuant to 37 C.F.R. § 1.97, the submission of this Information Disclosure Statement is not to be construed as a representation that a search has been made and is not to be construed as an admission that the information cited in this statement is material to patentability.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: Oct. 26, 2010

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Ex. 1018-731

Substitute for Form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(use as many sheets as necessary)*				Application Number	11/116,783
				Filing Date	April 28, 2005
				First Named Inventor:	Major, R. Drew
				Art Unit	2444
				Examiner Name	Donnabed, Ninos J.
Sheet	1	**of**	1	Attorney Docket Number	8532P001

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (If known)		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-				
		US-				
		US-				
		US-				

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] Number[4] Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		Final Office Action for 11/673,483, February 4, 2010, 21 pages.	
		Advisory Action for 11/673,483, April 9, 2010, 3 pages.	
		Advisory Action for 11/673,483, May 26, 2010, 3 pages.	

Examiner Signature		Date Considered	

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SENT FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Based on Form PTO/SB/08A (08-03) as modified by BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP on 09/10/03.

Electronic Acknowledgement Receipt

EFS ID:	8708664
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	26-OCT-2010
Filing Date:	28-APR-2005
Time Stamp:	21:20:02
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Filed (SB/08)	8532P001_IDS_2.pdf	68253 da834fdeb24610feb1920511ca65c6f947930f38	no	2

Warnings:	
Information:	

This is not an USPTO supplied IDS fillable form					
2	NPL Documents	P002_AA_4-9-10.pdf	184412 64e89912c4f8fdb7fd5cc14b30ca5e0be24b8a98	no	3
Warnings:					
Information:					
3	NPL Documents	P002_AA_5-26-10.pdf	135063 9ed14e988d5bc57a6b5e68856fac2acda6469eb0	no	3
Warnings:					
Information:					
4	NPL Documents	P002_FOA_2-4-10.pdf	695467 c1dbffee6e3e296354417bdee09e584705d7b313	no	21
Warnings:					
Information:					
			Total Files Size (in bytes):	1083195	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

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New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	8532P001	5535

8791 7590 11/02/2010

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED: 11/02/2010

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

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No.	Applicant(s)	
	11/116783	R. Drew Major, et. al.	
	Examiner	Art Unit	
	Donabed, Ninos J.	2444	

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

The Appeal Brief filed on *Oct. 25, 2010* is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. x (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. x Other (including any explanation in support of the above items):

1) The mapping to the specification in the "summary of claimed subject matter" is incorrect. Several citations are not correctly mapping the issues being discussed in the brief. For example, for claim 20, the paragraph states, "See Application, e. g., pgs. 6-7, ¶¶ 19-21", yet those paragraphs appear between pages 5 and 6. Also, in claim 20, there is an entry concerning "different copies...is stores as multiple files on the set of servers" and the citation refers to paragraphs 44 and 45; yet, the discussion about what has been mentioned in that section of the brief is on paragraphs 42 and 43. Please provide a correct mapping to the specification matching the claim notations being cited in the brief. An entire brief is not required for this section.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

R. Drew Major *et al.*

Application No.: 11/116,783

Filed: April 28, 2005

For: APPARATUS, SYSTEM, AND METOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

Examiner: Donabed, Ninos J

Group Art Unit: 2444

Confirmation No.: 5535

CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

/Leslie Rogan/ Nov. 10, 2010

Leslie Rogan ***Date***

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF UNDER 37 C.F.R. § 41.37(c)(1)(v)

In response to the Notification of Non-Compliant Appeal Brief mailed on November 2, 2010, Applicant respectfully requests that the Office enter the following amendments.

AMENDMENTS

Amendments to the Summary of the Claimed Subject Matter section:

Please replace the Summary of Claimed Subject Matter section with the following amended Summary of Claimed Subject Matter section:

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant respectfully submits that the following includes the claim language and citations that show where support for the claim language is found. Appellant respectfully submits that the citations should not be used to read limitations from the specification into the claims.

Claim 20 recites a method for presenting rate-adaptive streams (*See* Application, e.g., pgs. 5-6 [[6-7]] ¶¶19-21, pgs. 20-22 [[20-23]] ¶¶66-73, and Figs. 6 & 7), the method comprising: streaming by a media player operating on an end user station a video from a set of one or more servers (*See* e.g., pg. 11 ¶42, pg. 14, ¶50), wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers (*See* e.g., pgs. 11-12 ¶¶43-45 [[44-45]], and Figs. 2A-2C), wherein each of the multiple files yields a different portion of the video on playback (*See* e.g., pg. 11 ¶42 and pg. 12 ¶45), wherein the multiple files across the different copies yield the same portions of the video on playback (*See* e.g., pgs. 11-12 ¶¶43-45 [[44-45]]), each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video (*See* e.g., pgs. 11-12 ¶¶43-45 [[44-45]], and Figs. 2A-2C), and wherein the streaming comprises: requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes (*See* e.g., pgs. 15-16 [[15-17]] ¶¶54-55, pgs. 16-17 ¶57, and pgs 17-18 ¶60, and Figs. 4 and 6); automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies (*See* e.g., pgs. 20-22 ¶¶66, 68-72, and Figs. 6 and 7), said

automatically requesting including, repeatedly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies (*See* e.g., pgs. 21-22 ¶¶69-72, Fig. 7), wherein the set of one or more factors relate to the performance of the network (*See* e.g., pgs. 21-22 ¶¶69-72); and making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time (*See* e.g., pgs. 21-22 ¶¶69-72, Fig. 7); and presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time (*See* e.g., pg. 14 [[15]] ¶52, page 20, ¶67 [[52]], Fig. 6).

Claim 23, which depends from claim 20, recites wherein said making the successive determinations to shift comprises: upshifting to a higher quality one of the different copies when the at least one factor is greater than a first threshold (*See* e.g., pgs. 5-6 ¶20, pgs. 21-22 ¶71, Fig. 7); and determining if the higher quality playback can be sustained (*See* e.g., pg. 5-6 ¶20, pgs. 21-22 ¶71, Fig. 7).

Claim 35, which depends from claim 20, recites wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections (*See* e.g., pgs. 17-18 ¶60).

Claim 40, which depends from claim 20, recites wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station (*See* e.g., pg. 3 ¶10, pg. 16, ¶56).

Claim 41, which depends from claim 20, recites wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files (*See* e.g., pg. 14 ¶51, pg. 16, ¶56, pg. 20-21, ¶68).

Claim 42, which depends from claim 20, recites wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections (*See* e.g., pgs. 2-3 ¶8, pg. 16, ¶56, pgs. 17-18, ¶59-60).

Claim 44, which depends from claim 20, recites wherein at least one of the set of servers is a web server (*See* e.g., pg. [[¶]]11 ¶42, pgs. 13-14 ¶49), wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP) (*See* e.g., pgs. 13-14 ¶49, pg. 16 ¶55), and wherein the web server is without specialized server-side intelligence to respond to said requesting (*See* e.g., pgs. 13-14 ¶49).

Claim 45, which depends from claim 20, recites wherein at least one of the set of servers is a cache server of a network infrastructure operator (*See* e.g., pgs. 13-14 ¶49).

Claim 46, which depends from claim 20, recites wherein: said generating the set of factors comprises: monitoring time intervals between successive receive times for each of the requested files (*See* e.g., pg. 14 ¶51, pgs. 20-21 ¶68, Fig. 7); calculating a current performance ratio across a current window of the time intervals (*See* e.g., pg. 21 ¶69, Fig. 7); and calculating a current average of the performance ratio to obtain a current performance factor of the set of factors (*See* e.g., pg. 21 ¶70, Fig. 7); and said making further comprises: comparing the current performance factor with a set of one or more trigger thresholds (*See* e.g., pg. 21-22 ¶71, Fig. 7); and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (*See* e.g., pg. 21-22 ¶71, Fig. 7).

Claim 47, which depends from claim 20, recites wherein said making comprises: comparing a current performance factor of the set of factors with a set of one or more trigger thresholds (*See* e.g., pg. 21-22 ¶71, Fig. 7), wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin (*See* e.g., pg. 21-22 ¶71, Fig. 7), wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index (*See* e.g., pg. 21-22 ¶71, Fig. 7); and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (*See* e.g., pg. 21-22 ¶71, Fig. 7).

Claim 48, which depends from claim 20, recites wherein: said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that

file (*See* pg. 14-15 ¶52), and said automatically requesting comprises issuing for each of the files a request with the filename of that file (*See* pg. 14-15 ¶52, pg. 16 ¶55, Fig. 7).

Claim 49, which depends from claim 20, recites wherein the set of servers includes a content server storing the multiple files of the different copies (*See* e.g., pg. 10-11 ¶¶41-42), and wherein the set of servers includes one or more cache servers caching at least some of the files (*See* e.g., pgs. 13-14 ¶49).

Claim 50, which depends from claim 20, recites wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence (*See* e.g., pgs. 13-14 ¶49).

CONCLUSION

Based on Section 1205.03 of the MPEP, an entire new brief has not been submitted. The above amended section provides a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v). It is respectfully submitted that in view of the amendments set forth herein, the brief is compliant under 37 C.F.R. § 41.37(c)(1)(v).

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: November 10, 2010

/Kevin O. Grange/

Kevin O. Grange
Reg. No. 60,793

1279 Oakmead Parkway
Sunnyvale, CA 94086-4040
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Electronic Acknowledgement Receipt

EFS ID:	8807720
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Kevin Grange/Leslie Rogan
Filer Authorized By:	Kevin Grange
Attorney Docket Number:	8532P001
Receipt Date:	10-NOV-2010
Filing Date:	28-APR-2005
Time Stamp:	13:57:12
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Appeal Brief Filed	8532P001_Resp_to_Notice_of_Non-Compliant_Appeal_Brief.pdf	44863 c21a340d6ef386b1f08727a550395804cebd0557	no	6

Warnings:	
Information:	

Total Files Size (in bytes):	44863

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/96 (02-09)
Approved for use through 03/31/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: ECHOSTAR ADVANCED TECHNOLOGIES L.L.C.

Application No./Patent No.: 11/116,783 Filed/Issue Date: April 28, 2005

Titled: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

ECHOSTAR ADVANCED TECHNOLOGIES L.L.C., a limited liability company

(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.

states that it is:

1. [X] the assignee of the entire right, title, and interest in;

2. [ ] an assignee of less than the entire right, title, and interest in (The extent (by percentage) of its ownership interest is _____ %); or

3. [ ] the assignee of an undivided interest in the entirety of (a complete assignment from one of the joint inventors was made) the patent application/patent identified above, by virtue of either:

A. [ ] An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy therefore is attached.

OR

B. [X] A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: R. Drew Major, Mark B. Hurst To: Move Networks, Inc.

The document was recorded in the United States Patent and Trademark Office at Reel 018020, Frame 0750, or for which a copy thereof is attached.

2. From: Move Networks, Inc. To: EchoStar Advanced Technologies L.L.C.

The document was recorded in the United States Patent and Trademark Office at Reel 025570, Frame 0047, or for which a copy thereof is attached.

3. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

[ ] Additional documents in the chain of title are listed on a supplemental sheet(s).

[ ] As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (*i.e.*, a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

_____ 1/12/11
Signature Date

Max Gratton (Reg. No. 56,541) Corporate Counsel
Printed or Typed Name Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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PTO/SB/80 (11-08)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(b).

I hereby appoint:

☑ Practitioners associated with the Customer Number: 70560

OR

☐ Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used):

Name	Registration Number	Name	Registration Number

as attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent applications assigned only to the undersigned according to the USPTO assignment records or assignment documents attached to this form in accordance with 37 CFR 3.73(b).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(b) to:

☑ The address associated with Customer Number: 70560

OR

☐ Firm or Individual Name			
Address			
City		State	Zip
Country			
Telephone		Email	

Assignee Name and Address:

EchoStar Advanced Technologies L.L.C.
100 Inverness Terrace East
Englewood, CO 80112

A copy of this form, together with a statement under 37 CFR 3.73(b) (Form PTO/SB/96 or equivalent) is required to be filed in each application in which this form is used. The statement under 37 CFR 3.73(b) may be completed by one of the practitioners appointed in this form if the appointed practitioner is authorized to act on behalf of the assignee, and must identify the application in which this Power of Attorney is to be filed.

SIGNATURE of Assignee of Record

The individual whose signature and title is supplied below is authorized to act on behalf of the assignee

Signature		Date	1/28/11
Name	Brandon Ehrhart	Telephone	720 514-5297
Title	Vice President, Associate General Counsel and Assistant Secretary		

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Electronic Acknowledgement Receipt

EFS ID:	9244429
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	08791
Filer:	Brett Carlson/Sharron Castillo
Filer Authorized By:	Brett Carlson
Attorney Docket Number:	8532P001
Receipt Date:	17-JAN-2011
Filing Date:	28-APR-2005
Time Stamp:	16:05:30
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Power of Attorney	20110117_POA.pdf	269859 5d9edaf1f3fde7448c8e084f21589a82a94ad775	no	1

Warnings:	
Information:	

2	Assignee showing of ownership per 37 CFR 3.73(b).	20110117_Stmt373b_11116783.pdf	269737 f0773633d223a80037209bdb65c657c59dac75fb	no	1

Warnings:	
Information:	
Total Files Size (in bytes):	539596

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/116,783	04/28/2005	R. Drew Major	8532P001

CONFIRMATION NO. 5535

70560
INGRASSIA FISHER & LORENZ, P.C. (EchoStar)
7010 E. COCHISE ROAD
SCOTTSDALE, AZ 85253

POA ACCEPTANCE LETTER

OC000000045630350

Date Mailed: 01/26/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/17/2011.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/mnguyen/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/116,783	04/28/2005	R. Drew Major	8532P001

CONFIRMATION NO. 5535

POWER OF ATTORNEY NOTICE

8791
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

OC000000045630301

Date Mailed: 01/26/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/17/2011.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/mnguyen/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

SEARCHED			
Class	Subclass	Date	Examiner
709	246	05/07/2008	ND

SEARCH NOTES		
Search Notes	Date	Examiner
See EAST Search History	05/07/2008	ND
Conducted double patenting search	05/07/2008	ND
Consulted with SPE William Vaughn	11/13/2008	ND
See updated EAST search	12/13/2009	ND
Consulted with SPE William Vaughn regarding Final	02/12/2009	ND
Consulted with SPE William Vaughn regarding Advisory	03/29/2009	ND
Consulted with SPE William Vaughn regarding Advisory	5/7/2009	ND
Consulted with Primary Paul Kang	02/10/2009	ND
See updated east search	7/30/2009	ND
Consulted with SPe William Vaughn regarding search	7/30/2009	ND
Consulted SPE William Vaughn regarding Final	2/4/2010	nd
Consulted SPE William Vaughn regarding Appeal	1/27/2011	nd

INTERFERENCE SEARCH			
Class	Subclass	Date	Examiner

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)	5535

70560 7590 02/16/2011

INGRASSIA FISHER & LORENZ, P.C. (EchoStar)
7010 E. COCHISE ROAD
SCOTTSDALE, AZ 85253

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

NOTIFICATION DATE	DELIVERY MODE
02/16/2011	ELECTRONIC

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

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IPDEPT@Dishnetwork.com

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 11/116,783
Filing Date: April 28, 2005
Appellant(s): MAJOR ET AL.

Move Networks
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/25/2010 appealing from the Office action mailed 2/22/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 20-21, 23-26, 35-38, 40-50 are under appeal. Claims 20-21, 23-26, 35-38, 40-50 are pending in the application.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6490627	Quigg-Brown	2-2002
6490627	Kalra	6-1999

Birney, "Intelligent Streaming" Microsoft Corporation

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 20-21, 23-26, 35-38, 40-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birney "Intelligent Streaming" in view of Kalra (United Stated Patent 6490627) further in view of Quigg-Brown (United States Patent Application 2003/0152036.)

Regarding claim 20,

Birney teaches a method for presenting rate-adaptive streams, the method comprising:

streaming by a media player operating on an end user station a video from a set of one or more servers, wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers, wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video, and wherein the streaming comprises: **(See pages 1-2 (multi-bit rate encoding), Birney teaches multiple copies of the same stream being stored on a server at different bit rates with the same time index used to switch between the stream based on network bandwidth limitations)**

repeatedly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and **(See pages 2-3 including multiple-bit-rate encoding and intelligent bandwidth control sections, Birney teaches determining bandwidth capabilities)**

making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files portions of the highest quality one of the copies determined sustainable at that time; and

presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time.**(See pages 1-2, Birney teaches shifting playback quality to the highest quality dependent on network bandwidth.)**

Birney further teaches a client and a server working together to automatically determine the available bandwidth and based on this working together adjusting to a higher or lower quality stream **(See pages 2-4, Birney)**

While the implication of Birney is that both the server and the client work together to determine a quality of stream, Birney does not explicitly state that this is done by the media player acting alone.

Kalra teaches requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers; **(See figure 16A1 and column 15 line 56 - column 16 line 60, Kalra teaches requesting by a client media player one of the adaptive streams/copies based on the client capabilities)**

automatically requesting by the media player from the set of servers subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including, **(See figure 16A1 and column 15 line 56 - column 16 line 60, Kalra teaches automatically requesting by the media player higher or lower quality data based on a quality factor)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Kalra with Birney

because both deal with streaming different quality of streaming content to a client device from a server. The advantage of incorporating requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers; automatically requesting by the media player from the set of servers subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting of Kalra into Birney is that sata streams accessed by client from server are tailored to match profile of each client, such that best stream combinations are provided to maximize resolution of 3D, audio and video components thus making the system more robust and efficient. **(See column 1, Kalra)**

Birney and Kalra do not explicitly teach one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections.

Quigg-Brown teaches teach one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections **(See abstract and paragraphs [0028] – [0030])**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Quigg Brown with Birney because both deal with streaming of files. The advantage of incorporating one of

the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes and requesting by the media player from the set of servers over the plurality of TCP connections of Quigg Brown into Birney is that it improves the data transfer rate by transferring the packets in parallel through the network. **(See paragraphs [0002] – [0005], Quigg brown.)**

Regarding claim 21,

Birney, Kalra, and Quigg Brown teach the method of claim 20,wherein said requesting the plurality of sequential ones of the files includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the portions files from the received sub-parts. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 23,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said determining making the successive determinations to shift comprises: upshifting to a higher quality one of the different copies when the at least one performance factor is greater than a first threshold; and determining if the higher quality playback can be sustained. **(See page 2 paragraphs 4-5, Birney)**

Regarding claim 24,

Birney, Kalra, and Quigg Brown teach the method of claim 23, wherein said determining making the successive determinations to shift comprises downshifting to a lower quality one of the different copies when the at least one performance factor is less than a second threshold. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 25,

Birney, Kalra, and Quigg Brown teach the method of claim 20, further comprising: receiving user input to enable one of fast-forward, skip randomly, and rewind functionality; and requesting files of the video at a specified time index that is not the next sequential time in the current playback. **(See page 3, Birney)**

Regarding claim 26,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said requesting the plurality of sequential one of the files includes requesting the files from a low quality one of the different copies to enable instant playback of the video, and wherein said automatically requesting includes upshifting to a higher quality one of the different copies. **(See page 2 paragraphs 1-4, Birney)**

Regarding claim 35,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said requesting the plurality of sequential ones of the files includes requesting the plurality of

sequential ones of the files over different ones of the plurality of TCP connections. **(See paragraphs [0002] – [0005], Quigg Brown)** See motivation for claim 20.

Regarding claim 36,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said presenting comprises sequentially arranging the received requested portions files from the different copies in the order of ascending playback time for playback on with the media player on the end user station. **(See page 3 paragraphs 1-3, Birney)**

Regarding claim 37,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said automatically requesting includes requesting sub-parts of the files over different ones of the plurality of TCP connections, and wherein said presenting includes reassembling the files from the received sub-parts. **(See page 2 paragraphs 3-5, Birney)**

Regarding claim 38,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of is indicative of the available bandwidth of the plurality of TCP connections. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 40,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of latency of the requested files, wherein the latency is a time measure between when a one of the requests is issued and a time that response data of the begins to arrive at the end user station. **(See page 2 paragraphs 1-5, Birney)**

Regarding claim 41,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files. **(See page 1 paragraphs 1-3, Birney)**

Regarding claim 42,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 43,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein at least one of the set of servers is a web server. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 44,

Birney, Kalra, and Quigg Brown teach the method of claim 43, wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to respond to said requesting. **(See page 2, Birney)**

Regarding claim 45,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein at least one of the set of servers is a cache server of a network infrastructure operator. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 46,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein: said generating the set of factors comprises: monitoring time intervals between successive receive times for each of the requested files (**See pages 1-2, Birney)**; calculating a current performance ratio across a current window of the time intervals; and calculating a current average of the performance ratio to obtain a current performance factor of the set of factors; said making further comprises: comparing the current performance factor with a set of one or more trigger thresholds(**See pages 1-2, Birney)**; and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing (**See pages 2, Birney**)

Regarding claim 47,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein said making comprises: comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index; and determining whether to upshift or downshift to a higher or lower quality one of the different copies based on said comparing. **(See page 1 and 2 paragraphs 2-5, Birney)**

Regarding claim 48,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein: said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and said automatically requesting comprises issuing for each of the files a request with the filename of that file. **(See page 2 paragraphs 2-5, Birney)**

Regarding claim 49,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files. **(See page 2 paragraphs 1-3, Birney)**

Regarding claim 50,

Birney, Kalra, and Quigg Brown teach the method of claim 20, wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence. **(See page 2 paragraphs 2-5, Birney)**

(10) Response to Argument

The examiner summarizes the various points raised by the applicant and addresses replies individually.

As per appellant, “the cited references do not teach or suggest "wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers" and "the multiple files across the different copies yield the same portion of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video" (Argument A, See brief pages 10 1-7 and 12 lines 1-7)

In response to A), Examiner points to page 2 of "Intelligent Streaming” which states “In multiple-bit-rate encoding, **a number of discrete, user-definable audio and video streams are encode**d into a single Windows Media stream. **The streams are encoded from the same content, but each is encoded at a different bit rate**. When

Windows Media Player connects to a Windows Media server to receive a multiple-bit-rate Windows Media file or broadcast stream, the server only sends the set of audio and video streams that is the most appropriate for current bandwidth conditions". Clearly the reference teaches a plurality of different discrete copies of the video, each file/streams are encoded from the same content but at a different rate.

Furthermore, figure 7A-7B and column 6 lines 10-65, Kalra teaches the multiple files across the different copies yield the same portion of the video on playback.

Regarding the "each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video," Examiner points to page 5 of "Intelligent Streaming". This section teaches "**after 10 minutes**, network congestion increases, and bandwidth suddenly falls to 32 Kbps. The client's frame rate begins to decrease, and some packets are lost, but the server reacts immediately by switching to a 19-Kbps stream. The user notices some degradation in image quality, but audio is continuous and disruption of the presentation is minimized. Then, **20 minutes later**, bandwidth worsens again, decreasing to 14 Kbps". This section teaches seamlessly switching between the bit rate files at a specific time (10 and 20 minutes) based on network congestion. Clearly the files are stored based on time, time indexing is used with regards to the files, in order to seamlessly switch between the different files.

As per appellant, “the cited references do not teach or suggest alignment of the portions and requesting of the portions based on "Time Indexes." (Argument A, See brief page 13 lines 5-7)

In response to B), Examiner points to page 5 of “Intelligent Streaming”. This section teaches ”**after 10 minutes**, network congestion increases, and bandwidth suddenly falls to 32 Kbps. The client's frame rate begins to decrease, and some packets are lost, but the server reacts immediately by switching to a 19-Kbps stream. The user notices some degradation in image quality, but audio is continuous and disruption of the presentation is minimized. Then, **20 minutes later**, bandwidth worsens again, decreasing to 14 Kbps". This section teaches seamlessly switching between the bit rate files at a specific time (10 and 20 minutes) based on network congestion. Clearly the files are stored based on time, time indexing is used with regards to the files, in order to seamlessly switch between the different files.

As per appellant, “the cited references do not teach or suggest "Requesting by the Media Player a plurality of sequential ones of the files" or "automatically requesting by the media player ... subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon Successive Determinations by the Media Player" (Argument C, See brief page 15 lines 10-15)

In response to C), Examiner points to page 2 of “Intelligent Streaming”. This section teaches “The server and **client** [media player] automatically determine the current available bandwidth, and then the server selects and delivers the stream with the most appropriate bit rate.” The client/media player automatically makes successive determinations and requests the appropriate “Stream”/sequential portions of the video based on available bandwidth and other criteria. Clearly, the media player works directly with server to make determinations of which stream would be optimal and requesting the portions of the stream for any particular time.

As per appellant, “the cited references fail to render independent claim 20 obvious regarding "requesting ...files over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes," and "automatically requesting ... subsequent portions of the video by requesting for each such portion one of the files from one of the copies" (Argument D, See brief page 19 lines 9-12)

In response to D), Examiner points to page 2 of “Intelligent Streaming”. This section teaches “The server and **client** [media player] automatically determine the current available bandwidth, and then the server selects and delivers the stream with the most appropriate bit rate.” The client/media player automatically makes successive determinations and requests the appropriate “Stream”/sequential portions of the video based on available bandwidth and other criteria. Clearly, the media player works directly

with server to make determinations of which stream would be optimal and requesting the portions of the stream for any particular time.

Furthermore examiner points to paragraphs [0028] – [0032] of Quigg-Brown, which teaches splitting a data stream over a number of TCP connections based on a client requesting a stream of data. Each part of the data stream is a particular time of the video to be played. Clearly this teaches a plurality of TCP connections being used to transport a data stream after a request is made.

As per appellant, “the cited references do not teach or suggest "determining if the higher quality playback can be sustained." (Argument E, See brief page 26 lines 22-24)

In response to E), Examiner points to page 2 of “Intelligent Streaming”. This section teaches “The server and **client** [media player] automatically determine the current available bandwidth, and then the server selects and delivers the stream with the most appropriate bit rate.” The client/media player along with the server work together to determine if a higher playback is available and if the bandwidth can sustain the stream. If it cannot, the stream is switched to a lower quality.

As per appellant, “Quigg- Brown fails to "requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections” (Argument F, See brief page 28 lines 14-16)

In response to F), Examiner points to paragraphs [0028] – [0032] of Quigg-Brown, which teaches splitting a data stream over a number of TCP connections based on a client requesting a stream of data. Each part of the data stream is a particular time of the video to be played. Clearly this teaches a plurality of TCP connections being used to transport a data stream after a request is made.

As per appellant, “The prior art does not teach "latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station." (Argument G, See brief page 29 lines 19-23)

In response to G), Examiner points to page 2 of “Intelligent Streaming”. This section teaches “The server and **client** [media player] automatically determine the current available **bandwidth**, and then the server selects and delivers the stream with the most appropriate bit rate.” Bandwidth is a measurement of the amount of data (bits) that can be transmitted over time (per second). The request is the client/server requesting a stream and the time it takes to receive the stream and subsequent segments is bandwidth of the channel. The client./server request a stream and the rate is indirectly related to the latency, i.e. the greater the bandwidth, the lower the latency and vice versa.

As per appellant, “The prior art does not teach, claim 41, "wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files" (Argument H, See brief page 30 lines 9-12)

In response to H), Examiner points to page 2 of “Intelligent Streaming”. This section teaches “The server and **client** [media player] automatically determine the current available **bandwidth**, and then the server selects and delivers the stream with the most appropriate bit rate.” Bandwidth is a measurement of the amount of data (bits) that can be transmitted over time (per second). The request is the client/server requesting a stream and the time it takes to receive the stream and subsequent segments is bandwidth of the channel. The client./server request a stream and the rate is indirectly related to the latency, i.e. the greater the bandwidth, the lower the latency and vice versa. Again this clearly teaches that the bandwidth is a measurement of the time interval between requests.

As per appellant, “The prior art does not teach, claim 42 recites "wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections”. (Argument I, See brief page 31 lines 6-8)

In response to I), Examiner points to page 2 of “Intelligent Streaming”. This section teaches “The server and **client** [media player] automatically determine the current available **bandwidth**, and then the server selects and delivers the stream with

the most appropriate bit rate." Bandwidth is a measurement of the amount of data (bits) that can be transmitted over time (per second). The request is the client/server requesting a stream and the time it takes to receive the stream and subsequent segments is bandwidth of the channel. Again the bandwidth is a measure of the delay in the system and thus is one of the factors (bandwidth which also measures delay). Therefore, delay is intrinsically related to the bandwidth and clearly is taught by "Intelligent Streaming".

As per appellant, "The prior art does not teach, wherein the web server is without specialized server-side intelligence to respond to said requesting". (Argument J, See brief page 32 lines 5-9)

In response to J), Examiner points to Applicant's specification, paragraphs [0049] – [0050]. This is the only mention of specialized server intelligence in the specification. Examiner points to page 2 of "Intelligent Streaming" which teach a server which stores the media streams. No specialized server intelligence being used above and beyond the general operations of the streaming server. Again since no definition of the specialized intelligence is given by Applicant, and Examiner's interpretation which includes artificial intelligence is not found in the server of "Intelligent Streaming", the claim is clearly taught by the prior art.

As per appellant, “The prior art does not teach, claim 45 recites "wherein at least one of the set of servers is a cache server of a network infrastructure operator" [emphasis added]. Dependent claim 49 recites "wherein the set of servers includes a content server storing the multiple files of the different copies, and wherein the set of servers includes one or more cache servers caching at least some of the files". Dependent claim 50 recites "wherein the multiple files are independently cacheable by a cache server without specialized server-side intelligence". (Argument K, See brief page 33 lines 19-28)

In response to K), Examiner points to paragraphs [0050] Applicant’s specification which states “Use of cache servers is well known to those skilled in the art, and will not be discussed further herein.” To begin, the Applicant is admitting that the cache severs are well known in the art, which makes the cache servers at the very least Applicant admitted prior art or at the very least obvious for those skilled in the art. Secondly, Examiner points to page 2 -3 of "Intelligent Streaming" which teach a server that stores/caches the multiple streams and send’s them based on a request from a client. At the very least, Applicant has admitted that the cache server and functions are well known in the art and also the section pointed to by Examiner further teach the cache server and its functions.

As per appellant, “The prior art does not teach, that the Windows Media server, or the client, has the capability to monitor "time intervals between successive receive

times for each response to the requested files," much less the capability to calculate "a current performance ratio across a current window of the time intervals," and to calculate "a current average of the performance ratio to obtain a current performance factor of the set of factors," as recited in claim 46". (Argument L, See brief page 35 lines 11-17)

In response to L), Examiner points to page 6 of "Intelligent Streaming" which teaches "**monitoring the performance** of your CPU and memory resources is a simple way to monitor the quality of your encoding. The more streams, the more frames per second, the larger the image size, and the higher the quality that you specify, the more tasks per second the CPU must perform. Windows Media Encoder automatically adjusts its task load to the given bandwidth and to the limits of the CPU. For example, if you enter a high frame rate (30 frames per second) and a low bit rate (28.8 Kbps), and then use CBR encoding, Windows Media Encoder maintains a constant bit rate and attempts to achieve the requested frame rate by lowering image quality." This section clearly teaches monitoring the requested files at intervals and adjusting the stream based on the capabilities of the stream and media player. Furthermore this section shows monitoring the performance based on the average frames per second quality being streamed. And based on the performance factors (computer capabilities and bandwidth), the streams are automatically adjusted to higher or lower qualities based on these factors throughout the streaming time/interval.

As per appellant, “Birney is silent as to trigger thresholds, how the triggered thresholds are determined, as well as determining the trigger factors by "a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin," as recited in claim 47". (Argument M, See brief page 36 lines 13-17)

In response to M), Examiner points to page 5 of “Intelligent Streaming” which teaches “When a client attempts to connect to the server to receive a broadcast or file, the server determines the current bandwidth of the connection. For example, suppose a user connects with a 56-Kbps analog modem, but does so at a time when network traffic is particularly high. When the user connects, the server might determine the actual available bandwidth to be 40 Kbps. At that bandwidth, a 53-Kbps stream is too high, so the server streams a 31-Kbps video stream and the audio stream.

After 10 minutes, network congestion increases, and bandwidth suddenly falls to 32 Kbps. The client's frame rate begins to decrease, and some packets are lost, but the server reacts immediately by switching to a 19-Kbps stream. The user notices some degradation in image quality, but audio is continuous and disruption of the presentation is minimized. Then, 20 minutes later, bandwidth worsens again, decreasing to 14 Kbps. This is even too low for the lowest video stream, so the Windows Media server stops streaming all video to the client. The user notices the loss of video but is still able to listen to an uninterrupted audio stream, which only requires 8 Kbps of bandwidth. A few minutes later, bandwidth improves a great deal, and the server again is able to send the 31-Kbps video stream.”

This section clearly teaches a trigger threshold being set which when reached forces the stream quality being sent to the client to be changed, either to a higher quality or lower quality. When packets begin to be lost/(the safety margin relates to the effects the degradation would have on the user) because of the decrease in bandwidth, the stream is automatically switched. Therefore, this section clearly teaches how the triggered thresholds are determined, as well as determining the trigger factors by "a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin.

As per appellant, “Appellant respectfully disagrees because Birney is silent as to issuing a request for each of the files with the filename of that file.". (Argument N, See brief page 37 lines 8-11)

In response to N), Examiner points to page 6 of “Intelligent Streaming” which teaches “Intelligent streaming uses a series of strategies to modify the bit rate of the stream so it plays continuously on the client regardless of the current bandwidth. As bandwidth fluctuates between server and client, the server detects the changes and adopts the best strategy. The strategies are as follows: 1. The server and client automatically determine the current available bandwidth.” The media player and server request the different files stored at different bit rates based on the capabilities. The media player and server request the file with a certain bit rate then upshift or downshift to a different file based on bandwidth and other factors.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/N. D./

Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11116783	MAJOR ET AL.
	Examiner	Art Unit
	NINOS DONABED	2444

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	02/04/2010	02/01/2011							
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	19	-	-							
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	23	✓	A							
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	32	-	-							
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	34	-	-							
	35	✓	A							
	36	✓	A							

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
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CLAIM		DATE								
Final	Original	02/04/2010	02/01/2011							
	37	✓	A							
	38	✓	A							
	39	-	-							
	40	✓	A							
	41	✓	A							
	42	✓	A							
	43	✓	A							
	44	✓	A							
	45	✓	A							
	46	✓	A							
	47	✓	A							
	48	✓	A							
	49	✓	A							
	50	✓	A							

Substitute for Form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(use as many sheets as necessary)*				Application Number	11/116,783
				Filing Date	April 28, 2005
				First Named Inventor:	Major, R. Drew
				Art Unit	2444
				Examiner Name	Donnabed, Ninos J.
Sheet	1	**of**	1	Attorney Docket Number	8532P001

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number-Kind Code[2] (If known)		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-	6,389,473	05/14/2002	Carmel et al.	
		US-	7,818,444	10/19/2010	Brueck, et al.	
		US-				
		US-				

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] Number[4] Kind Code[5] (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

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		Notice of Allowance for 11/673,483, August 5, 2010, 7 pages.	

Examiner Signature	/Ninos Donabed/	Date Considered	03/09/2011

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SENT FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)	5535

70560 7590 03/17/2011

INGRASSIA FISHER & LORENZ, P.C. (EchoStar)
7010 E. COCHISE ROAD
SCOTTSDALE, AZ 85253

EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

NOTIFICATION DATE	DELIVERY MODE
03/17/2011	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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IPDEPT@Dishnetwork.com

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Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
11116783	4/28/2005	MAJOR ET AL.	066.0141 (P2004-04-01.1)

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EXAMINER	
NINOS DONABED	
ART UNIT	**PAPER**
2444	20110311

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Commissioner for Patents

This communication is acknowledge recicipt and consideration of IDS' dated 10/26/2010, 10/26/2010, and 4/22/2010.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

/N. D./
Examiner, Art Unit 2444

PTO-90C (Rev.04-03)

Pursuant to 37 C.F.R. § 1.97, the submission of this Information Disclosure Statement is not to be construed as a representation that a search has been made and is not to be construed as an admission that the information cited in this statement is material to patentability.

Pursuant to 37 C.F.R. § 1.97, this Information Disclosure Statement is being submitted under one of the following (as indicated by an "X" to the left of the appropriate paragraph):

_____ 37 C.F.R. §1.97(b).

_____ 37 C.F.R. §1.97(c). If so, then enclosed with this Information Disclosure Statement is one of the following:

____ A statement pursuant to 37 C.F.R. §1.97(e) or

____ **The Director is Authorized to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. § 1.17(p).**

__X__ 37 C.F.R. §1.97(d). If so, then enclosed with this Information Disclosure Statement are the following:

(1) A statement pursuant to 37 C.F.R. §1.97(e); and

(2) **Authorization to charge our Deposit Acct. No. 02-2666 in the amount of $180.00 for the fee under 37 C.F.R. §1.17(p) for submission of the Information Disclosure Statement.**

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: April 22, 2010 /Kevin O. Grange/
Kevin O. Grange
Reg. No. 60,793

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /N.D

Substitute for form 1449A/PTO	Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(Use as many sheets as necessary)*	**Application Number**	11/116,783
	Filing Date	April 28, 2005
	First Named Inventor	Major, R. Drue
	Group Art Unit	2444
	Examiner Name	Donabed, Ninos J.
Sheet 1 of 1	Attorney Docket No: 8532P001	

US PATENT DOCUMENTS					
Examiner Initial *	Cite No [1]	USP Document Number	Publication or Issue Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-20030204519A1	10/30/2003	Sirivara, et al.	
		US-7408984B2	08/05/2008	Lu, et al.	

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No [1]	Foreign Patent Document Country Code/Number/Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T [2]

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EXAMINER	/Ninos Donabed/	DATE CONSIDERED	03/09/2011

Based on PTO/SB/08A(09-06) - Substitute Disclosure Statement Form (PTO-1449) as modified by BSTZ 03/26/07

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Substitute for Form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT *(use as many sheets as necessary)*				Application Number	11/116,783
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				Examiner Name	Donnabed, Ninos J.
Sheet	1	**of**	1	Attorney Docket Number	8532P001

U.S. PATENT DOCUMENTS

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		US-				
		US-				
		US-				
		US-				

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NON PATENT LITERATURE DOCUMENTS

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		Final Office Action for 11/673,483, February 4, 2010, 21 pages.	
		Advisory Action for 11/673,483, April 9, 2010, 3 pages.	
		Advisory Action for 11/673,483, May 26, 2010, 3 pages.	

Examiner Signature	/Ninos Donabed/	Date Considered	03/09/2011

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[1]Applicant's unique citation designation number (optional). [2]Applicant is to place a check mark here if English Translation is attached.

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EFS ID:	9898661
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	70560
Filer:	Brett Carlson/Sharron Castillo
Filer Authorized By:	Brett Carlson
Attorney Docket Number:	066.0141 (P2004-04-01.1)
Receipt Date:	18-APR-2011
Filing Date:	28-APR-2005
Time Stamp:	18:04:26
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

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Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Reply Brief Filed	20110418_ReplyBrief_P2004-04-01-1.pdf	199367 72a47b1892b39e8599bfe7246897b22cf31122d1	no	19

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National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Serial. No.:	11/116,783	Confirmation No. 5535
Filed:	April 28, 2005	Customer No.: 70560
T.C./A.U.:	2444	
Examiner:	Ninos J. Donabed	
Title:	APPARATUS, SYSTEM, AND METOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT	
Docket No:	066.0141 (P2004-04-01.1)	

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.41

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Alexandria, VA 22313-1450

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Commissioner:

We hereby submit our Reply Brief in response to the Examiner's Answer mailed on February 16, 2011. Our response on Monday, April 18, 2011 is timely under 35 U.S.C. § 21 and MPEP § 710.05.

This Brief will supplement the information provided in the original Appeal Brief filed on October 25, 2010 appealing the Office Action mailed on February 22, 2010.

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I. INTRODUCTION

This is a Reply Brief filed under 37 C.F.R. § 41.41 in response to the Examiner's Answer Brief filed on February 16, 2011. This Reply supplements, but does not replace the earlier Appeal Brief filed on October 25, 2010, and we do not waive any of the arguments presented in the earlier brief. Even though the Appeal Brief was fully responsive to the rejections that are of record, we are filing this Reply simply to address several statements made in the Examiner's Answer, and to clarify the issues that are before the Board.

Each of the items required by 37 C.F.R. § 41.41 is set forth below.

II. STATUS OF CLAIMS

As noted by the Examiner, claims 20-21, 23-26, 35-38 and 40-50 are pending. Each of these claims is presently under Appeal.

III. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed in this appeal the same as those presented in our prior Brief. To reiterate, the issues involved in this Appeal are as follows:

A. Whether claims 20-21, 25, 26, 36, 38, and 43 are obvious under 35 U.S.C. § 103(a) based on Birney, "Intelligent Streaming" ("Birney") in view of Kalra (U.S. 6,490,627) ("Kalra") and Quigg-Brown (U.S. Patent Publ. No. 2003/0152036) ("Quigg-Brown").

B. Whether claims 23-24 are obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

C. Whether claim 35 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

D. Whether claims 40-42 are obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

E. Whether claim 44 obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

F. Whether claims 45, 49, and 50 are obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

G. Whether claim 46 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

H. Whether claim 47 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

I. Whether claim 48 is obvious under 35 U.S.C. § 103(a) based on Birney in view of Kalra and Quigg-Brown.

As noted previously, all of the claims do not stand or fall together, and bases for the separate patentability of the claims was set forth in the Appeal Brief.

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IV. ARGUMENTS

The following is simply intended to bring several issues to the Board's attention and to address the Examiner's statements in the Answer Brief. For full analyses of the rejections, please refer to the original Appeal Brief that was filed on October 25, 2010.

As a preliminary matter, we note that many of the rejections simply fail to consider the full extent of our actual claim language. MPEP § 2143.03 requires that "***all words*** in a claim must be considered in judging the patentability of that claim against the prior art" (emphasis added). Many of the rejections currently of record attempt to cite generalized concepts from the references without applying these concepts to the particular details that are actually recited in our claims. As a result, many of the concepts that are extracted from the cited references are simply not relevant to the actual methods recited in our claims, as described in greater detail in our Appeal Brief, and as supplemented below.

We therefore request that the Board independently review the references of record, especially the primary Birney "Intelligent Streaming" document. Upon review, it will be clear that the cited art falls well short of teaching or suggesting the full extent of our claim language.

The following discussion uses the same outline structure as the "Response to Argument" section at pages 13-24 of the Examiner's Answer Brief for simplicity and convenience of reference.

A) The cited references do not teach or suggest that "<u>each of a plurality of different copies of the video...is stored as multiple files</u>".

Claim 20 requires each of the following features to be present: (1) a plurality of different copies of the video; (2) each of the different copies is stored as a plurality of files; (3) each of the multiple files in each of the different copies has a time index; and (4) files across the different copies share the same time index in relation to the beginning of the video. None of these features are found in a conventional streaming media application, such as the application described in the Birney publication.

The Birney "Intelligent Streaming" publication is not concerned with <u>file based retrieval</u> of media content at all. To the contrary, **Birney describes a system in which "audio and video streams are <u>*encoded into a single Windows Media stream*</u>"** (Birney p. 2, cited in Answer Brief at p. 13, emphasis added). Indeed, the Answer Brief incorrectly blurs the distinction between file based media retrieval and streaming media at the top of page 14, where it notes "each file/streams are encoded from the same content but at a different rate". The Examiner seems to be improperly treating files and streams as the same thing, without providing any basis doing so.

There is absolutely no mention in Birney of storing <u>a plurality of files for each of the different copies</u>. At best, Birney discloses combining several different video streams into one Windows media stream. This does not, however, teach or suggest storing a plurality of commonly-indexed files for each of the different copies of the video, as recited in claim 20.

The Kalra reference cited in the Answer Brief similarly relates to streaming media, rather than file-based video. The Answer Brief cites Kalra's FIGS. 7A-B and col. 6, lines 10-65 as describing the "multiple file" aspects of our claims, but in fact this language simply describes an "adaptive stream" in which supplemental streams are used to enhance the content of a "base stream".

Simply stated, neither Birney nor Kalra describes a method in which each of the different copies of the video is stored as a plurality of files, as required by claim 20. Even a combination of these references, then, would still fall short of teaching or suggesting the full extent of our claim 20.

B) The cited references do not teach or suggest "*each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video*" as recited in claim 20.

Since the art does not teach the multiple file aspects of our claims, it certainly does not teach the further detail regarding time indices that is recited in claim 20. In particular, claim 20 recites that each of the plurality files has "*a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video*". That is, the various files that make up the different copies of the video share common time indices in relation to the beginning of the video. As noted above, this allows the media player to interchange files between different copies of the video.

The Office Action cites the following portion of Birney against the "same time index" features of our claims. The following section is the entire extent of Birney's consideration of "time", so it is reproduced here in full:

> **After 10 minutes, network congestion increases, and bandwidth suddenly falls to 32 Kbps. The client's frame rate begins to decrease, and some packets are lost, but the server reacts immediately by switching to a 19-Kbps stream. The user notices some degradation in image quality, but audio is continuous and disruption of the presentation is minimized. Then, 20 minutes later, bandwidth worsens again, decreasing to 14 Kbps. This is even too low for the lowest video stream, so the Windows Media server stops streaming all video to the client. The user notices the loss of video but is still able to listen to an uninterrupted audio stream, which only requires 8 Kbps of bandwidth. A few minutes later, bandwidth improves a great deal, and the server again is able to send the 31-Kbps video stream.**

Note that this portion of Birney does not relate at all to a "time index" that is shared between files from different copies of the video, nor does the language relate to any sort of time index "in relation to the beginning of the video", as recited in our claims. The reference simply uses the phrases "after 10 minutes" and "20 minutes later" to present an example of streaming video. It does not present a "time index" in any meaningful sense of the phrase, and certainly does not teach "*each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video*", as recited in our claim 20. Birney therefore does not teach the full extent of our claim language for which it is cited.

C) The cited references do not teach or suggest "requesting <u>by the media player</u> a plurality of sequential ones of the files of one of the copies", as recited in claim 20.

Claim 20 clearly recites that that media player requests a plurality of sequential files. In response, the Answer Brief quotes a portion of the Birney

reference that actually supports our position by expressly stating that *the Birney server, not the client, selects and delivers the stream to the client*. The Examiner's quotation (from page 16 of the Answer Brief) appears below:

> **In response to C),** Examiner points to page 2 of "Intelligent Streaming". This section teaches "The server and **client** [media player] automatically determine the current available bandwidth, and then the server selects and delivers the stream with the most appropriate bit rate." The client/media player automatically makes successive determinations and requests the appropriate "Stream"/sequential portions of the video based on available bandwidth and other criteria. Clearly, the media player works directly with server to make determinations of which stream would be optimal and requesting the portions of the stream for any particular time.

Even to the extent that Birney's media player may be involved in determining available bandwidth, this does not meet the language of our claim. The Examiner's statements that the "media player works directly with the server" do not consider the full extent of our claim language, which clearly requires that the media player request a plurality of sequential files.

Claim 20 provides substantial additional detail about this "requesting by the media player" that even further distinguishes the Birney reference. Several of these features are described in increasing detail below.

D) The cited references do not teach or suggest claim 20's recitation of "automatically requesting subsequent portions of the video by requesting for each portion one of the files from one of the copies".

The Answer Brief applies exactly the same analysis and the same language from Birney that was addressed above with respect to Section C) above. Because Birney fails to describe requesting files from the client in any manner, Birney

certainly fails to disclose this additional detail with regard to the media player request. Once again, the Birney reference fails to teach or suggest the full extent of our claim language for which it is cited.

E) The cited references do not teach or suggest the media player "making the successive determinations to shift the playback quality" as recited in claim 20.

Once again, the Examiner's statement that "the client" is involved in determining the bandwidth of the connection does not address the full extent of claim 20, which requires that the media player "*regularly generat[e] a set of one or more factors indicative of the current ability to sustain the streaming of the video"* and "*making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous playback of the video using the files of the highest quality one of the copies determined sustainable at that time*".

As noted above, Birney expressly states that the *server*, not the client, "selects and delivers" the stream with the most appropriate bit rate. This is in direct opposition to claim 20's requirement that the media player make successive determinations to shift playback quality. At the very least, Birney's limited teaching fails to teach or suggest the full extent of our claim language.

F) Quigg-Brown fails to teach "requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections", as recited in claim 35.

The Answer Brief states that Quigg Brown "*teaches a plurality of TCP connections being used to transport a data stream after a request is made*" (Answer Brief at page 18). This statement is focused entirely on delivering a stream of data from the server to the client over multiple connections rather than requesting files, as recited in our claims.

The rejection therefore fails to consider the actual language of claim 35. Even if the Examiner is correct in his characterization of the Quigg-Brown reference, then, this would still not anticipate claim 35's recitation of *requesting the plurality of sequential ones of the files includes requesting the plurality of sequential ones of the files over different ones of the plurality of TCP connections.*

G) Birney fails to teach "wherein the latency is a time measure between when one of the requests is issued and a time that response data of the request begins to arrive at the end user station" as recited in claim 40.

The Answer Brief does not attempt to find a reference to actual time latency in the cited references. Instead, the Answer Brief simply states without elaboration or citation that Birney's "client/server request a stream and the rate is indirectly related to the latency, i.e., the greater the bandwidth, the lower the latency and vice versa". This statement fails to support a Section 103 rejection for several reasons.

First, this does not meet the language of claim 40, which expressly describes latency as a time measure between when a request is issued and a time that response data begins to arrive at the end user station. Birney does not even remotely contemplate computing latency in this particular manner.

Secondly, it is not sufficient to reject a claim under Section 103 based upon material that "indirectly relates" to claimed features. Assuming *arguendo* that an indirect relationship did exist between latency and bandwidth, this would not be sufficient to sustain a Section 103 rejection of claim 40.

Thirdly, bandwidth and latency are not necessarily related in the manner suggested by the Examiner. A satellite link, for example, may have substantial bandwidth, yet latency can be very high due to the extreme distances through space inherent in satellite communications. Similarly, a low bandwidth connection may exhibit very low latency for relatively short messages if no other traffic is using the connection at the same time.

The Examiner's reliance upon Birney's "bandwidth" calculation therefore fails to teach or suggest the particular latency measurement that is recited in claim 40.

H) Birney fails to teach "wherein the at least one of the set of factors is indicative of time intervals between successive receive times for each response to the requested files" as recited in claim 41.

The Answer Brief simply repeats the prior section's reference to Birney's bandwidth determination feature and then states, inexplicably, that "the client/server request a stream (sic) and the rate is indirectly related to the latency". At best, this statement is utterly unrelated to the language of claim 41.

Even to the extent that the Examiner intended to relate Birney's bandwidth measurement to the language of claim 41, this is not a valid argument for the same reasons presented above. Like the prior section, the rejection of claim 41 that is currently of record is simply not related to the actual language of the claim.

I) Birney fails to teach "wherein the at least one of the set of factors is indicative of delays or losses in one or more of the plurality of TCP connections" as recited in claim 42.

Again, the rejection set forth in the Answer Brief does not consider the actual language of our claims. Birney's bandwidth determination technique does not anticipate or suggest the unique language of claim 42, just as it does not teach the language of claims 40 or 41.

J) Birney fails to teach "wherein the files are requested from the web server using Hyper Text Transfer Protocol (HTTP), and wherein the web server is without specialized server-side intelligence to respond to said requesting", as recited in dependent claim 44.

One example of a system that uses file-based media distribution is described in our Specification at paragraph 0051. In that embodiment, files may be distributed using a conventional HTTP server without the need for specialized server-side software (such as Windows Media Server) to support streaming connections.

The entire focus of the Birney reference is to provide specialized server-side software that can manage the streaming connection to the client. The embodiment of claim 44 does not require specialized software to support streaming video, since the client is able to determine desired files and to request

the files from the server using conventional HTTP. This would not be possible in the Birney system without specialized server-side intelligence.

At the very least, the Birney reference fails to teach that files are requested from the web server using the HTTP protocol. HTTP is not typically compatible with streaming media; since Birney relates to streaming media rather than files, there would be no reason for Birney to incorporate this feature.

K) The art fails to teach "wherein at least one of the set of servers is a cache server of a network infrastructure operator", as recited in dependent claim 45.

Even to the extent that cache servers themselves may have been previously known, such caches were not used to deliver media files in the manner recited in claim 45. Hence, the "admitted prior art" referenced by the Examiner does not extend to the full breadth of claim 45. Again, the rejection of record does not anticipate the full extent of our claim language.

L) Birney fails to teach a media player that performs the particular method of claim 46.

Claim 46 recites five method steps that are executed by the media player to generate the set of factors referenced in claim 20. This method includes a number of features relating to monitoring time intervals between successive receive times for each of the requested files, and then calculating performance metrics based upon these time intervals.

In response, the Answer Brief cites Birney's description of a CPU monitor that executes on the video server. This monitor fails to describe any sort of processing by the media player, so it certainly does not meet the various features recited in claim 46. Further, the "CPU monitor" on the server is not relevant to

time intervals between successive receive times for files requested by a media player.

The cited portions of Birney completely fail to teach or suggest the claimed features of claim 35 for which they are cited.

M) Birney fails to teach "comparing a current performance factor of the set of factors with a set of one or more trigger thresholds, wherein the set of one or more trigger thresholds is determined by a combination of two of the set of factors relating to a current read ahead margin and a minimum safety margin, wherein the current read ahead margin is an amount of contiguously available, sequentially arranged requested files of video received by the media player for playback at a current playback time index", as recited in claim 47.

Claim 47 provides additional detail about the media player's "making" process. The Answer Brief alleges that the Birney reference teaches "trigger thresholds", but it does not address the additional features found in this claim. Even to the extent that Birney may imply some sort of trigger threshold (a conclusion that we dispute), Birney certainly does not teach or suggest the remaining features of this claim, including the manner in which the trigger thresholds are formed. The rejection of record therefore fails to teach the full extent of claim 47.

N) Birney fails to teach "said requesting comprises issuing for each of the plurality of sequential ones of the files a request with the filename of that file, and said automatically requesting comprises issuing for each of the files a request with the filename of that file", as recited in claim 48.

As we noted at the outset, the Birney reference relates to conventional streaming video rather than any sort of file-based scheme for delivering media content. Birney therefore fails to describe many of the different aspects of our

claims, including the storing multiple files for each of the different copies of the video, using the same time index for files in different copies of the video, and sequentially requesting files by the media player. Birney operates in a fundamentally different manner in which the specialized server selects and delivers a video stream to a client. The Birney client has no opportunity to request particular files, since the Birney system is organized in a fundamentally different manner.

Claim 48 adds additional detail by reciting that the media player requests sequential files by issuing a requests that include the filenames of the files. This is entirely antithetical to the operation of the Birney system, which uses a single media stream and that uses the server to adapt the stream on behalf of the client. The Birney client would have no ability or need to obtain the filename of a requested file, since Birney does not allow the media player to request individual files at all. Once again, the cited art fails to disclose the actual language of our claims.

O) Conclusion

In general, the various rejections of record do not consider the full extent of our actual claim language. When the references are truly compared to the language of our claims, it is apparent that our claims contain many features that patentably distinguish over the art of record.

For all the reasons stated herein and in the original Appeal Brief, then, Birney and the other references of record fail to describe every element and limitation of our claimed inventions. We therefore repeat our request that the

Board reverse all of the rejections contained in the Final Office Action mailed on February 22, 2010.

In the unlikely event that the Patent Office determines that an extension and/or other relief is required for entry of this Reply Brief or to otherwise prevent abandonment of this matter, the Patent Owner hereby petitions for any required relief, including any extension of time, and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-2091.

Respectfully submitted,

Ingrassia, Fisher & Lorenz PC

Dated: Monday, April 18, 2011

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)	5535

70560 7590 05/10/2011

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EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
11116783	4/28/2005	MAJOR ET AL.	066.0141 (P2004-04-01.1)

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EXAMINER	
NINOS DONABED	
ART UNIT	**PAPER**
2444	20110427

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Commissioner for Patents

The reply Brief filed on April 18, 2011 has been considered and placed in the file. No further action by the examiner is deemed necessary, and the case has been forwarded to the Board of Appeal and Interferences.

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444

/N. D./
Examiner, Art Unit 2444

PTO-90C (Rev.04-03)

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)	5535

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Appeal No: 2011-008734
Application: 11/116,783
Appellant: R. Drew Major et al.

Board of Patent Appeals and Interferences
Docketing Notice

Application 11/116,783 was received from the Technology Center at the Board on May 09, 2011 and has been assigned Appeal No: 2011-008734.

In all future communications regarding this appeal, please include both the application number and the appeal number.

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By order of the Board of Patent Appeals and Interferences.

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Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	70560
Filer:	Brett Carlson/Sharron Castillo
Filer Authorized By:	Brett Carlson
Attorney Docket Number:	066.0141 (P2004-04-01.1)
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Filing Date:	28-APR-2005
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Application Type:	Utility under 35 USC 111(a)

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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Power of Attorney	20130424_POA_P2004-04-01-1.pdf	155604 a5936465c4525e7424990e74e32e66f01483b5fb	no	2

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2	Assignee showing of ownership per 37 CFR 3.73.	20130424_Stmt373b_P2004-04-01-1.pdf	434944 e1c5339611d80585a82e2f36632f3892ca223836	no	2

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

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If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

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If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/AIA/80 (07-12)
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POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(c).

I hereby appoint:

☑ Practitioners associated with Customer Number: 110240

OR

☐ Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used):

Name	Registration Number	Name	Registration Number

As attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent applications a ssigned only to the undersigned according to the USPTO assignment records or assignments docu ments attached to this form in accordance with 37 CFR 3.73(c).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(c) to:

☑ The address associated with Customer Number: 110240

OR

☐	Firm or Individual Name		
	Address		
	City		
	Country		
	Telephone		Email

Assignee Name and Address: DISH Digital L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

A copy of this form, together with a statement under 37 CFR 3.73(c) (Form PTO/SB/96 or equivalent) is required to be Filed in each application in which this form is used. The statement under 37 CFR 3.73(c) may be completed by one of The practitioners appointed in this form, and must identify the application in which this Power of Attorney is to be filed.

SIGNATURE of Assignee of Record
The individual whose signature and title is supplied below is authorized to act on behalf of the assignee

Signature	/John T. Kennedy/	Date	12-12-2012
Name	John T. Kennedy	Telephone	303.723.1725
Title	Legal Secondee and Acting Chief IP Counsel		

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

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2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: DISH DIGITAL L.L.C.

Application No./Patent No.: 11/116,783 Filed/Issue Date: April 28, 2005

Titled: APPARATUS, SYSTEM, AND METHOD FOR ADAPTIVE-RATE SHIFTING OF STREAMING CONTENT

DISH DIGITAL L.L.C. , a limited liability company

(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.

states that it is:

1. ☒ the assignee of the entire right, title, and interest in;

2. ☐ an assignee of less than the entire right, title, and interest in (The extent (by percentage) of its ownership interest is _____ %); or

3. ☐ the assignee of an undivided interest in the entirety of (a complete assignment from one of the joint inventors was made)

the patent application/patent identified above, by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy therefore is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: R. Drew Major, Mark B. Hurst To: Move Networks, Inc.

The document was recorded in the United States Patent and Trademark Office at
Reel 018020 , Frame 0750 , or for which a copy thereof is attached.

2. From: Move Networks, Inc. To: EchoStar Advanced Technologies L.L.C.

The document was recorded in the United States Patent and Trademark Office at
Reel 025570 , Frame 0047 , or for which a copy thereof is attached.

3. From: EchoStar Advanced Technologies L.L.C. To: DISH Digital L.L.C.

The document was recorded in the United States Patent and Trademark Office at
Reel 029894 , Frame 0512 , or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet(s).

☐ As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (*i.e.*, a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

/BRETT A. CARLSON, REG. NO. 39928/	April 24, 2013
Signature	Date
Brett A. Carlson	Attorney of Record
Printed or Typed Name	Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)

CONFIRMATION NO. 5535

110240
Ingrassia Fisher & Lorenz, P.C. (DISH Digital)
7010 East Cochise Road
Scottsdale, AZ 85253

POA ACCEPTANCE LETTER

OC000000060781136

Date Mailed: 05/01/2013

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/24/2013.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/erimando/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)

CONFIRMATION NO. 5535

POWER OF ATTORNEY NOTICE

70560
INGRASSIA FISHER & LORENZ, P.C. (EchoStar)
7010 E. COCHISE ROAD
SCOTTSDALE, AZ 85253

OC000000060781074

Date Mailed: 05/01/2013

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/24/2013.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/erimando/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/116,783	04/28/2005	R. Drew Major	066.0141 (P2004-04-01.1)	5535

110240 7590 07/23/2014

Ingrassia Fisher & Lorenz, P.C. (DISH Digital)
7010 East Cochise Road
Scottsdale, AZ 85253

EXAMINER	
PAPPAS, PETER	
ART UNIT	PAPER NUMBER
2444	

NOTIFICATION DATE	DELIVERY MODE
07/23/2014	ELECTRONIC

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@ifllaw.com
ipdept@echostar.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte R. DREW MAJOR and MARK B. HURST

Appeal 2011-008734
Application 11/116,783
Technology Center 3600

Before ANTON W. FETTING, BIBHU R. MOHANTY, and MCHAEL C. ASTORINO, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 20–21, 23–25, 35–38, and 40–50 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is directed to a system for adaptive rate-content streaming (Spec. ¶ 12). Claim 20, reproduced below with the numbering in brackets added, is representative of the subject matter on appeal.

> 20. A method for presenting rate-adaptive streams, the method comprising:
>
> [1] streaming by a media player operating on an end user station a video from a set of one or more servers, [2] wherein each of a plurality of different copies of the video encoded at different bit rates is stored as multiple files on the set of servers, [3] wherein each of the multiple files yields a different portion of the video on playback, wherein the multiple files across the different copies yield the same portions of the video on playback, each of said files having a time index such that the files whose playback is the same portion of the video for each of the different copies have the same time index in relation to the beginning of the video, and wherein the streaming comprises:
>
> [4] requesting by the media player a plurality of sequential ones of the files of one of the copies from the set of servers over a plurality of Transmission Control Protocol (TCP) connections based on the time indexes;
>
> [5] automatically requesting by the media player from the set of servers over the plurality of TCP connections subsequent portions of the video by requesting for each such portion one of the files from one of the copies dependent upon successive determinations by the media player to shift the playback quality to a higher or lower quality one of the different copies, said automatically requesting including,
>
> [6] regularly generating a set of one or more factors indicative of the current ability to sustain the streaming of the video using the files from different ones of the copies, wherein the set of one or more factors relate to the performance of the network; and
>
> [7] making the successive determinations to shift the playback quality based on at least one of the set of factors to achieve continuous

playback of the video using the files of the highest quality one of the copies determined sustainable at that time; and

[8] presenting the video by playing back with the media player on the end user station the requested files in order of ascending playback time.

THE REJECTIONS

The following rejections are before us for review:

Claims 20, 21, 23–26, 35–38, and 40–50 are rejected under 35 U.S.C. § 103(a) as unpatentable over Birney ("Intelligent Streaming" Microsoft Corporation, May 2003) (hereafter Birney), Kalra (US 6,490,627 B1, iss. Dec. 3, 2002) and Quigg-Brown (US 2003/0152036 A1, pub. Aug. 14, 2003).

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence[1].

ANALYSIS

The Appellants argue that the rejection of claim 20 is improper because the prior art fails to disclose claim limitation [2] (Br. 10–11, Reply Br. 6).

In contrast, the Examiner has determined that the cited claim limitation is found in Birney (Ans. 4, 13–14).

---

[1] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

We agree with the Appellants. Here, the cited claim limitation [2] requires:

> [2] wherein *each of a plurality of different copies* of the video encoded at different bit rates *is stored as multiple files* on the set of servers. (Claim 1, emphasis added).

Here, cited claim limitation [2] requires that the plurality of different copies of the video are *stored as multiple files*. In contrast, the cited portions of the Birney reference fail to show this. While Birney at page 2 in the "Multiple-Bit-Rate Encoding section" does disclose that there are "a number of discrete, user-definable audio and video streams" it is also disclosed in the same sentence that these streams are "encoded into a *single* Windows Media stream" (emphasis added). As these streams are encoded into a *single* stream, they are not *stored as multiple files* as the claim limitation requires.

The Examiner has also made a reference to cited claim limitation [2] being found in Kalra at Figures 7A–7B and column 6, lines 10–65 (Ans. 14). While Kalra at Figure 7A does show multiple streams it is not disclosed that they are *stored* as multiple files. Further, Kalra at column 6, lines 36–65, shows that Figure 7B, rather than Figure 7A, discloses the data format *when stored*. Kalra in Figure 7B shows a *single stored* stream with slices of the individual files. Thus, Kalra fails to disclose that the different copies of the video are *stored as multiple files*.

For these above reasons, the rejection of claim 20 and its dependent claim is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting the claims as listed in the Rejection section above.

DECISION

The Examiner's rejection of claims 20, 21, 23–26, 35–38, and 40–50 is reversed.

REVERSED

mp

Electronic Acknowledgement Receipt

EFS ID:	19715584
Application Number:	11116783
International Application Number:	
Confirmation Number:	5535
Title of Invention:	Apparatus, system, and method for adaptive-rate shifting of streaming content
First Named Inventor/Applicant Name:	R. Drew Major
Customer Number:	110240
Filer:	Brett Carlson/Sharron Castillo
Filer Authorized By:	Brett Carlson
Attorney Docket Number:	066.0141 (P2004-04-01.1)
Receipt Date:	29-JUL-2014
Filing Date:	28-APR-2005
Time Stamp:	16:24:03
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	$180
RAM confirmation Number	2862
Deposit Account	502091
Authorized User	CARLSON, BRETT A.

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Form (SB08)	20140729_IDS_P2004-04-01-1.pdf	622752 15a3447dce563853d27675f9a5759aade5daeb00	no	25
Warnings:					
Information:					
2	Transmittal Letter	20140729_IDSCert_P2004-04-01-1.pdf	107451 d826c4bb8cbfa1fcc7a162e03340400fb28de00dd	no	1
Warnings:					
Information:					
3	Foreign Reference	EP1202487A2.pdf	1169542 e3961c13249effa85f97034caddedff4dbedd77d	no	21
Warnings:					
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4	Foreign Reference	EP1298931A2.pdf	564750 17988c97c90278abafab90accdb307ac133ea832	no	9
Warnings:					
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5	Foreign Reference	EP1395014A1.pdf	430935 5bd3cb3cce066c412e84ceb0db005d86ebc13605	no	11
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Information:					
6	Foreign Reference	GB2367219A.pdf	1022882 4b911a5301386062eb7560e4982065ed5cfef6d	no	24
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Information:					
7	Foreign Reference	JP2000201343.pdf	21958041 852daf4ae4a533b5a36984e992609dbc8888bebb	no	14
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Information:					
8	Foreign Reference	JP2001092752.pdf	9449147 3115b20d4cc1a9898d8742728f2946d9e91da1b7	no	12
Warnings:					
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9	Foreign Reference	JP2004054930.pdf	7662878 7215a4460b43c2d5f49cd2e80dcb034a81c3604b	no	36
Warnings:					
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10	Foreign Reference	JP2011004225A.pdf	2693988 c96187633b1948096c41bf2f2558ceb94073c945	no	11
Warnings:					
Information:					
11	Foreign Reference	WO2001067264.pdf	1561090 14ea9fe21f267c32636564e07838fe524ece83c8	no	41
Warnings:					
Information:					
12	Foreign Reference	WO2003003760.pdf	2622813 40ea384993705bc0f97d2b4db0cc677369e25769	no	87
Warnings:					
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13	Foreign Reference	WO2003027876.pdf	5592281 937b4925b48acf8bed9f4226067eb00e31f2dcf8	no	97
Warnings:					
Information:					
14	Foreign Reference	WO2004025405.pdf	825266 e160c7648ab3c92ae53aad7efe41ffe5c6b0ebc9	no	20
Warnings:					
Information:					
15	Foreign Reference	WO2004036824.pdf	1597410 20a96cbb41a14278a3c60b1b5236e3ae012280f0	no	41
Warnings:					
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16	Foreign Reference	WO2006010113.pdf	5663204 6e292580427daf9fc8f17d85c0318e226cf0bd6a	no	118
Warnings:					
Information:					
17	Foreign Reference	WO20003009581.pdf	826054 99622dbf7cd9f4e0b6bc5216aae980d2282bd893	no	21
Warnings:					
Information:					

18	Non Patent Literature	NPL_AustraliaFirstExamRpt20111017_2011213730.pdf	27546 795a661c5ca609878f5c957bb8b15d556c8271c1	no	2
Warnings:					
Information:					
19	Non Patent Literature	NPL_CanadaOA20121015_2564861.pdf	263323 73b61068d8859ee06f177b151517158507 3e244e	no	5
Warnings:					
Information:					
20	Non Patent Literature	NPL_CanadaOA20130909_2564861.pdf	202703 3d8f8a42328da94a7d28048ccef3ec897866 1d18	no	4
Warnings:					
Information:					
21	Non Patent Literature	NPL_Clement_MoveClosesFunding.pdf	172934 c65a317075d6d88f73613f212b13b4e0964 6ea79	no	2
Warnings:					
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22	Non Patent Literature	NPL_EuropeExtSrchRpt20140710_12154559.pdf	1844529 380cc4633ad5f0a18a11207e5e7cbeceddc0 8c59	no	11
Warnings:					
Information:					
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27	Non Patent Literature	NPL_JPInterrogation20121106_2007511070.pdf	4923875 ccdd5d93559e144eaf0d083e2725122e6f55148e	no	24
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28	Non Patent Literature	NPL_JPNtcOfReject20110426_2007511070.pdf	11221634 cbdd88f13ae97d297a47f32aa0eb08a141d1bcb9	no	13
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30	Non Patent Literature	NPL_Kozamernik_MediaStreaming.pdf	6407225 7f5c49521521198a912e04f054f8405ed84f9614	no	15
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38	Non Patent Literature	NPL_OA20130913_13757571.pdf	1418297 94f483bfda2f69a58937df26fd2e02470cc4151c	no	36
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39	Non Patent Literature	NPL_Rejaie_ArchitecturalConsiderations.pdf	3252815 d638402b4b84964353e12f7de0a6dc071af47d63	no	6
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40	Non Patent Literature	NPL_Roy_SystemArchitecture.pdf	2812918 7e9c5ee17749c18ea0bd37428a2cfaa78b62fddc	no	6
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43	Non Patent Literature	NPL_Xu_PeerToPeer.pdf	4454232 01dcd4f73c5fcba31a2d951f592bf59eaebca748	no	10
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45	Non Patent Literature	NPL_Zhang_CoolStreaming.pdf	293506 79257b4aeb9b9510bf46f97c437f91285abb9784	no	14
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46	Fee Worksheet (SB06)	fee-info.pdf	30346 ec1884efdd73cc1eaba8ebe08e575075ded8e9a	no	2
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Information:					
		Total Files Size (in bytes):	137195870		

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New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PATENT ABSTRACTS OF JAPAN

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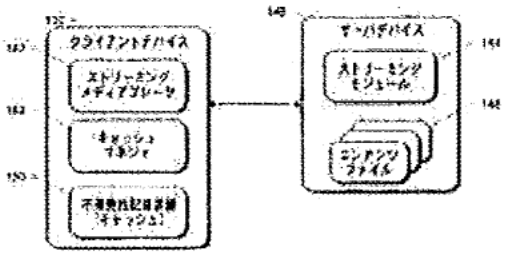
(21)Application number : 2003-180339
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(54) COMPUTER READABLE MEDIUM, SYSTEM, AND METHOD FOR CLIENT-SIDE CACHING OF STREAMING MEDIA CONTENT

(57)Abstract:
PROBLEM TO BE SOLVED: To provide a technique for client-side caching of a streaming media content.
SOLUTION: Various functions with respect to streaming media content are made available to users. Such functions includes one or more functions for streaming the media content at a rate independent of the encoded bit rate of the content to allow streaming of the content to continue even when a user has selected various shuttle control options (e.g., pause, stop, fast forward, seek, rewind, etc.), a function for allowing the streaming content to be recorded for playback at a later time, and a function for allowing the streaming content to be played back while shifting time.



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H04N 7/173	H04N	7/173	640Z	

審査請求 未請求　請求項の数 77　OL　（全 35 頁）

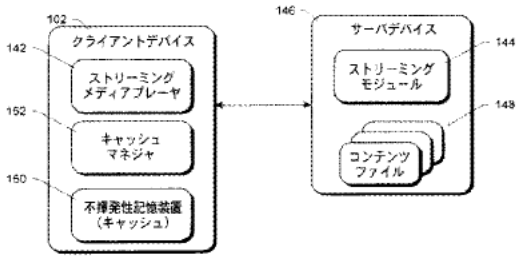
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最終頁に続く

(54)【発明の名称】ストリーミングメディアコンテンツのクライアント側でのキャッシングのためのコンピュータ可読媒体、システムおよび方法

(57)【要約】
【課題】ストリーミングメディアコンテンツのクライアント側でのキャッシングの技術を提供する。
【解決手段】ストリーミングメディアコンテンツに関する各種の機能をユーザが利用できるようにする。そのような機能には、メディアコンテンツをそのコンテンツの符号化ビットレートに依存しないレートでストリーミングすることにより、ユーザが各種のシャトルコントロールオプション（例えば一時停止、停止、早送り、シーク、巻き戻しなど）を選択した際でも、コンテンツのストリーミングを継続することを可能にする、また後の時間に再生するためにストリーミングコンテンツを記録することを可能にする、また時間をずらしてストリーミングコンテンツを再生することを可能にする、のいずれか１つまたは複数が含まれる。
【選択図】　図２



【特許請求の範囲】
【請求項１】
クライアントデバイスの１つまたは複数のプロセッサによって実行されるときに，前記１つまたは複数のプロセッサにより、
サーバデバイスから、ストリーミングメディアコンテンツを該ストリーミングメディアコンテンツの符号化ビットレートに依存しないレートで受信させる
複数の命令が格納されていることを特徴とする１つまたは複数のコンピュータ可読媒体。
【請求項２】
前記複数の命令は，さらに前記１つまたは複数のプロセッサに、
前記受信したストリーミングメディアコンテンツを不揮発性の記憶装置に保存させる
ことを特徴とする請求項１に記載の１つまたは複数のコンピュータ可読媒体。
【請求項３】
前記サーバデバイスはプロキシサーバを含むことを特徴とする請求項１に記載の１つまたは複数のコンピュータ可読媒体。
【請求項４】
前記複数の命令はさらに前記１つまたは複数のプロセッサに、
前記ストリーミングメディアコンテンツについて要求されたレートを指示する速度要求を前記サーバデバイスに送信させ、
前記ストリーミングメディアコンテンツの前記レートの指示を前記サーバデバイスから受信させる
ことを特徴とする請求項１に記載の１つまたは複数のコンピュータ可読媒体。
【請求項５】
前記要求されたレートは値ｘで表され、前記速度要求は、
プラグマ：速度＝ｘ
を含むストリーミング速度メッセージヘッダであることを特徴とする請求項４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項６】
前記要求されたレートは値ｘで表され、前記速度要求は、
速度＝ｘ
を含むストリーミング速度メッセージヘッダであることを特徴とする請求項４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項７】
サーバデバイスで実施される方法であって、
ストリーミングメディアコンテンツに対する要求をクライアントデバイスから受信することと、
前記メディアコンテンツを前記コンテンツの符号化ビットレートに依存しないレートで前記クライアントデバイスにストリーミングすることと
を含むことを特徴とする方法。
【請求項８】
前記ストリーミングメディアコンテンツに対する要求をユーザから受信することと、
前記ユーザの要求に応答して、前記サーバデバイスに前記ストリーミングメディアコンテンツを要求することと
をさらに含むことを特徴とする請求項７に記載の方法。
【請求項９】
前記受信したストリーミングメディアコンテンツをキャッシュすること
をさらに含むことを特徴とする請求項７に記載の方法。
【請求項１０】
前記サーバデバイスは、プロキシサーバを含むことを特徴とする請求項７に記載の方法。
【請求項１１】
前記ストリーミングメディアコンテンツに要求されたレートを指示する速度要求を前記サ

ーバデバイスに送信することと、
前記ストリーミングメディアコンテンツの前記レートの指示を前記サーバデバイスから受信することと
をさらに含むことを特徴とする請求項７に記載の方法。
【請求項１２】
前記要求されたレートは値ｘで表され、前記速度要求は、
プラグマ：速度＝ｘ
を含むストリーミング速度メッセージヘッダであることを特徴とする請求項１１に記載の方法。
【請求項１３】
前記要求されたレートは値ｘで表され、前記速度要求は、速度＝ｘ
を含むストリーミング速度メッセージヘッダであることを特徴とする請求項１１に記載の方法。
【請求項１４】
クライアントデバイスの１つまたは複数のプロセッサによって実行されると、前記１つまたは複数のプロセッサに、
ストリーミングメディアコンテンツの再生を少なくとも一時的に停止する要求を受信させ、
前記クライアントデバイスにおける前記ストリーミングメディアコンテンツの再生を停止させ、
前記ストリーミングメディアコンテンツの再生を停止させる要求に関わらず、前記ストリーミングメディアコンテンツの受信を継続させる
複数の命令が格納されていることを特徴とする１つまたは複数のコンピュータ可読媒体。
【請求項１５】
前記要求は停止コマンドを含むことを特徴とする請求項１４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項１６】
前記要求は一時停止コマンドを含むことを特徴とする請求項１４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項１７】
前記複数の命令はさらに、前記１つまたは複数のプロセッサに前記受信したストリーミングメディアコンテンツをキャッシュさせることを特徴とする請求項１４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項１８】
サーバからストリーミングメディアコンテンツを受信することと、
ユーザからシャトルコントロールオプションを受信することと、
前記サーバに前記シャトルコントロールオプションを指示せずに、前記シャトルコントロールオプションに従って前記ストリーミングメディアコンテンツの再生を変更することと
を含むことを特徴とする方法。
【請求項１９】
前記シャトルコントロールオプションは停止コマンドを含むことを特徴とする請求項１８に記載の方法。
【請求項２０】
前記シャトルコントロールオプションは一時停止コマンドを含むことを特徴とする請求項１８に記載の方法。
【請求項２１】
前記シャトルコントロールオプションは巻き戻しコマンドを含むことを特徴とする請求項１８に記載の方法。
【請求項２２】
前記シャトルコントロールオプションは早送りコマンドを含むことを特徴とする請求項１

８に記載の方法。
【請求項２３】
前記サーバから受信すると前記ストリーミングメディアコンテンツをキャッシュすることをさらに含むことを特徴とする請求項１８に記載の方法。
【請求項２４】
クライアントデバイスの１つまたは複数のプロセッサによって実行されると、前記１つまたは複数のプロセッサに、
サーバデバイスからストリーミングメディアコンテンツを受信させ、
前記受信したストリーミングメディアコンテンツを前記クライアントデバイスの不揮発性記憶装置に保存させる
複数の命令が格納されていることを特徴とする１つまたは複数のコンピュータ可読媒体。
【請求項２５】
前記サーバデバイスはプロキシサーバを含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項２６】
前記不揮発性記憶装置はハードディスクドライブを含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項２７】
前記不揮発性記憶装置は、光ディスクおよび光ディスクドライブを含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項２８】
前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる前記命令は、コンテンツをキャッシュすることが許される旨の指示を前記サーバデバイスから受信した場合にのみ、前記１つまたは複数のプロセッサに、その受信したストリーミングメディアコンテンツを保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項２９】
前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる前記命令は、ストリーミングメディアコンテンツのキャッシングが前記サーバデバイスによってサポートされることを示すサポートヘッダを含むメッセージを前記サーバデバイスから受信した場合にのみ、前記１つまたは複数のプロセッサに、その受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項３０】
前記サポートヘッダは、ストリーミングメディアコンテンツのクライアントでのキャッシングが前記サーバデバイスによってサポートされることを示す機能名を含み、前記機能名は、
ｃｏｍ．ｍｉｃｒｏｓｏｆｔ．ｗｍ．ｆａｓｔｃａｃｈｅ
を含むことを特徴とする請求項２９に記載の１つまたは複数のコンピュータ可読媒体。
【請求項３１】
前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる前記命令は、キャッシュ制御指示に関連のストリーミングメディアコンテンツをキャッシュすることが前記クライアントデバイスに許されることを示すキャッシュ制御指示を含むメッセージを前記サーバデバイスから受信した場合にのみ、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。
【請求項３２】
前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを

前記不揮発性記憶装置に保存させる前記命令は、前記ストリーミングメディアコンテンツのキャッシュが許されることが、前記ストリーミングメディアコンテンツの識別子によって示されている場合にのみ、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３３】

前記識別子はＵＲＬ（Ｕｎｉｆｏｒｍ　ＲｅｓｏｕｒｃｅＬｏｃａｔｏｒ）を含むことを特徴とする請求項３２に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３４】

前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる前記命令は、ユーザがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしていない場合にのみ、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３５】

前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる前記命令は、前記クライアントデバイスのメディアプレーヤがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしていない場合にのみ、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３６】

前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる前記命令は、前記ストリーミングメディアコンテンツのタイプがキャッシュ可能タイプである場合にのみ、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存させる命令を含むことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３７】

前記複数の命令はさらに前記１つまたは複数のプロセッサに、
前記ストリーミングメディアコンテンツに対する事後の要求を受信させ、
前記事後の要求に応答して、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置から取得させる
ことを特徴とする請求項２４に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３８】

前記複数の命令はさらに前記１つまたは複数のプロセッサに、
前記ストリーミングメディアコンテンツの有効期限が切れているかどうかを調べさせ、
前記ストリーミングメディアコンテンツの有効期限が切れていない場合にのみ、前記事後の要求に応答して、前記不揮発性記憶装置から前記ストリーミングメディアコンテンツを取得させる
ことを特徴とする請求項３７に記載の１つまたは複数のコンピュータ可読媒体。

【請求項３９】

前記複数の命令はさらに前記１つまたは複数のプロセッサに、
前記ストリーミングメディアコンテンツの有効期限が切れているかどうかを調べさせ、
前記ストリーミングメディアコンテンツの有効期限が切れている場合は、前記ストリーミングメディアコンテンツを再確認させる
ことを特徴とする請求項３７に記載の１つまたは複数のコンピュータ可読媒体。

【請求項４０】

前記複数の命令はさらに前記１つまたは複数のプロセッサに、

前記不揮発性記憶装置からの前記ストリーミングメディアコンテンツの再生に係わるロギング情報を含むメッセージを生成させ、前記メッセージは、データ構造のメッセージ本体部分に前記ロギングが含まれることを示すロギング情報ヘッダを含むことを特徴とする請求項３７に記載の１つまたは複数のコンピュータ可読媒体。

【請求項４１】

前記ロギング情報ヘッダは、Ｃｏｎｔｅｎｔ－Ｔｙｐｅ：ａｐｐｌｉｃａｔｉｏｎ／ｘ－ｗｍｓ－ｓｅｎｄｅｖｅｎｔを含むことを特徴とする請求項４０に記載の１つまたは複数のコンピュータ可読媒体。

【請求項４２】

不揮発性記憶装置と、

システム上で再生するためにストリーミングメディアコンテンツをサーバデバイスから受信するように構成され、さらに、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成されたストリーミングメディアプレーヤコンポーネントとを備えることを特徴とするシステム。

【請求項４３】

前記ストリーミングメディアプレーヤコンポーネントはさらに、ストリーミングメディアコンテンツのキャッシングが前記サーバデバイスによってサポートされることを示すサポートヘッダを含むメッセージを前記サーバデバイスから受信した場合にのみ、前記受信したストリーミングメディアコンテンツを前記不揮発性記憶装置に保存するように構成されることを特徴とする請求項４２に記載のシステム。

【請求項４４】

前記サポートヘッダは、ストリーミングメディアコンテンツのクライアントでのキャッシングが前記サーバデバイスによってサポートされることを示す機能名を含み、前記機能名は、ｃｏｍ．ｍｉｃｒｏｓｏｆｔ．ｗｍ．ｆａｓｔｃａｃｈｅを含むことを特徴とする請求項４３に記載のシステム。

【請求項４５】

前記ストリーミングメディアプレーヤコンポーネントはさらに、前記コンテンツのキャッシングが許されることを示す指示を前記サーバデバイスから受信した場合にのみ、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成されることを特徴とする請求項４２に記載のシステム。

【請求項４６】

前記ストリーミングメディアプレーヤコンポーネントはさらに、キャッシュ制御指示に関連のストリーミングメディアコンテンツをキャッシュすることが前記システムに許されることを示すキャッシュ制御指示を含むメッセージを前記サーバデバイスから受信した場合にのみ、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成されることを特徴とする請求項４２に記載のシステム。

【請求項４７】

前記ストリーミングメディアプレーヤコンポーネントはさらに、前記ストリーミングメディアコンテンツのキャッシングが許されることが、前記ストリーミングメディアコンテンツの識別子によって示されている場合にのみ、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成されることを特徴とする請求項４２に記載のシステム。

【請求項４８】

前記識別子はＵＲＬ（Ｕｎｉｆｏｒｍ　Ｒｅｓｏｕｒｃｅ　Ｌｏｃａｔｏｒ）を含むことを特徴とする請求項４７に記載のシステム。

【請求項４９】

前記ストリーミングメディアプレーヤコンポーネントはさらに、ユーザがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしていない場合にのみ、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成

されることを特徴とする請求項４２に記載のシステム。
【請求項５０】
前記ストリーミングメディアプレーヤコンポーネントはさらに、前記ストリーミングメディアプレーヤがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしていない場合にのみ、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成されることを特徴とする請求項４２に記載のシステム。
【請求項５１】
前記ストリーミングメディアプレーヤコンポーネントはさらに、前記ストリーミングメディアコンテンツのタイプがキャッシュ可能タイプである場合にのみ、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶するように構成されることを特徴とする請求項４２に記載のシステム。
【請求項５２】
前記ストリーミングメディアプレーヤコンポーネントはさらに、
前記ストリーミングメディアコンテンツに対する事後の要求を受信し、
前記事後の要求に応答して、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置から取得する
ように構成されることを特徴とする請求項４２に記載のシステム。
【請求項５３】
前記ストリーミングメディアプレーヤコンポーネントはさらに、
前記ストリーミングメディアコンテンツの有効期限が切れているかどうかを調べ、
前記ストリーミングメディアコンテンツの有効期限が切れていない場合にのみ、前記事後の要求に応答して、前記ストリーミングメディアコンテンツを前記不揮発性記憶装置から取得する
ように構成されることを特徴とする請求項５２に記載のシステム。
【請求項５４】
前記ストリーミングメディアプレーヤコンポーネントはさらに、
前記ストリーミングメディアコンテンツの有効期限が切れているかどうかを調べ、
前記ストリーミングメディアコンテンツの有効期限が切れている場合は、前記ストリーミングメディアコンテンツを再確認する
ように構成されることを特徴とする請求項５２に記載のシステム。
【請求項５５】
前記ストリーミングメディアプレーヤコンポーネントはさらに、
前記不揮発性記憶装置からの前記ストリーミングメディアコンテンツの再生に係わるロギング情報を含むメッセージを生成し、前記メッセージは、データ構造のメッセージ本体部分に前記ロギング情報が含まれることを示すロギング情報ヘッダを含む
ように構成されることを特徴とする請求項５２に記載のシステム。
【請求項５６】
前記ロギング情報ヘッダは、
Ｃｏｎｔｅｎｔ－Ｔｙｐｅ：ａｐｐｌｉｃａｔｉｏｎ／ｘ－ｗｍｓ－ｓｅｎｄｅｖｅｎｔ
を含むことを特徴とする請求項５５に記載のシステム。
【請求項５７】
クライアントデバイスの１つまたは複数のプロセッサによって実行されると、前記１つまたは複数のプロセッサに、
サーバデバイスからストリーミングメディアコンテンツを受信させ、
後の時間に再生するために、前記受信したストリーミングメディアコンテンツを前記クライアントデバイスでキャッシュさせる
複数の命令が格納されていることを特徴とする１つまたは複数のコンピュータ可読媒体。
【請求項５８】
前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツをキャッシュさせる前記命令は、コンテンツのキャッシングが許される旨の指示を前記サー

バデバイスから受信した場合にのみ、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツを保存させる命令を含むことを特徴とする請求項５７に記載の１つまたは複数のコンピュータ可読媒体。

【請求項５９】

前記後の時間は、前記ストリーミングメディアコンテンツすべてを前記サーバデバイスから受信した後の時間を含むことを特徴とする請求項５７に記載の１つまたは複数のコンピュータ可読媒体。

【請求項６０】

クライアントデバイスの１つまたは複数のプロセッサによって実行されると、前記１つまたは複数のプロセッサに、

サーバデバイスからストリーミングメディアコンテンツを受信させ、

前記ストリーミングメディアコンテンツの再生の時間をずらすことを可能にさせる

複数の命令が格納されていることを特徴とする１つまたは複数のコンピュータ可読媒体。

【請求項６１】

前記複数の命令はさらに、前記１つまたは複数のプロセッサに、前記受信したストリーミングメディアコンテンツをキャッシュさせることを特徴とする請求項６０に記載の１つまたは複数のコンピュータ可読媒体。

【請求項６２】

不揮発性記憶装置と、

ストリーミングメディアコンテンツの符号化ビットレートに依存しないレートで前記ストリーミングメディアコンテンツをサーバデバイスから受信し、

前記ストリーミングメディアコンテンツを前記不揮発性記憶装置に記憶し、

前記ストリーミングメディアコンテンツの後の時間の再生を可能にし、

前記ストリーミングメディアコンテンツの時間をずらした再生を可能にし、

受け取ったシャトルコントロールオプションを前記サーバデバイスに指示することなく、前記シャトルコントロールオプションに従って、前記ストリーミングメディアコンテンツの再生を変更し、

ストリーミングメディアコンテンツの再生を少なくとも一時的に停止する要求を受信し、

前記システムにおける前記ストリーミングメディアコンテンツの再生を停止し、

前記ストリーミングメディアコンテンツの再生を停止させる要求に関わらず、前記ストリーミングメディアコンテンツの受信を継続する

ように構成されたストリーミングメディア再生コンポーネントと

を備えることを特徴とするシステム。

【請求項６３】

データ構造が格納されたコンピュータ可読媒体であって、

データ構造タイプを識別するデータを含む第１の部分と、

１つまたは複数のヘッダを識別するデータを含む第２の部分であって、前記１つまたは複数のヘッダは、ストリーミングメディアコンテンツのクライアントでのキャッシングが、前記ストリーミングメディアコンテンツのソースによってサポートされるかどうかを示すサポートヘッダを含む第２の部分と、

前記データ構造中の前記第２の部分の終わりを識別するデータを含む第３の部分と

を備えることを特徴とするコンピュータ可読媒体。

【請求項６４】

前記サポートヘッダは、ストリーミングメディアコンテンツのクライアントでのキャッシングが前記ソースによってサポートされることを示す機能名を含み、前記機能名は、

ｃｏｍ．ｍｉｃｒｏｓｏｆｔ．ｗｍ．ｆａｓｔｃａｃｈｅ

を含むことを特徴とする請求項６３に記載のコンピュータ可読媒体。

【請求項６５】

データ構造が格納されたコンピュータ可読媒体であって、

データ構造タイプを識別するデータを含む第１の部分と、

キャッシュ制御指示に関連のストリーミングメディアコンテンツをクライアントデバイスがキャッシュできるかどうかを示すキャッシュ制御指示を識別するデータを含む第２の部分と、
前記データ構造中の前記第２の部分の終わりを識別するデータを含む第３の部分と
を備えることを特徴とするコンピュータ可読媒体。
【請求項６６】
前記キャッシュ制御指示はさらに、プロキシデバイスが前記ストリーミングメディアコンテンツをキャッシュできるかどうかを示すことを特徴とする請求項６５に記載のコンピュータ可読媒体。
【請求項６７】
前記キャッシュ制御指示はさらに、ストリーミングメディアコンテンツのキャッシングをサポートしないキャッシングデバイスが前記ストリーミングメディアコンテンツをキャッシュできるかどうかを示すことを特徴とする請求項６５に記載のコンピュータ可読媒体。
【請求項６８】
前記クライアントデバイスがストリーミングメディアコンテンツをキャッシュできることを示すのに、キャッシュ制御指示を使用しないことを特徴とする請求項６５に記載のコンピュータ可読媒体。
【請求項６９】
前記クライアントデバイスのストリーミングメディアプレーヤが前記ストリーミングメディアコンテンツをキャッシュできることを示すキャッシュ制御指示は、
ｎｏ－ｃａｃｈｅ，　ｕｓｅｒ－ｐｕｂｌｉｃ
を含むことを特徴とする請求項６５に記載のコンピュータ可読媒体。
【請求項７０】
前記クライアントデバイスのストリーミングメディアプレーヤが前記ストリーミングメディアコンテンツをキャッシュできないことを示すキャッシュ制御指示は、
ｎｏ－ｕｓｅｒ－ｃａｃｈｅ
を含むことを特徴とする請求項６５に記載のコンピュータ可読媒体。
【請求項７１】
データ構造が格納されたコンピュータ可読媒体であって、
データ構造タイプを識別するデータを含む第１の部分と、
１つまたは複数のヘッダを識別するデータを含む第２の部分であって、前記１つまたは複数のヘッダは、ストリーミングメディアコンテンツをストリーミングする速度を示すストリーミング速度ヘッダを含み、前記ストリーミングメディアコンテンツをストリーミングする速度は、前記ストリーミングメディアコンテンツの符号化ビットレートに依存しない第２の部分と、
前記データ構造中の前記第２の部分の終わりを識別するデータを含む第３の部分と
を備えることを特徴とするコンピュータ可読媒体。
【請求項７２】
前記ストリーミングメディアコンテンツをストリーミングする速度は値ｘによって表され、前記ストリーミング速度ヘッダは、
プラグマ：速度＝ｘ
を含むことを特徴とする請求項７１に記載のコンピュータ可読媒体。
【請求項７３】
前記ストリーミングメディアコンテンツをストリーミングする速度は値ｘによって表され、前記ストリーミング速度ヘッダは、
速度＝ｘ
を含むことを特徴とする請求項７１に記載のコンピュータ可読媒体。
【請求項７４】
前記ストリーミングメディアコンテンツをストリーミングする速度は、前記ストリーミングメディアコンテンツを受信するクライアントデバイスによって要求された速度であるこ

とを特徴とする請求項７１に記載のコンピュータ可読媒体。
【請求項７５】
データ構造が格納されたコンピュータ可読媒体であって，
データ構造タイプを識別するデータを含む第１の部分と、
１つまたは複数のヘッダを識別するデータを含む第２の部分であって、前記１つまたは複数のヘッダは、前記データ構造のメッセージ本体部分に、クライアントデバイスキャッシュからのストリーミングメディアコンテンツの再生に係わるロギング情報が含まれることを示すロギング情報ヘッダを含む第２の部分と、
前記データ構造中の前記第２の部分の終わりを識別するデータを含む第３の部分と
を備えることを特徴とするコンピュータ可読媒体。
【請求項７６】
前記ロギング情報ヘッダは、
Ｃｏｎｔｅｎｔ－Ｔｙｐｅ：ａｐｐｌｉｃａｔｉｏｎ／ｘ－ｗｍｓ－ｓｅｎｄｅｖｅｎｔ
を含むことを特徴とする請求項７５に記載のコンピュータ可読媒体。
【請求項７７】
前記複数の命令が、さらに前記１つまたは複数のプロセッサに、
前記ストリーミングメディアコンテンツに対する要求をユーザから受信させ、前記ユーザの要求に応答して前記サーバデバイスに対して前記ストリーミングメディアコンテンツを要求させる
ことを特徴とする請求項１に記載の１つまたは複数のコンピュータ可読媒体。
【発明の詳細な説明】
【０００１】
【発明の属する技術分野】
本発明は、ストリーミングメディアに関し、詳細には、ストリーミングメディアコンテンツのクライアント側でのキャッシングに関する。
【０００２】
【従来の技術】
オーディオ、ビデオ、および／またはテキストメディアコンテンツのストリーミングなどのコンテンツストリーミングが次第に普及しつつある。一般に、用語「ストリーミング」とは、メディアを表すデータがネットワークを通じてクライアントコンピュータに提供され、クライアントコンピュータは、「ファイル」全体が配信されるのを待つのではなく、それをネットワークサーバから受信しながらストリーミングコンテンツをレンダリングすることを意味する。
【０００３】
ストリーミングメディアコンテンツの利用性が高まることにより、以前にはインターネットまたは他のコンピュータネットワークを介しては入手できなかった様々な情報コンテンツの入手が可能になっている。ライブコンテンツは、そのようなコンテンツの顕著な一例である。ストリーミングメディアコンテンツを使用すると、注目すべきイベントのオーディオ、ビデオ、またはオーディオ／ビジュアルの対象を、その進行と同時にインターネットを通じて放送することができる。同様に、テレビ局またはラジオ局は、インターネットを通じて各自のライブコンテンツを伝送することができる。
【０００４】
現在、ストリーミングメディアコンテンツは、「ジャストインタイム（ちょうど間に合う）配信」の概念を使用してストリーミングされている。コンテンツは、クライアントで再生するためにそのコンテンツの符号化ビットレートでクライアントに配信される。ストリームメディアコンテンツには、（例えば、再送する必要のある損失データやその他のネットワークの不整合を考慮に入れて）いくらかのバッファリングを行う。しかし、現在のクライアントシステムは通例、クライアントで行うバッファリング量を最小に抑え、それによりクライアントにおけるメモリ要件を低減し、またバッファリングによる始動待ち時間も短縮することを試みている。

【０００５】
【発明が解決しようとする課題】
しかし、現在のストリーミングメディアコンテンツおよびバッファリングシステムは、他タイプのコンテンツ再生システムに備わる機能を持たないことにより損をしている。例えばＶＣＲ（ビデオカセットレコーダ）で録画したテレビ番組はユーザによって巻き戻すことができ、すでに見た部分を容易に繰り返し見ることができ、あるいはユーザの必要に応じて後の時間に見ることができる。これに対し、現在のストリーミングメディアコンテンツシナリオでは、そのような動作をユーザによって行うことができない。ストリームメディアコンテンツを巻き戻すには、コンテンツのストリーミングを停止し、新しい位置で再開する（そしてしたがってその新しい位置から開始するストリームを再度バッファリングする）必要があり、通例ユーザは、ストリーミングメディアコンテンツを後の時間に見ることができない。すなわち、コンテンツは受信と同時にユーザに対して再生され、ユーザがコンテンツを後の時間に見たい場合はその後の時間にコンテンツをストリーミングしなければならない。
【０００６】
【課題を解決するための手段】
本発明による下記のストリーミングメディアコンテンツのクライアント側でのキャッシングは、上記の課題およびその他の課題を解決することができる。
【０００７】
以下、本発明によるストリーミングメディアコンテンツのクライアント側でのキャッシングについて説明する。
【０００８】
本発明の一実施形態によれば、ストリーミングメディアコンテンツを、コンテンツの符号化ビットレートに依存しないレートでストリーミングすることができる。
【０００９】
本発明の他の実施形態によれば、ユーザが様々なシャトルコントロールオプション（例えば一時停止、停止、早送り、シーク、巻き戻しなど）を選択した場合でも、ストリーミングメディアコンテンツのストリーミングを継続することができる。
【００１０】
本発明のさらに他の実施形態によれば、後の時間に再生するためにストリーミングメディアコンテンツを記録することができる。
【００１１】
本発明のさらに別の実施形態によれば、ストリーミングメディアコンテンツを時間をずらして再生する（ｔｉｍｅ－ｓｈｉｆｔ）ことができる。
【００１２】
追加的な実施形態によれば、サーバデバイスから受信したストリーミングメディアコンテンツをクライアントデバイスにキャッシュ（キャッシュメモリに格納）することができる。そしてクライアントデバイスのストリーミングメディアコンテンツに対する事後の要求は、サーバデバイスからそのストリーミングメディアコンテンツを再度ストリーミングするのではなく、キャッシュされたストリーミングメディアコンテンツを使用して満たすことができる。
【００１３】
本明細書の記述を通じて、同様の構成要素および／または特徴を参照する際は同じ参照符号を使用することとする。
【００１４】
【発明の実施の形態】
図面を参照して、本発明によるストリーミングメディアコンテンツのクライアント側でのキャッシングの実施の形態を以下に詳述する。ストリーミングメディアコンテンツをキャッシュすることにより、従来は利用できなかった様々な機能をユーザが利用できるようにすることができる。そのような機能の例には、コンテンツの符号化ビットレートに依存し

ないレートでメディアコンテンツをストリーミングすることにより、ユーザが各種のシャトル（ｓｈｕｔｔｌｅ）コントロールオプション（例えば一時停止、停止、早送り、シーク、巻き戻しなど）を選択した際でもコンテンツのストリーミングを継続することが可能になる、後の時間に再生するためにストリーミングコンテンツを記録することが可能になる、ストリーミングコンテンツを時間をずらして再生することが可能になることが含まれる。ストリーミングメディアコンテンツのクライアント側でのキャッシングの様々な実施形態は、これらの機能のうち異なる機能、あるいはこれらの機能の異なる機能の組合せを含むことができる。

【００１５】

図１に、ストリーミングメディアコンテンツのクライアント側でのキャッシングを用いることができる例示的なネットワーク環境１００を示す。環境１００では、複数の（ｘ個の）クライアントコンピューティングデバイス１０２（１）、１０２（２）、．．．、１０２（ｘ）が、ネットワーク１０６を介して複数（ｙ個）のオリジンサーバコンピューティングデバイス１０４（１）、１０４（２）、．．．、１０４（ｙ）に結合されている。ネットワーク１０６は、各種の従来のネットワークプロトコル（公開プロトコルおよび／または独自仕様のプロトコルを含む）のうち任意のプロトコルを用いる、各種の従来のネットワークトポロジおよびタイプ（光ネットワーク、配線および／または無線ネットワークを含む）の任意のネットワークを表すものとする。ネットワーク１０６は、例えば、インターネット、また可能性としては１つまたは複数のローカルエリアネットワーク（ＬＡＮ）および／または広域ネットワーク（ＷＡＮ）の少なくとも一部を含むことができる。

【００１６】

オリジンサーバデバイス１０４から利用可能なストリーミングメディアコンテンツを要求する際に、その要求は、クライアントデバイス１０２からネットワーク１０６を介してサーバデバイス１０４に送られる。オリジンサーバデバイス１０４はその要求を受信し、ネットワーク１０６を介して要求元のクライアントデバイス１０２にその要求されたコンテンツを返送する。１つまたは複数のプロキシサーバ（図示せず）がネットワーク１０６の一部であってよく、クライアントデバイス１０２からの要求およびクライアントデバイス１０２への応答は、実際のサーバデバイス１０４ではなく、そのようなプロキシサーバに送信し、そこから受信してもよい。クライアントデバイス１０２にメディアコンテンツをストリーミングするデバイス（オリジンサーバ、プロキシサーバ、あるいはその他のデバイス）はいずれも、そのストリームメディアコンテンツのソースデバイスと呼ばれる。

【００１７】

コンピューティングデバイス１０２および１０４はそれぞれ、各種の従来のコンピューティングデバイスのいずれであってもよく、これにはデスクトップＰＣ（パーソナルコンピュータ、パソコン）、ノートブック型または携帯型コンピュータ、ワークステーション、メインフレームコンピュータ（大型コンピュータ）、インターネット機器、ゲームコンソール、ハンドヘルド（手持ちサイズ）ＰＣ、携帯電話、携帯情報端末（ＰＤＡ）、これらの組合せなどが含まれる。デバイス１０２および１０４の１つまたは複数は、同じタイプのデバイスでも、あるいは異なるタイプのデバイスであってもよい。

【００１８】

サーバデバイス１０４は、各種のデータをクライアント１０２にストリーミング可能な状態にすることができる。用語「ストリーミング」は、メディア（マスコミ媒体）を表すデータがネットワークを通じてクライアントデバイスに提供され、そのコンテンツが完全に配信される前にコンテンツの再生を開始できることを指し示すのに使用される。データは、公開で利用可能としても、あるいは限定にしてもよい（例えば、特定のユーザだけに制限する、適切な料金を支払った場合のみ利用可能とするなど）。データは、オーディオ、ビデオ、テキスト、アニメーションなど、１つまたは複数の各種タイプのコンテンツのいずれであってもよい。さらに、データは「オンデマンド」式（例えば予め記録されており、サイズが分かっているもの）であっても、あるいは「ブロードキャスト」（例えば、演奏と同時に記録され、記録後すぐにストリーミングが可能な状態とされるコンサートのデ

ジタル表現など、予めサイズが分からないもの）してもよい。

【００１９】

図２に、例示的なクライアントデバイスおよびサーバデバイスを示す。クライアントデバイス１０２は、ソースサーバデバイス１４６のストリーミングモジュール１４４にアクセスするように構成されたストリーミングメディアプレーヤ１４２を含む。ソースサーバデバイス１４６は、例えば、図１のオリジンサーバデバイス１０４か、あるいは別のデバイス（例えばプロキシデバイス）である。ソースサーバデバイス１４６はまた（例えばプレーヤ１４２へのユーザ入力に基づいて）メディアプレーヤ１４２によりその中から選択を行うことができる１つまたは複数のストリーミングメディアコンテンツファイル１４８、および選択されてプレーヤ１４２にストリーミングされたコンテンツファイルを含む。ストリーミングメディアコンテンツは、受信されるとすぐに不揮発性の記憶装置１５０に保存することにより、クライアントデバイスでキャッシュされることができる。図２には示されていないが、１つまたは複数の追加的なデバイス（例えばファイアウォール、ルータ、ゲートウェイ、ブリッジ、複数のプロキシサーバなど）が、クライアントデバイス１０２とサーバデバイス１４６の間に位置してもよい。説明を簡潔にするために図２には単一のクライアント１０２とサーバ１４６しか図示していないが、サーバ１４６には複数のクライアント１０２がアクセスすることができ、また単一のクライアント１０２が複数のサーバ１４６にアクセスできることに留意されたい。

【００２０】

不揮発性の記憶装置１５０は、電源障害が生じた際でもその状態を維持するという点で不揮発性である。したがって、不揮発性記憶装置１５０に保存されたストリーミングメディアコンテンツは、クライアント１０２に電力損失が生じた際（例えばクライアント１０２の電源を切った際）でも消えずに存続する。デバイス１５０としては、磁気ディスクおよびディスクドライブ（例えば従来のハードディスク）、光ディスクおよびディスクドライブ、フラッシュメモリなど、各種の異なる不揮発性ストレージのタイプを使用することができる。

【００２１】

デバイス１０２と１４６間の通信は、各種の異なる従来のプロトコルを使用して行うことができる。一実装では、デバイス１０２と１４６間の通信は、バージョン１．１（ＨＴＴＰ１．１）など、あるバージョンのハイパーテキスト伝送プロトコル（ＨＴＴＰ）を使用して行われる。別の実装では、デバイス１０２と１４６間の通信は、リアルタイムストリーミングプロトコル（ＲＴＳＰ）を使用して行われる。あるいは、セッション開始プロトコル（ＳＩＰ）、シンプルオブジェクトアクセスプロトコル（ＳＯＡＰ）など、他のプロトコルを使用してもよい。

【００２２】

また、ストリーミングメディアコンテンツは、各種の異なるストリーミングメディアフォーマットの任意のものに従って記憶し、ストリーミングすることができる。例示的な一実装では、メディアは、ＡＳＦフォーマット（Ａｄｖａｎｃｅｄ Ｓｙｓｔｅｍｓ Ｆｏｒｍａｔあるいは Ａｄｖａｎｃｅｄ Ｓｔｒｅａｍｉｎｇ Ｆｏｒｍａｔ）に基づいてストリーミングされる。ＡＳＦに関するさらなる情報は、ワシントン州レドモンドのマイクロソフト（登録商標）社から得ることができる。これと同じ技術は、ＭＰＥＧ（Ｍｏｖｉｎｇ Ｐｉｃｔｕｒｅｓ Ｅｘｐｅｒｔｓ Ｇｒｏｕｐ）１、ＭＰＥＧ２、ＭＰＥＧ４、Ｑｕｉｃｋｔｉｍｅ（クイックタイム）など、他のフォーマットにも適用することができる。

【００２３】

図３に、ストリーミング媒体データを通信する際に使用できる例示的なメッセージフォーマットを示す。ＨＴＴＰ１．１メッセージやＲＴＳＰメッセージなどのメッセージのデータ構造１８０は、スタートラインフィールドまたは部分１８２、１つまたは複数のヘッダフィールドまたは部分１８４、空のラインフィールドまたは部分１８６、および任意選択のメッセージ本体フィールドまたは部分１８８を含む。スタートライン部分１８２は、メ

ッセージまたはデータ構造タイプを識別するデータを含み、これはリクエストライン（例えばＨＴＴＰ１．１のＧＥＴ要求や、ＲＴＳＰのＧＥＴ＿ＰＡＲＡＭＥＴＥＲ要求など）であっても、ステータスライン（例えばＨＴＴＰ１．１　２００のＯＫ応答やＲＴＳＰ１．０　２００のＯＫ応答など）であってもよい。メッセージに関する情報を表すデータを含む１つまたは複数のヘッダ１８４も含まれる。空ライン部分１８６は、ヘッダ１８４の終わりを識別するのに使用する。メッセージ本体部分１８８には任意選択で追加的なデータを含めることができる。この説明では、各種の指示をヘッダ１８４に含めるが、それらの指示はあるいはメッセージ本体１８８に位置してもよい。

【００２４】

図２のデバイス１０２と１４６間では、データ構造１８０を備えるデータを使用して、制御情報（例えばメディアコンテンツのストリーミングをセットアップする）や、データ（例えばストリーミングメディアコンテンツ）が適宜通信される。したがって、これらのメッセージは、ストリーミングされるメディアコンテンツに対応するか、または関連付けられる。

【００２５】

図２を参照すると、クライアントデバイス１０２のキャッシュマネジャ１５２は、オリジンサーバ１４６からストリーミングメディアプレーヤ１４２によって受信されたストリーミングメディアコンテンツのキャッシングを管理する。ストリーミングメディアプレーヤ１４２は、コンテンツを受信し、そのコンテンツをキャッシュすべきであると判断した際は、そのコンテンツを記憶するためにキャッシュマネジャ１５２に転送する。ストリーミングメディアプレーヤ１４２はこの判定を独自に行っても、あるいはキャッシュマネジャ１５２から受け取る情報（例えばキャッシュに利用可能な空間があるかどうかなど）に部分的に基づいて判定してもよい。

【００２６】

ストリーミングメディアプレーヤ１４２によるストリーミングメディアコンテンツのキャッシングは、ストリーミングメディアコンテンツのバッファリングとは異なることに留意されたい。キャッシングとバッファリングには様々な違いがあるが、通例その違いには次の１つまたは複数が含まれる：キャッシュされたコンテンツは、揮発性メモリではなく不揮発性の記憶装置に記憶される；キャッシュされたコンテンツは、すでに再生されたコンテンツを含むことができる；キャッシュされたコンテンツは、（例えば「ジャストインタイム」配信のように）直ちに再生されるのではなく、長時間再生されないコンテンツを含むことができる。

【００２７】

図２には異なるストリーミングメディアコンテンツを異なるファイル１４８として示しているが、これに代えて、１つのストリーミングメディアコンテンツを複数のファイルとして記憶してもよい（あるいはブロードキャストコンテンツの場合はファイルがなくともよい）。「１つの」コンテンツを定義する方式は、実装と媒体のタイプによって異なる可能性がある。例えば、音楽を扱うオーディオおよび／またはビデオコンテンツの場合は、１つの歌を１つのコンテンツとすることができる。コンテンツは、固有の境界（例えば異なる歌）に沿って複数部分に区分するか、あるいはその他の任意の方式で（例えばコンテンツを５分ごとに１コンテンツとするなど）区分することができる。

【００２８】

クライアントデバイス１０２の一部である従来のコンポーネントを任意選択で強化して、キャッシュ管理機能を行わせることができる。例示的な一実装では、マイクロソフト（登録商標）社のインターネットエクスプローラブラウザプログラムがキャッシュ管理機能を含み、ストリーミングメディアプレーヤ１４２はこの機能を強化し、使用することができる。

【００２９】

各メディアコンテンツは、ともに単一のファイルとして記憶することができるにも関わらず複数のストリームを含むことができる。そのようなストリームはそれぞれ、特定タイプ

のメディア（例えばオーディオ、ビデオ、テキストなど）を通例は特定の符号化ビットレートで表す。符号化ビットレートは、再生のためにメディアコンテンツを符号化するレート（処理速度）である。符号化ビットレートは，ユーザによって知覚されるコンテンツの再生速度とは無関係であることに留意されたい（例えば、通例は、通常のコンテンツストリームと、ユーザがその通常ストリームの再生速度の２倍と知覚する早送りのコンテンツストリームは、どちらも同じ符号化ビットレートである）。

【００３０】

同一タイプのメディアの複数のバージョン（例えば複数のオーディオバージョン、複数のビデオバージョンなど）をメディアコンテンツに含め、メディアプレーヤ１４２による再生のためにそれらのストリームの異なる組合せを選択できるようにすることができる。これらの異なるバージョンはそれぞれ、通例は異なるビットレートで符号化される（通例はビットレートが高いほどコンテンツの品質が高くなる）。ストリームのどの組合せをストリーミングメディアコンテンツに含めるかは各種の方式で選択することができ、これには、ユーザの嗜好（例えばより高い品質のコンテンツを望むか、あるいはより低い品質のコンテンツを望むか）、利用可能なネットワーク帯域幅、特定コンテンツに望まれるビットレート（例えば、あるビットレートをコンテンツ作成者または配信者が設定し、ストリーミングメディアコンテンツの識別子に含めて、ユーザがその識別子を選択するとストリーミングメディアプレーヤ１４２が（任意選択でユーザの嗜好に基づいて）その求められるビットレートに可能な限り近いストリームを選択するなど）などがある。

【００３１】

コンテンツをキャッシュする際は、キャッシュマネジャ１５２が、ストリーミングメディアコンテンツとしてサーバデバイス１４６から受信した（ストリーミングメディアプレーヤ１４２によって要求された）特定のストリームを不揮発性記憶装置１５０に格納する。同じメディアコンテンツについての異なるストリームの組合せをキャッシュマネジャ１５２によってキャッシュすることができる。あるいは、キャッシュマネジャ１５２は、特定のメディアコンテンツについてのすべてのストリームをサーバデバイス１４６から取得し、そのストリームすべてをキャッシュすることが可能だが、メディアプレーヤ１４２へは要求されたストリームだけを再生することができる。

【００３２】

複数のコンテンツをいっしょに再生リストにまとめることもでき、この再生リストは、それぞれがストリーミングされる特定のコンテンツである，１つまたは複数の項目からなるリストである。これらの異なるコンテンツを（例えばユーザまたはその他の者によって）選択していっしょに再生リストにまとめ，ユーザが単に再生リストを選択するだけでレンダリングのためにそれらのコンテンツすべてを選択できるようにすることができる。例として、ユーザは自分の好きな歌から２０曲を選んで再生リストの一部とし、その後は再生リストの再生を選択することによりそれらの歌を再生させることができる。

【００３３】

クライアント１０２でストリーミングメディアコンテンツをキャッシュすることにより、ストリーミングメディアプレーヤ１４２が各種の機能、およびしたがってユーザ体験の機能強化を提供することが可能になる。これらには、コンテンツの符号化ビットレートに依存しないレートでメディアコンテンツをストリーミングすることにより、ユーザが各種のシャトルコントロールオプション（例えば一時停止、停止、早送り、シーク、巻き戻しなど）を選択した際でもコンテンツのストリーミングを継続することが可能になる、後の時間に再生するためにストリーミングコンテンツを記録することが可能になる，時間をずらしてストリーミングコンテンツを再生することが可能になることが含まれる。

【００３４】

クライアント１０２でストリーミングメディアコンテンツをキャッシュすることにより、符号化ビットレートに依存しないレートでサーバデバイス１４６からクライアントデバイス１０２にメディアコンテンツをストリーミングすることが可能になる。ストリーミングレートが符号化ビットレートと同じになる状況が生じる可能性があるが、ストリーミング

レートは、符号化ビットレートよりも高く、または低くすることができる。ストリーミングメディアプレーヤ１４２によって受信されたストリーミングメディアコンテンツはキャッシュメモリに記憶され、コンテンツを再生する際は、メディアプレーヤ１４２は、そのコンテンツを再生のためにキャッシュメモリから取り出し、それと同時にサーバデバイス１４６からストリーミングされてくるコンテンツの続きの部分をキャッシュメモリに入れ続ける。ストリーミングレートが符号化ビットレートを下回る例示的な状況では、メディアプレーヤ１４２は、キャッシュされたコンテンツの量、符号化ビットレート、およびストリーミングレートに基づいて、ストリーミングされるコンテンツの再生に補足的な遅延を課す。例えば符号化ビットレートが３００ｋｂｐｓでストリーミングレートが１５０ｋｂｐｓである場合、メディアプレーヤ１４２は、十分なコンテンツが記憶され、ユーザが気づくような中断を生じずにコンテンツを始めから終わりまで完全に再生できるようになるまでコンテンツ再生の開始を遅らせる。

【００３５】

一実装では、メディアプレーヤ１４２は、ストリーミングモジュール１４４にストリーミングコンテンツを要求する際に、ストリーミングモジュール１４４に速度の要求も伝達する。この速度要求は、メディアプレーヤ１４２がメディアコンテンツをストリーミングさせたいレート（速度）を指示する。ストリーミングモジュール１４４は要求されたレート（速度）を受け入れ、続いてその要求されたレート（速度）でメディアコンテンツをメディアプレーヤ１４２にストリーミングするか、あるいはそのレート（速度）を変更することができる。例えば、ストリーミングモジュール１４４は、要求されたレートでコンテンツをストリーミングできない場合がある（例えばサーバポリシー（サーバの方針）、サーバのハードウェアおよび／またはソフトウェアの限界、サーバの現在の負荷などの原因による）。ストリーミングモジュール１４４は、どれだけのストリーミングレートになるかについての指示をメディアプレーヤ１４２に送信する（あるいは、ストリーミングモジュール１４４が特に指示しない場合は、ストリーミングレートはメディアプレーヤ１４２が要求するレートでよい）。さらに、ストリーミングモジュール１４４は、（新たな速度要求をストリーミングモジュール１４４に送信することにより）コンテンツのストリーミング中にストリーミングレートの変更を試みることができ、ストリーミングモジュール１４４は、（新たな速度指示をメディアプレーヤ１４２に送信することにより）コンテンツのストリーミング中にストリーミングレートを変更することができる。

【００３６】

メディアプレーヤ１４２は、自身が求めるストリーミングレート、すなわちそれがストリーミングモジュール１４４に要求するレートを各種の異なる要因に基づいて決定することができる。この決定は、コンテンツ単位で行うことができる。一実装では、メディアプレーヤ１４２は、メディアプレーヤ１４２とストリーミングモジュール１４４間の現在利用可能な帯域幅の割り出しを試みる。これは各種の従来の方法で割り出しすることができ、この方法には、デバイス１０２と１４６間でテストメッセージを送信する、デバイス１０２と１４６間の接続の現在および過去の振る舞いを監視する、ストリーミングモジュール１４４から利用可能な帯域幅の指示を受け取るなどがある。現在利用可能な帯域幅を知ると、メディアプレーヤ１４２は、まず現在利用可能な帯域幅よりも小さい特定の量であるストリーミングレートを要求する。この特定の量は、固定された量（例えば常に５０ｋｂｐｓ）でも、動的な量（例えば現在利用可能な帯域幅の１５％、あるいは現在利用可能な帯域幅の５％～２５％の間など）であってもよい。

【００３７】

メディアプレーヤ１４２からストリーミングモジュール１４４に送信されるストリーミング速度要求は、メディアプレーヤ１４２がいろいろな任意の方法のいずれかでデータをストリーミングさせたいレートを示すことができる。一実装では、このレートは、コンテンツの符号化ビットレートに比例する速度係数で表される（例えば、３．２の速度係数は、ストリーミングレートがコンテンツの符号化ビットレートに比べて３．２倍速いことを意味し、０．５の速度係数は、ストリーミングレートがコンテンツの符号化ビットレートの

半分であることを意味する）。別の実装では、速度は、単に所望のストリーミングビットレート（例えば３００ｋｂｐｓ、５００ｋｂｐｓ、２０ｋｂｐｓなど）を指定することによって示される。

【００３８】

速度要求の指示は、各種の異なる方式でメディアプレーヤ１４２からストリーミングモジュール１４４に送信することができる。ＲＴＳＰを使用してデバイス１０２と１４６間の通信を行う一実装では、ストリーミングメディアプレーヤ１４２からストリーミングモジュール１４４に送信されるメッセージに次のＲＴＳＰヘッダを（例えば図３のヘッダ１８４として）付加する。

速度：ｘ

ｘは、コンテンツの符号化ビットレートに比例する要求された速度係数を表す。値ｘは、整数でも実数でもよい（任意選択で小数点以下の桁数を制限することができ、通例は小数点第１位または第２位までに制限するが、他の値を使用することもできる）。このヘッダは様々なメッセージに付加することができ、一実装では、ストリーミングメディアプレーヤ１４２からストリーミングモジュール１４４に送信される、メディアコンテンツのストリーミングを要求するメッセージに含める。

【００３９】

ストリーミングモジュール１４４がその要求に応答する際には、ＲＴＳＰ　ＰＬＡＹ応答メッセージに類似のヘッダ（速度：ｙ）を入れてストリーミングメディアプレーヤ１４２に返送する。ｙは、ストリーミングモジュール１４４が要求されたコンテンツをストリーミングする（コンテンツの符号化ビットレートに比例する）速度を表す（ｙは、値ｘと同じでも同じでなくともよい）。値ｘと同様に、値ｙは、整数または実数とすることができる（小数点以下の桁数は任意選択で制限してもよく、通例は小数点第１位または第２位までに制限するが、他の値も使用することができる）。

【００４０】

ＨＴＴＰを使用してデバイス１０２と１４６間の通信を行う別の一実装では、ストリーミングメディアプレーヤ１４２からストリーミングモジュール１４４に送信されるメッセージに（例えば図３のヘッダ１８４として）次のＨＴＴＰヘッダを付加する。

プラグマ：速度＝ｘ

ｘは、コンテンツの符号化ビットレートに比例する要求された速度係数を表す。プラグマ（ｐｒｏｇｍａ）ヘッダは、実装に固有の指示を含めるためにＨＴＴＰで使用される一般ヘッダフィールドである。上述のＲＴＳＰスピードヘッダと同様に、このヘッダは様々なメッセージに付加することができ、一実装では、ストリーミングメディアプレーヤ１４２からストリーミングモジュール１４４に送信される、メディアコンテンツのストリーミングを要求するメッセージに含められる。

【００４１】

ストリーミングモジュール１４４は、この要求に応答する際には、ＨＴＴＰ　ＧＥＴ応答メッセージに同様のヘッダ（プラグマ：速度＝ｙ）を入れてストリーミングメディアプレーヤ１４２に返送する。ｙは、ストリーミングモジュール１４４が要求のコンテンツをストリーミングする（コンテンツの符号化ビットレートに比例する）速度を表す（ｙは、値ｘと同じでも同じでなくともよい）。値ｘと同様に、値ｙは整数でも実数でもよい（小数点以下の桁数を任意選択で制限することができ、通例は小数点第１位または第２位までに制限するが、他の値を使用してもよい）。

【００４２】

コンテンツのストリーミングレートは、符号化ビットレートを参照して識別することができるが、この識別は単にそれが容易な基準点であるために行うことに留意されたい。ストリーミングレートはなお符号化ビットレートには依存せず、実質的にどのような速度係数でも要求および／または選択することができ、その速度係数を識別する方式は符号化ビットレートを基準とする。

【００４３】

図４に、サーバからクライアントにメディアコンテンツをストリーミングする例示的プロセス２００を表すフローチャートを示す。プロセス２００は、図２のデバイス１０２および１４６などのクライアントデバイスおよびサーバデバイスによって実施され、またソフトウェア、ファームウェア、ハードウェア、またはそれらの組合せで行うことができる。

【００４４】

初めに、コンテンツの符号化ビットレートに依存しない、メディアコンテンツをストリーミングするときのストリーミングレートをクライアントデバイスとサーバデバイス間でネゴシエートする（動作２０２）。このネゴシエーションは、例えば、上述のようにクライアントによる要求速度の提出と、ストリーミング速度の戻し通知とすることができる。あるいは、このネゴシエーションは他の形を取ることもでき、サーバデバイス（または何らかの他のデバイス）によって開始し、クライアントデバイスがそのストリーミングレートに対して所望の変更を要求する、クライアントデバイスまたはサーバデバイスによって変更可能なデフォルトのレートを使用する、ストリーミングメディアコンテンツの識別子によって示され、クライアントデバイスまたはサーバデバイスによって変更することが可能なレートを使用する、などがある。ストリーミングレートをネゴシエートすると、ネゴシエートされたストリーミングレートでサーバデバイスからクライアントデバイスにメディアコンテンツをストリーミングする（動作２０４）。ストリーミングレートは、任意選択であって、後にコンテンツのストリーミング中に再度ネゴシエートすることができる（これを開始するのはクライアントデバイス、サーバデバイス、あるいは何らかの他のデバイスである）。

【００４５】

図２に戻ると、通例、ストリーミングモジュール１４４は、ストリーミングメディアプレーヤ１４２に対してコンテンツファイル１４８全体をストリーミングメディアコンテンツとして転送することはない。通例は、ファイルヘッダや索引付け情報などの特定の情報は、ストリーミングメディアコンテンツの一部としてストリーミングメディアプレーヤ１４２に対して転送されない。この情報の厳密な性質は、ストリーミングモジュール１４４の設計方式と、メディアコンテンツのストリーミングに使用するフォーマットとに基づいて異なる可能性がある。そのような情報がクライアントデバイス１０２に転送されない場合は、ストリーミングメディアプレーヤ１４２（あるいはキャッシュマネジャ１５２）がその情報を生成し、その情報をキャッシュ１５０に追加する。したがってこの適切な情報はキャッシュ内コンテンツの一部として取得可能になり、キャッシュからストリーミングメディアコンテンツを再生する際にストリーミングメディアプレーヤ１４２によって使用することができる。

【００４６】

ストリーミングメディアプレーヤ１４２は、ストリーミングメディアコンテンツの再生要求を受け取ると、キャッシュマネジャ１５２を介して、要求されたコンテンツがキャッシュ１５０内にあるかどうかを調べる。コンテンツがキャッシュ１５０にある場合（これを「キャッシュヒット」と呼ぶ）、ストリーミングメディアプレーヤ１４２は、サーバデバイス１４６ではなくキャッシュ１５０から要求されたストリーミングメディアコンテンツを取得する。ただし、コンテンツがキャッシュ１５０にない場合（これを「キャッシュミス」と呼ぶ）、ストリーミングメディアプレーヤ１４２は、要求されたストリーミングメディアコンテンツをサーバデバイス１４６から取得する。キャッシュが一杯になり、それ以上のストリーミングメディアコンテンツを入れるだけの記憶空間がなくなった場合には、新たなコンテンツを入れるスペースを作るためにすでにキャッシュされているコンテンツをキャッシュから削除（これをしばしばキャッシュから追い出すという）できることに留意されたい。各種ある従来のキャッシュ置換アルゴリズムを使用して、キャッシュから追い出すコンテンツを決定することができる。

【００４７】

状況によっては、コンテンツファイル１４８に、符号化ビットレートが異なる複数の異なるストリーム（例えば、５６ｋｂｐｓで符号化された低品質のストリームと、３００ｋｂ

ｐｓで符号化された高品質のストリームなど）が含まれる可能性がある。このようなファイルをしばしばマルチプルビットレートファイルと呼ぶ。そのような状況では、通例は１つのストリーム（例えば低品質のストリームまたは高品質のストリーム）だけをクライアントデバイス１０２にストリーミングし、そのストリームをキャッシュ１５０にキャッシュイングする。それと符号化ビットレートが同じである同一コンテンツに対する事後の要求は、キャッシュ１５０から満たすことができる（すなわちキャッシュヒットになる）が、別の符号化ビットレートに対する要求はキャッシュ１５０からは満たすことができない（キャッシュミスとなる）。あるいは、ストリーミングメディアプレーヤ１４２が、ストリーミングモジュール１４４からストリーミングされた符号化ビットレートをすべて備え、それによりそれらのレートすべてをキャッシュ１５０に記憶しておいてもよい。

【００４８】

ストリーミングモジュール１４４は任意選択で，ストリーミングメディアコンテンツの満了時間（有効期限）を含んでもよい。この満了時間は、比例する時間（例えばコンテンツを送信してから５分後）であっても、固定された時間（例えば特定の日時）であってもよい。ストリーミングメディアコンテンツの満了時間は、各種の異なる方式で示すことができる。一実装では、ＨＴＴＰのｍａｘ－ａｇｅキャッシュ制御指示を使用して満了時間を指示する。別の実装では、ＨＴＴＰまたはＲＴＳＰのＥｘｐｉｒｅｓヘッダを使用して満了時間を指示する。

【００４９】

期限が満了すると、ストリーミングメディアプレーヤ１４２は、キャッシュからコンテンツを再生する前にコンテンツを再確認する。この再確認は、通例、ストリーミングメディアプレーヤ１４２でコンテンツ要求（例えばコンテンツの再生を求めるユーザの要求）を受信したときに行っても、あるいは他のときに行ってもよい（例えば、そのコンテンツが要求されているかどうかに関係なく、ストリーミングメディアプレーヤ１４２またはキャッシュマネジャ１５２がキャッシュを監視して、満了時間が経過するとその期限切れを検出するということが可能である）。コンテンツの期限が満了すると、ストリーミングメディアプレーヤ１４２は、そのコンテンツを記述する新しい情報（それによりストリーミングメディアプレーヤ１４２はそのコンテンツに変化があるかどうかを判定することができる）と、新しい満了時間を回復する。

【００５０】

コンテンツが変化していない場合、ストリーミングメディアプレーヤ１４２は、単にそのコンテンツの満了時間を新しい期限日に更新することができ、キャッシュ内のコンテンツには変更を行う必要がない。ただし、コンテンツが変化している場合は、ストリーミングメディアプレーヤ１４２は、そのコンテンツをキャッシュから取得するのではなく、要求されたそのコンテンツをストリーミングモジュール１４４からストリーミングする。あるいは、ストリーミングメディアプレーヤ１４２は、コンテンツの何が変化したのかを判断し、変化した部分だけをストリーミングモジュール１４４からストリーミングし、残りの部分はキャッシュから得ることを試みることもできる。

【００５１】

ストリーミングメディアプレーヤ１４２は、記述オペレーションを使用して、サーバデバイス１４６から取得できる特定のコンテンツを記述した情報を得ることができる。ストリーミングモジュール１４４は、記述要求に応答して、ヘッダ情報（例えば，コンテンツについての書誌学的な（ｂｉｂｌｉｏｇｒａｐｈｉｃ）情報、コンテンツのストリームの特徴，そのコンテンツのインデックスを再生成するのに必要な情報などを含む）、コンテンツに関連のメタデータ、コンテンツの一部として取得可能なストリームのリストなど、識別されるメディアコンテンツを記述する各種の情報を返送する。返送された正確な情報は、ストリーミングモジュール１４４の実装方式と、メディアコンテンツをストリーミングするのに使用する特定のフォーマットとに応じて異なる可能性がある。この情報を使用してコンテンツを再確認することができる。

【００５２】

一実装では、特定のコンテンツストリームのヘッダ情報は、コンテンツが変更された場合にコンテンツ作成者によって変更されるＧＵＩＤ（Ｇｌｏｂａｌｌｙ Ｕｎｉｑｕｅ ＩＤ：グローバル一意識別子）を含む。この値は、「ＭＭＳタイプ」属性として知られる。コンテンツの変更はこのＧＵＩＤ値を調べることによって検出することができ、値が変化していなければコンテンツは変化しておらず、ＧＵＩＤ値が変化していればコンテンツが変化していることになる。

【００５３】

あるいは、別の情報を調べてコンテンツが変化しているかどうかを判定することができる。一実装では、コンテンツ記述情報は、最後に修正された日付の指示を含む（例えば図３のヘッダ１８４とすることができる）。新たに受け取った最後に修正された日付が、以前に受け取った最後に修正された日付と異なる場合、ストリーミングメディアプレーヤ１４２は、コンテンツが変化していると判断する。調べることが可能なこの他の情報は、コンテンツのハッシュ（ｈａｓｈ）である。従来の各種のハッシングアルゴリズムを使用してコンテンツのハッシュ値を生成することができ、一般にはコンテンツを変更するとそのコンテンツのハッシュ値が変化する。ハッシュ値が変化している場合、ストリーミングメディアプレーヤ１４２は、コンテンツが変更されたと判断する。

【００５４】

上述のように、ストリーミングメディアコンテンツは、複数コンテンツからなる再生リストとすることができる。メディアコンテンツの再生リストがキャッシュされている場合、ストリーミングメディアプレーヤ１４２は、再生リストの各メディアコンテンツを必要に応じて再確認する。キャッシュされた時点から変化しているコンテンツは、キャッシュから取得するのではなく、ストリーミングモジュール１４４からストリーミングする。また、再生リストのメディアコンテンツのすべてがクライアントデバイス１０２でキャッシュされてはいない状況が生じる場合がある。そのような状況では、キャッシュされていないコンテンツは、キャッシュから取得するのではなくストリーミングモジュール１４４からストリーミングする。

【００５５】

また、再生リストに関しては、ストリーミングメディアプレーヤ１４２が、再生リスト中の次のコンテンツについての準備が整ったことをストリーミングモジュール１４４に指示する状況が生じる可能性がある。この指示は、「次のエントリのストリーム（ｓｔｒｅａｍ ｎｅｘｔ ｅｎｔｒｙ）」のコマンドをストリーミングモジュール１４４に通信することによって、あるいは、単にそのコンテンツがキャッシュから取得できる場合でも、現在のコンテンツをストリーミングモジュール１４４からストリーミングさせることによって、行うことができる（ストリーミングモジュール１４４は、現在のコンテンツの最後に達すると次のコンテンツのストリーミングを開始する時間であることを知る）。

【００５６】

ストリーミングメディアコンテンツをキャッシングすることにより、ユーザが各種のシャトルコントロールオプション（例えば停止、一時停止、早送り、シーク、巻き戻しなど）を選択した場合でもコンテンツのストリーミングを継続することも可能になる。ストリーミングメディアプレーヤ１４２は、プレーヤ１４２のユーザにシャトルコントロールオプションが利用できるようにし、それによりユーザが必要に応じてストリーミングモジュール１４４の再生を制御できるようにする。ユーザが特定のシャトルコントロールコマンドを入力した際、ストリーミングメディアプレーヤ１４２の振る舞いは、入力されたコマンドに応じて異なる。ただし、多くの場合、ストリーミングメディアプレーヤ１４２は、ストリーミングモジュール１４４からのメディアコンテンツのストリーミングを継続する。

【００５７】

ユーザが停止コマンドを入力した場合、ストリーミングメディアプレーヤ１４２は、ストリーミングメディアコンテンツの再生を中止するが、ストリーミングモジュール１４４からのコンテンツのストリーミングとキャッシュを継続する。同様に、ユーザが一時停止コマンドを入力した場合、ストリーミングメディアプレーヤ１４２は、ストリーミングメデ

ィアコンテンツの再生を一時停止するが、ストリーミングモジュール１４４からのコンテンツのストリーミングとキャッシングを継続する。さらに、ユーザが巻き戻しコマンドを入力した場合は、ストリーミングメディアプレーヤ１４２は、ストリーミングメディアコンテンツの巻き戻しを開始するが、引き続きストリーミングモジュール１４４からコンテンツをストリーミングし、キャッシュする。さらに、ユーザが早送りコマンドを入力した場合は、ストリーミングメディアプレーヤ１４２は、すでにキャッシュされたコンテンツ部分を通じてストリーミングメディアコンテンツの早送りを開始し、必要な範囲までコンテンツをストリーミングし、キャッシュし続ける。

【００５８】

図５に、サーバからクライアントにメディアコンテンツをストリーミングし、同時にシャトルコントロールコマンドを受け取る例示的プロセス２３０を説明するフローチャートを示す。プロセス２３０は、図２のクライアントデバイス１０２のストリーミングメディアプレーヤ１４２など、クライアントデバイスのストリーミングメディアプレーヤによって実施され、ソフトウェア、ファームウェア、ハードウェア、またはそれらの組合せで実行することができる。

【００５９】

初めに、ストリーミングメディアコンテンツの再生に係わるシャトルコントロール要求をストリーミングメディアプレーヤで受け取る（動作２３２）。ストリーミングメディアプレーヤは、要求に従ってストリーミングメディアコンテンツの再生を変える（動作２３４）が、ストリーミングメディアコンテンツの受信を継続する（動作２３６）。ストリーミングメディアプレーヤは、ユーザアクションを詳述する以後のログ提出を除いてはシャトルコントロールコマンドをサーバデバイスに知らせる必要はなく、通例は指示しないことに留意されたい。

【００６０】

また、ユーザがシャトルコントロールコマンドを使用してストリーミングメディアコンテンツの再生をナビゲート（操縦）または制御する能力は、特定のコンテンツ（あるいは特定コンテンツの一部）に対しては制限されることもある。例えば、ユーザは、ストリーミングメディアコンテンツの特定の部分（例えば広告）では早送りできない場合がある。そのような制限の指示は、ストリーミングモジュール１４４からストリーミングメディアプレーヤによって受信され、ストリーミングメディアコンテンツとともにキャッシュされる。したがって、キャッシュからストリーミングメディアコンテンツを再生する際には、そのような制限も実施される。

【００６１】

ストリーミングメディアコンテンツをキャッシュすることにより、さらに、後の時間に再生するためにコンテンツを記録することが可能になる。コンテンツの少なくとも一部は、コンテンツがストリーミングされ、キャッシュされるのと同時にユーザに対して再生することができ、あるいは、コンテンツのどの部分も後の時間まで再生しないことも可能である（例えば、コンテンツのキャッシングが完了してからしばらく経ってから再生するなど）。例えば、ユーザは、複数のストリーミングメディアコンテンツをキャッシュする要求をストリーミングメディアプレーヤ１４２に入力し、後の時間（例えば同じ日の後の時間、翌日、翌週、翌月など）にそれらのコンテンツを再生することができる。そのような要求は、例えば具体的な「コンテンツのキャッシュ」要求であるか、あるいは単に再生要求である。ストリーミングメディアプレーヤ１４２は、そのような要求を受信すると、ストリーミングモジュール１４４と通信して、ストリーミングメディアプレーヤ１４２がユーザのためにそのコンテンツを再生する場合と同じ方式で、要求されたコンテンツをストリーミングさせる。ただし、コンテンツをクライアントデバイス１０２で受信した場合は、ストリーミングメディアプレーヤ１４２は、そのコンテンツを不揮発性記憶装置１５０にキャッシュし、（ユーザから要求されない限りは）そのコンテンツをその時間には再生しない。ユーザが後にそのコンテンツの再生を要求すると、ストリーミングメディアプレーヤ１４２は、そのコンテンツをキャッシュメモリから入手する（ただし、コンテンツの期

限が切れていないことを前提とする。または、コンテンツの期限が切れている場合はコンテンツが変更されていないことを前提とする）。

【００６２】

ストリーミングメディアコンテンツをキャッシュすることにより、さらに、時間をずらしたストリーミングメディアコンテンツの再生が可能になる。時間をずらした再生では、ユーザは、ストリーミングと同時にストリーミングコンテンツをナビゲートし、制御することができる（例えば一時停止、巻き戻し、早送りなどのコマンドの入力により）。例えば、ユーザはストリーミングメディアコンテンツの再生を特定の位置で一時停止し、数分後にその位置から再生を再開することができ、再生が一時停止されていた間にさらなるコンテンツがクライアントデバイス１０２にストリーミングされていても、再生はなおユーザが再生を一時停止した位置から再開する。別の例として、ユーザは、コンテンツのある部分をもう一度（あるいはさらに複数回）見るために、ストリーミング中にストリーミングメディアコンテンツを巻き戻すことができる。ユーザが例えば３分だけコンテンツを巻き戻した場合、ユーザはその３分間をもう一度見ることができ、その３分間分先行するコンテンツが再度再生されていた間にさらなるコンテンツがクライアントデバイス１０２にストリーミングされていても、再生は、ユーザが巻き戻しコマンドを入力したコンテンツ中の時点から（再生にユーザが気づくような中断を生じずに）継続する。

【００６３】

図６に、後に再生するためにストリーミングメディアコンテンツを記録する例示的プロセス２６０を説明するフローチャートを示す。プロセス２６０は、図２のクライアントデバイス１０２のストリーミングメディアプレーヤ１４２など、クライアントデバイスのストリーミングメディアプレーヤによって実行され、ソフトウェア、ファームウェア、ハードウェア、またはそれらの組合せで行うことができる。

【００６４】

初めに、サーバからストリーミングメディアコンテンツを受信する（動作２６２）。受信したストリーミングメディアコンテンツは、クライアントデバイスのキャッシュにローカルに記憶する（動作２６４）。ストリーミングメディアコンテンツを再生する要求を後の時間に受け取る（動作２６６）が、これはメディアコンテンツのストリーミングが完了した後でも、完了しない時点でもよい。再生要求に応答して、ローカルに保存されたストリーミングメディアコンテンツを再生する（動作２６８）。

【００６５】

また、ストリーミングメディアプレーヤ１４２がストリーミングメディアコンテンツを再生する際には、通例、ストリーミングメディアプレーヤ１４２からストリーミングモジュール１４４に各種のロギング情報が返送される。ストリーミングメディアプレーヤ１４２がストリーミングモジュール１４４ではなくクライアントデバイス１０２のキャッシュからストリーミングメディアコンテンツを取得する状況でも、このロギング情報をストリーミングモジュール１４４に返送しなければならない。ロギング情報は、ストリーミングメディアプレーヤ１４２がコンテンツの再生に費やした時間量、複数回再生されたコンテンツ部分、スキップされたコンテンツ部分、コンテンツの再生が一時停止されたか、もしそうであればコンテンツ中のどの点で一時停止が行われたか、ストリームコンテンツを受信したネットワーク接続に伴う問題など、各種の情報を含むことができる。

【００６６】

ロギング情報は、各種の異なる方式でサーバデバイス１４６に通信することができる。一実装では、通例のヘッダを使用してメッセージを送信して、メッセージ本体（図３の本体１８８）にロギング情報が含まれることを知らせる。

Ｃｏｎｔｅｎｔ－Ｔｙｐｅ：ａｐｐｌｉｃａｔｉｏｎ／ｘ－ｗｍｓ－ｓｅｎｄｅｖｅｎｔ

【００６７】

ただし、この代わりに異なるヘッダを送信してもよい。このメッセージは、例えば、ＲＴＳＰのＳＥＴ＿ＰＡＲＡＭＥＴＥＲメッセージ、またはＨＴＴＰのＰＯＳＴメッセージなどである。

【００６８】
すべてのストリーミングメディアコンテンツがクライアントデバイス１０２でキャッシュ可能であるとは限らないことに留意されたい。ストリーミングメディアコンテンツをクライアントデバイス１０２でキャッシュしない様々な状況がありうる。こうした状況には、例えば、サーバデバイスがキャッシングをサポートしない状況、コンテンツ作成者または配信者が特定のコンテンツをキャッシュすべきでないことを知らせている状況、クライアントデバイス１０２のユーザによってキャッシングが使用禁止にされている状況などがある。さらに、一部の実施形態では、ブロードキャストコンテンツなど特定のコンテンツはキャッシュするべきでないとしている（他の実施形態ではブロードキャストコンテンツをキャッシュすることができる）。ストリーミングメディアプレーヤ１４２は、特定のコンテンツをキャッシュすべきでないと判定した場合、そのコンテンツをキャッシュしない。

【００６９】
一実装では、ストリーミングメディアプレーヤ１４２がストリーミングモジュール１４４からコンテンツをストリーミングするように要求すると、ストリーミングモジュール１４４は、要求されたコンテンツのキャッシングがストリーミングモジュール１４４によってサポートされるかどうかの通知を返送する。この指示はメッセージヘッダ（例えば図３のヘッダ１８４）に含めることができ、「サポート（ｓｕｐｐｏｒｔｅｄ：支援）」ヘッダと称する。サポートヘッダ中の指示の一例を次に示す。
ｃｏｍ．ｍｉｃｒｏｓｏｆｔ．ｗｍ．ｆａｓｔｃａｃｈｅ

【００７０】
ただし、これに代えて他のヘッダを使用することもできる。このサポートヘッダがあるということは、ストリーミングモジュール１４４がクライアントデバイス１０２のキャッシングをサポート（支援）するということを示しており、それでストリーミングモジュール１４４は、例えば、メディアコンテンツを符号化ビットレートに依存しないレートでストリーミングし、キャッシュされたコンテンツについてのロギング情報を受信することなどを可能にする。このサポートヘッダがない場合は、ストリーミングメディアプレーヤ１４２は、メッセージに関連のストリーミングメディアコンテンツをキャッシュしない。

【００７１】
さらに、特定の部分のストリーミングメディアコンテンツのキャッシングを制御するのに、各種のキャッシュ制御指示を使用することができる。キャッシュ制御ヘッダは、キャッシュマネジャ１５２（また、キャッシュメモリを含むプロキシサーバなどの任意の仲介デバイス）が、関連のストリーミングメディアコンテンツのキャッシングをどのように処理するかを記述する情報を含む。キャッシュ制御ヘッダは、そのメッセージを受け取るすべてのキャッシング機構が従うべき指示を指定するのに使用される。ここでは述べないが、追加的なキャッシュ制御指示（例えば従来のＨＴＴＰまたはＲＴＳＰのキャッシュ制御指示）をキャッシュ制御ヘッダに含めてもよい。

【００７２】
使用するプロトコルに応じて、ストリーミングメディアプレーヤだけが関連のコンテンツをキャッシュできることを示すキャッシュ制御指示を含めてもよいし、含めなくともよい。ストリーミング媒体および非ストリーミング媒体（例えばＨＴＴＰ）両方に向けて設計されたプロトコルには、通例、ストリーミングメディアプレーヤ（一般的なＨＴＴＰコンポーネント（例えばウェブブラウザ）やプロキシデバイスではない）が関連のコンテンツをキャッシュできることを示す指示を使用する。ただし、ストリーミング媒体用に特に設計されたプロトコル（例えばＲＴＳＰ）には、ストリーミングメディアプレーヤだけが関連のコンテンツをキャッシュできるという指示は必要ない（したがって通例は使用しない）。

【００７３】
下記の表１に、例示的なキャッシュ制御指示と、ストリーミング媒体用に特に設計されたプロトコル（例えばＲＴＳＰ）とでキャッシングが可能かどうかを示す。表ＩＩは、例示的なキャッシュ制御指示と、ストリーミング媒体向けでないプロトコル（例えばＨＴＴＰ

）でキャッシングが可能かどうかを示す。

【００７４】

【表１】

表Ｉ

キャッシュ制御指示	ストリーミングメディアプレーヤによるキャッシング
<none>	可能
"no-user-cache"	不可能
"no-cache"	不可能

【００７５】

【表２】

表ＩＩ

キャッシュ制御指示	一般的なHTTPキャッシュ／プロキシデバイスでのキャッシング	ストリーミングメディアプレーヤによるキャッシング
<none>	可能	可能
"no-cache, user-public"	不可能	可能
"no-cache"	不可能	不可能

【００７６】

表ＩＩで、「ｕｓｅｒ－ｐｕｂｌｉｃ」の指示は、ストリーミングメディアプレーヤ１４２によって、関連のコンテンツをキャッシュできるものと理解されたく、また「ｎｏ－ｃａｃｈｅ」の指示を無効にするということに留意されたい。ただし、「ｕｓｅｒ－ｐｕｂｌｉｃ」の指示が含まれない場合は、「ｎｏ－ｃａｃｈｅ」の指示により、関連のコンテンツをキャッシュできないことがストリーミングメディアプレーヤ１４２に示される。さらに、一般的なＨＴＴＰキャッシュまたはプロキシデバイスは、「ｕｓｅｒ－ｐｕｂｌｉｃ」の指示を理解せず、したがって単に「ｎｏ－ｃａｃｈｅ」指示に従い、コンテンツをキャッシュしない。

【００７７】

特定の部位のコンテンツをキャッシュするかどうかを判定する際には、各種の他の要因も絡む可能性がある。一実装では、ＵＲＬ（Ｕｎｉｆｏｒｍ Ｒｅｓｏｕｒｃｅ Ｌｏｃａｔｏｒ）などのストリーミングメディアコンテンツ識別子が、コンテンツでのキャッシュが可能である、あるいは可能でないことを示す指示を含むことができる。例えば、値「？ＷＭＣａｃｈｅ＝０」を使用して、コンテンツのキャッシングを行わないことを示し、値「？ＷＭＣａｃｈｅ＝１」を使用してコンテンツのキャッシングを行うことを示すことができる。別の実装では、ストリーミングメディアプレーヤ１４２は、ユーザがストリーミングメディアコンテンツのクライアントでのキャッシングを明確に使用禁止にすることを可能にし、それに応じて、ストリーミングメディアコンテンツがストリーミングメディアプレーヤ１４２によってキャッシュされないこととなる。さらに別の実装では、ストリーミングメディアプレーヤ１４２は、どのストリーミングメディアコンテンツもキャッシュしないことを決定することができる（例えば、ストリーミングメディアプレーヤ１４２は

、コンテンツをキャッシングするのに十分な記憶空間がない、あるいはコンテンツをそのキャッシュから再生した回数が閾値回数を下回るため、以降受信するストリーミングメディアコンテンツをキャッシュしないと決定することなどができる）。さらに別の実装では、特定タイプのストリーミングメディアコンテンツのみをキャッシュすることができる（例えばオンデマンドコンテンツはキャッシュ可能であるが、ブロードキャストコンテンツはキャッシュ可能でないなど）。

【００７８】

また、ストリーミングメディアプレーヤ１４２が、あるストリーミングメディアコンテンツをキャッシュすると決定した場合、そのキャッシングのために任意選択で各種の制約をストリーミングメディアプレーヤに課すことができる。例えば、そのコンテンツをキャッシュする場合にはストリームの間引き（ｔｈｉｎｎｉｎｇ）（例えば、帯域幅を節減するためにサーバデバイスからストリーミングするフレーム数を減らすなど）を要求しないようにストリーミングメディアプレーヤ１４２を設定することができる。

【００７９】

図７に、クライアントデバイスでストリーミングメディアコンテンツをキャッシュする例示的プロセス３００を説明するフローチャートを示す。プロセス３００は、図２のクライアントデバイス１０２のストリーミングメディアプレーヤ１４２などクライアントデバイスのストリーミングメディアプレーヤによって実施され、ソフトウェア、ファームウェア、ハードウェア、またはそれらの組合せで実行することができる。

【００８０】

初めに、サーバデバイスからストリーミングメディアコンテンツを受信する（動作３０２）。プロセス３００は、そのストリーミングメディアコンテンツのキャッシングが可能であるかどうか（動作３０４）に基づいて進行する。キャッシングが可能である場合はコンテンツを不揮発性の記憶装置に保存し（動作３０６）、ストリーミングメディアコンテンツを再生が可能な状態にする（動作３０８）。動作３０８でそのストリーミングメディアコンテンツをキャッシュした場合には、そのコンテンツのストリーミングと同時に、かつ／または後の時間に再生可能な状態にできることに留意されたい。ただしキャッシングが可能でない場合は、単にストリーミングメディアコンテンツを再生可能な状態とし（動作３０８）、すなわちキャッシュしない場合には、そのコンテンツは再度ストリーミングしなければ後の時間に再生することができない。

【００８１】

図８Ａおよび８Ｂは、クライアントデバイスでストリーミングメディアコンテンツをキャッシュするかどうかを判定する例示的プロセス３３０を説明するフローチャートである。プロセス３３０は、図２のクライアントデバイス１０２のストリーミングメディアプレーヤ１４２など、クライアントデバイスのストリーミングメディアプレーヤによって実施され、ソフトウェア、ファームウェア、ハードウェア、またはそれらの組合せで実行することができる。

【００８２】

初めに、ストリーミングメディアプレーヤは、サーバデバイスから取得可能なストリーミングメディアコンテンツにアクセスすることを試み（図８Ａの動作３３６）、サーバデバイスからそのストリーミングメディアコンテンツのヘッダ情報を取得する（動作３３８）。ストリーミングメディアプレーヤは次いで、ユーザがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしているかどうかを調べる（動作３４０）。ユーザがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしている場合は、クライアントでストリーミングメディアコンテンツをキャッシュメモリに入れない（動作３４２）。ただし、ユーザがストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしていない場合は、ストリーミングメディアプレーヤは、ストリーミングメディアコンテンツの識別子にそのコンテンツがキャッシングしないと示されているかどうかを調べる（動作３４４）。キャッシングしないと示されている場合は、ストリーミングメディアコンテンツをクライアントでキャッシュしない

（動作３４２）。

【００８３】

ただし、ストリーミングメディアコンテンツの識別子にそのコンテンツがキャッシングしないと示されていない場合は、ストリーミングメディアプレーヤは、そのストリーミングメディアプレーヤが、ストリーミングメディアコンテンツのクライアントでのキャッシングを使用禁止にしているかどうかを調べる（動作３４６）。使用禁止にしている場合には、ストリーミングメディアコンテンツをクライアントでキャッシュメモリに入れない（動作３４２）。使用禁止でない場合には、ストリーミングメディアプレーヤは、ストリーミングメディアコンテンツ識別子がコンテンツビットレートの変更子を含むかどうかを調べる（動作３４８）。

【００８４】

コンテンツビットレートの変更子が含まれる場合には、ストリーミングメディアプレーヤは、そのコンテンツビットレート変更子の値を超えない最高のビットレートを有するストリームのセットを選択する（図８Ｂの動作３５２）。コンテンツビットレートの変更子が含まれない場合には、ストリーミングメディアプレーヤは、リンク帯域幅とも称するクライアントとサーバ間の帯域幅に基づいてストリームのセットを選択する（図８Ｂの動作３５０）。

【００８５】

ストリームを選択すると、ストリーミングメディアプレーヤは、ストリーミングメディアコンテンツの識別子がそのコンテンツをキャッシュすべきと示しているかどうかに基づいて進行する（動作３５４）。キャッシュすべきと示されていない場合には、ストリーミングメディアプレーヤは、リンク帯域幅が、選択したストリームのビットレートの合計の１．５倍を超えるか、または選択したストリームのビットレートの合計の０．９倍未満であるかどうかを調べる（動作３５６）。あるいは、動作３５６では１．５および０．９以外の値を使用してもよい。リンク帯域幅が、選択したストリームのビットレート合計の１．５倍を超えないか、または選択したストリームのビットレート合計の０．９倍未満でない場合には、クライアントでストリーミングメディアコンテンツをキャッシュしない（図８Ａの動作３４２）。ただし、リンク帯域幅が、選択したストリームのビットレート合計の１．５倍を超えるか、または、選択したストリームのビットレート合計の０．９倍未満である場合には、ストリーミングメディアプレーヤは、選択したプロトコルがストリーミングメディアコンテンツのクライアントでのキャッシングをサポートするかどうかを調べる（動作３５８）。例示的な一実装では、ＴＣＰ（伝送制御プロトコル）によるデータ配信を使用したＨＴＴＰ１．１およびＲＴＳＰで、ストリーミングメディアコンテンツのクライアントでのキャッシングがサポートされる。

【００８６】

プロトコルがストリーミングメディアコンテンツのクライアントでのキャッシングをサポートしない場合には、ストリーミングメディアコンテンツをクライアントでキャッシュしない（図８Ａの動作３４２）。プロトコルがストリーミングメディアコンテンツのクライアントでのキャッシングをサポートする場合、またはストリーミングメディアコンテンツの識別子がコンテンツをキャッシュすべきであると示す（動作３５４）場合には、ストリーミングメディアプレーヤは、サーバがクライアントでのキャッシングを許可するかどうかを調べる（動作３６０）。サーバがクライアントでのキャッシングを許可しない場合には、ストリーミングメディアコンテンツをクライアントでキャッシュしない（図８Ａの動作３４２）。ただしサーバでクライアントでのキャッシングが可能であるとしている場合には、ストリーミングメディアコンテンツを入れるだけの空間がキャッシュメモリにあるかどうかを調べる（動作３６２）。ストリーミングメディアコンテンツをキャッシュするのに必要な空間量は、例えば図８Ａの動作３３８で受信するヘッダ情報で識別することができる。必要な場合にはすでにキャッシュされているコンテンツを任意選択でキャッシュメモリから追い出して十分な空間を作成することもできる。キャッシュメモリに十分な空間がない場合には、ストリーミングメディアコンテンツをクライアントでキャッシュしな

い（図８Ａの動作３４２）。ただしキャッシュするのに十分な空間がある場合には、ストリーミングメディアコンテンツをクライアントでキャッシュする（動作３６４）。

【００８７】

ストリーミングメディアコンテンツがブロードキャストコンテンツである場合など、状況によっては、コンテンツのサイズが分からない場合には，そのためそのコンテンツのすべてに十分な空間がキャッシュにあるかどうかの判定（動作３６２）を行わない場合があることに留意されたい。そのような状況では、単にキャッシュにそれ以上コンテンツを入れるだけのメモリ空間がなくなるまでコンテンツをキャッシュして、空間がなくなった時点でストリーミングメディアコンテンツのキャッシングをやめるようにしてもよい。あるいは、図８Ａの動作３３８で受信するヘッダ情報に入れるなどにより、ストリーミングメディアコンテンツのおよそのサイズをストリーミングメディアプレーヤが取得できるようにしてもよい（例えば、予測されるブロードキャスト継続時間や、ブロードキャストストリーミングメディアコンテンツの符号化ビットレートなどからブロードキャストコンテンツのおよそのサイズを容易に判定することができる）。

【００８８】

図８Ａおよび８Ｂのプロセス３３０は、クライアントデバイスにストリーミングメディアコンテンツをキャッシュするかどうかを判定する例示的なプロセスであり、プロセス３３０には色々な修正を加えてよいことにも留意されたい。例えば、ブロードキャストコンテンツをキャッシュしない実施形態では、コンテンツがブロードキャストコンテンツであるかどうかを調べ、ブロードキャストコンテンツである場合にはコンテンツをキャッシュしない（動作３４２）ように、追加的な動作をプロセス３３０に含めることができる。別の実施形態では、コンテンツ識別子がコンテンツをキャッシュすべきと指示しているかどうかを調べることができ、キャッシュすべきとの場合は、その指示が他のデフォルト設定に優先することができる（例えば、デフォルトではブロードキャストコンテンツをキャッシュしないが、キャッシュが可能というコンテンツ識別子中の指示によってそれを無効にすることができる）。さらに別の実施形態では、ユーザはクライアントでのキャッシングを使用禁止にすることが許されず、したがって動作３４０をプロセス３３０に含める必要がない。さらに別の実施形態では、コンテンツをキャッシュすべきかどうかをコンテンツ識別子で示すことができず、したがって動作３４４をプロセス３３０に含める必要がない。

【００８９】

本明細書には各種のプロセスをフローチャートの形で例示している。これらのプロセスに伴う動作は、フローチャートに示す順序で行っても、あるいは別の順序で行ってもよいことに留意されたい。例えば図８Ａおよび８Ｂでは、動作を図の順序で行っても、あるいは動作３６０または動作３６２を動作３４０より前に行っても、動作３４６を動作３４４の前に行ってもよい。

【００９０】

図９に、本明細書に記載された本発明に係わる技術を実施するのに使用できる例示的な一般的コンピューティング環境４００を示す。コンピュータ環境４００はコンピューティング環境の一例に過ぎず、このコンピュータおよびネットワークアーキテクチャの使用または機能性の範囲について何らの制限を示唆するものではない。またコンピュータ環境４００は、例示的コンピュータ環境４００に示す構成要素の任意の１つまたは組合せに関連する依存関係または必要性を有するものとも解釈すべきでない。

【００９１】

コンピュータ環境４００は、コンピュータ４０２の形態の汎用コンピューティングデバイスを含む。コンピュータ４０２は、例えば図１のクライアント１０２またはサーバ１０４、または図２のクライアント１０２またはサーバ１４６である。コンピュータ４０２の構成要素には、これらに限定しないが、１つまたは複数のプロセッサまたは処理装置４０４、システムメモリ４０６、およびプロセッサ４０４を含む各種のシステムコンポーネントをシステムメモリ４０６に結合するシステムバス４０８が含まれる。

【００９２】

システムバス４０８は、各種のバスアーキテクチャの任意のものを使用したメモリバスまたはメモリコントローラ、周辺バス、アクセラレーテッドグラフィックポート（ＡＧＰ）、およびプロセッサバスまたはローカルバスを含む数タイプのバス構造の任意の１つまたは複数を表す。例として、このようなアーキテクチャには、ＩＳＡ（Ｉｎｄｕｓｔｒｙ Ｓｔａｎｄａｒｄ Ａｒｃｈｉｔｅｃｔｕｒｅ）バス、ＭＣＡ（Ｍｉｃｒｏ Ｃｈａｎｎｅｌ Ａｒｃｈｉｔｅｃｔｕｒｅ）バス、ＥＩＳＡ（Ｅｎｈａｎｃｅｄ ＩＳＡ）バス、ＶＥＳＡ（Ｖｉｄｅｏ Ｅｌｅｃｔｒｏｎｉｃｓ Ｓｔａｎｄａｒｄｓ Ａｓｓｏｃｉａｔｉｏｎ）バス、およびメザニンバスとも称されるＰＣＩ（Ｐｅｒｉｐｈｅｒａｌ Ｃｏｍｐｏｎｅｎｔ Ｉｎｔｅｒｃｏｎｎｅｃｔｓ）バスが含まれる。

【００９３】

コンピュータ４０２は通例各種のコンピュータ可読媒体を含む。そのような媒体は、コンピュータ４０２がアクセスできる任意の利用可能媒体でよく、揮発性および不揮発性の媒体、取り外し可能および取り外し不能媒体が含まれる。

【００９４】

システムメモリ４０６は、ランダムアクセスメモリ（ＲＡＭ）４１０などの揮発性メモリの形態と、および／または読み取り専用メモリ（ＲＯＭ）４１２など不揮発性メモリの形態のコンピュータ可読媒体を含む。起動時などにコンピュータ４０２内の要素間の情報転送を助ける基本ルーチンを含む基本入出力システム（ＢＩＯＳ）４１４は、ＲＯＭ４１２に記憶される。ＲＡＭ４１０は通例、処理装置４０４から即座にアクセス可能な、かつ／または現在処理装置４０４によって操作中のデータおよび／またはプログラムモジュールを含む。

【００９５】

コンピュータ４０２は、この他の取り外し可能／取り外し不能、揮発性／不揮発性のコンピュータ記憶媒体も含むことができる。例として、図９には、取り外し不能、不揮発性の磁気媒体（図示せず）の読み取りおよび書き込みを行うハードディスクドライブ４１６、取り外し可能、不揮発性の磁気ディスク４２０（例えば「フロッピー（登録商標）ディスク」）の読み取りおよび書き込みを行う磁気ディスクドライブ４１８、およびＣＤ－ＲＯＭ、ＤＶＤ－ＲＯＭ、あるいは他の光媒体などの取り外し可能、不揮発性の光ディスク４２４の読み取りおよび書き込みを行う光ディスクドライブ４２２を示す。ハードディスクドライブ４１６、磁気ディスクドライブ４１８、および光ディスクドライブ４２２はそれぞれ、１つまたは複数のデータメディアインタフェース４２５によってシステムバス４０８に接続される。あるいは、ハードディスクドライブ４１６、磁気ディスクドライブ４１８、および光ディスクドライブ４２２は、１つまたは複数のインタフェース（図示せず）によってシステムバス４０８に接続することもできる。

【００９６】

これらのディスクドライブとそれに関連のコンピュータ可読媒体は、コンピュータ可読命令、データ構造、プログラムモジュール、およびコンピュータ４０２のその他のデータの不揮発性の記憶を提供する。この例示としてハードディスク４１６、取り外し可能磁気ディスク４２０、および取り外し可能光ディスク４２４を図示しているが、これ以外に、磁気カセットまたはその他の磁気記憶装置、フラッシュメモリカード、ＣＤ－ＲＯＭ、デジタル多用途ディスク（ＤＶＤ）またはその他の光ストレージ、ランダムアクセスメモリ（ＲＡＭ）、読み取り専用メモリ（ＲＯＭ）、電気的に消去可能なプログラム可能読み取り専用メモリ（ＥＥＰＲＯＭ）など、データを記憶することができ、コンピュータによるアクセスが可能な他のタイプのコンピュータ可読媒体をこの例示的コンピューティングシステムおよび環境の実装に利用できることも理解されたい。

【００９７】

ハードディスク４１６、磁気ディスク４２０、光ディスク４２４、ＲＯＭ４１２、および／またはＲＡＭ４１０には任意数のプログラムモジュールを格納することができ、この例には、オペレーティングシステム４２６、１つまたは複数のアプリケーションプログラム４２８、その他のプログラムモジュール４３０、およびプログラムデータ４３２が含まれ

る。そのようなオペレーティングシステム４２６、１つまたは複数のアプリケーションプログラム４２８、他のプログラムモジュール４３０、およびプログラムデータ４３２（またはこれらの何らかの組合せ）はそれぞれ、分散ファイルシステムをサポートする常駐コンポーネントのすべてまたは一部を実装することができる。

【００９８】

ユーザは、キーボード４３４やポインティングデバイス４３６（例えば「マウス」）などの入力装置を介して、コンピュータ４０２にコマンドと情報を入力することができる。この他の入力装置４３８（具体的には図示せず）には、マイクロフォン、ジョイスティック、ゲームパッド、衛星受信アンテナ、シリアルポート、スキャナなどがある。これらおよびその他の入力装置は、システムバス４０８に結合された入出力インタフェース４４０を介して処理装置４０４に接続されるが、パラレルポート、ゲームポート、あるいはユニバーサルシリアルバス（ＵＳＢ）など、他のインタフェースおよびバス構造によって接続することもできる。

【００９９】

モニタ４４２またはその他のタイプの表示装置もビデオアダプタ４４４などのインタフェースを介してシステムバス４０８に接続することができる。モニタ４４２以外の他の出力周辺装置には、入出力インタフェース４４０を介してコンピュータ４０２に接続できるスピーカ（図示せず）やプリンタ４４６などのコンポーネントが含まれる。

【０１００】

コンピュータ４０２は、遠隔コンピュータ装置４４８など１つまたは複数の遠隔コンピュータへの論理結合を使用するネットワーク環境で動作することができる。例として、遠隔コンピュータ装置４４８は、パーソナルコンピュータ、携帯型コンピュータ、サーバ、ルータ、ネットワークコンピュータ、ピアデバイス、あるいはその他の一般的なネットワークノードなどである。遠隔コンピュータ装置４４８は、ここでコンピュータ４０２との関連で挙げた要素および機能の多くまたはすべてを含むことが可能な携帯型コンピュータとして図示している。

【０１０１】

コンピュータ４０２と遠隔コンピュータ４４８間の論理接続は、ローカルエリアネットワーク（ＬＡＮ）４５０および一般的な広域ネットワーク（ＷＡＮ）４５２として図示している。このようなネットワーク環境は、オフィス、企業内のコンピュータネットワーク、イントラネット、およびインターネットに一般的に見られる。

【０１０２】

ＬＡＮネットワーク環境で実装する場合、コンピュータ４０２は、ネットワークインタフェースまたはアダプタ４５４を介してローカルネットワーク４５０に接続される。ＷＡＮネットワーク環境で実装する場合、コンピュータ４０２は通例、広域ネットワーク４５２を通じて通信を確立するためのモデム４５６またはその他の手段を含む。モデム４５６は、コンピュータ４０２の内部にあっても外部にあってもよく、入出力インタフェース４４０またはその他の適切な機構を介してシステムバス４０８に接続することができる。図のネットワーク接続は例示的なものであり、コンピュータ４０２と４４８の間に通信リンクを確立することのできる他の手段を用いてもよいことを理解されたい。

【０１０３】

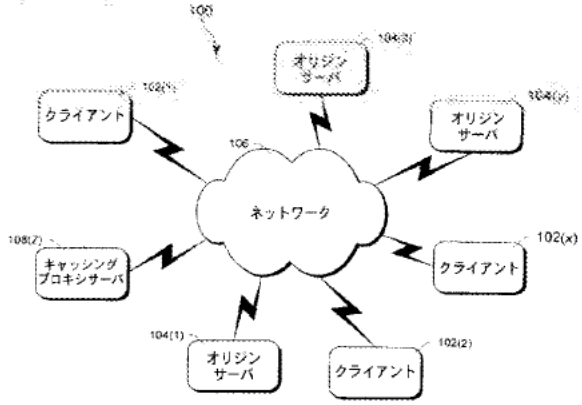
コンピューティング環境４００で示すようにネットワークされた環境では、コンピュータ４０２との関連で図に示すプログラムモジュールまたはその一部は、遠隔のメモリ記憶装置に格納することができる。例として、リモートアプリケーションプログラム４５８が遠隔コンピュータ４４８のメモリ装置に常駐している。例示のために、アプリケーションプログラムおよびオペレーティングシステムなどのその他の実行可能なプログラムコンポーネントをここでは別個のブロックとして表しているが、そのようなプログラムおよびコンポーネントは、様々な時にコンピューティングデバイス４０２の別々のストレージコンポーネント（記憶構成要素）に常駐し、コンピュータのデータプロセッサによって実行されることが分かる。

【０１０４】
ここでは各種のモジュールおよび技術を、１つまたは複数のコンピュータまたは他のデバイスによって実行されるプログラムモジュールなどのコンピュータ実行可能命令の一般的な文脈で説明することができる。一般に、プログラムモジュールには、特定のタスクを実行するか、特定の抽象データ型を実装するルーチン、プログラム、オブジェクト、コンポーネント、データ構造などが含まれる。通例、プログラムモジュールの機能は、各種の実施形態で必要に応じて組み合わせても分散させてもよい。
【０１０５】
こうしたモジュールおよび技術の実装は、何らかの形態のコンピュータ可読媒体に格納しても、そうしたコンピュータ可読媒体を通じて送信してもよい。コンピュータ可読媒体は、コンピュータによるアクセスが可能な任意の利用可能媒体でよい。例として、これに限定しないが、コンピュータ可読媒体は、「コンピュータ記憶媒体」と「通信媒体」を含むことができる。
【０１０６】
「コンピュータ記憶媒体」には、コンピュータ可読命令、データ構造、プログラムモジュール、あるいは他のデータなどの情報を記憶するための任意の方法または技術で実行される、揮発性および不揮発性、取り外し可能および取り外し不能の媒体が含まれる。コンピュータ記憶媒体には、これらに限定しないが、ＲＡＭ、ＲＯＭ、ＥＥＰＲＯＭ、フラッシュメモリまたはその他のメモリ技術、ＣＤ－ＲＯＭ、デジタル多用途ディスク（ＤＶＤ）またはその他の光ストレージ、磁気カセット、磁気テープ、磁気ディスクストレージまたはその他の磁気記憶装置、あるいは所望の情報の記憶に使用することができ、コンピュータによってアクセスできる任意の他の媒体が含まれる。
【０１０７】
「通信媒体」は通例、コンピュータ可読命令、データ構造、プログラムモジュール、またはその他のデータを搬送波やその他の移送機構などの変調データ信号で具現化する。通信媒体には、任意の情報伝達媒体も含まれる。用語「変調データ信号」とは、信号中に情報を符号化するような形でその特性の１つまたは複数を設定または変化させた信号を意味する。例として、通信媒体には、これらに限定しないが、配線ネットワークや直接配線接続などの配線媒体と、音響、ＲＦ（無線周波数）、赤外線、その他の無線媒体などの無線媒体が含まれる。上記の媒体の組合せもコンピュータ可読媒体の範囲に含まれる。
【０１０８】
上記の説明では、構造的特徴および／または方法論的な動作に固有の術語を使用しているが、頭記の特許請求の範囲に定義する本発明はここに記載する特定の特徴または動作に限定されないことを理解されたい。それら特定の特徴および動作は、本発明を実施する例示的形態として開示する。
【図面の簡単な説明】
【図１】ストリーミングメディアコンテンツのクライアント側でのキャッシングを用いることができる例示的なネットワーク環境を示す図である。
【図２】例示的なクライアントデバイスおよびサーバデバイスを示す図である。
【図３】ストリーミングメディアデータを通信する際に使用できる例示的なメッセージフォーマットを示す図である。
【図４】サーバからクライアントにメディアコンテンツをストリーミングする例示的プロセスを示すフローチャートである。
【図５】サーバからクライアントにメディアコンテンツをストリーミングするのと同時に、シャトルコントロールコマンドを受け付ける例示的プロセスを示すフローチャートである。
【図６】後の再生のためにストリーミングメディアコンテンツを記録する例示的プロセスを示すフローチャートである。
【図７】クライアントデバイスにストリーミングメディアコンテンツをキャッシュする例示的プロセスを示すフローチャートである。

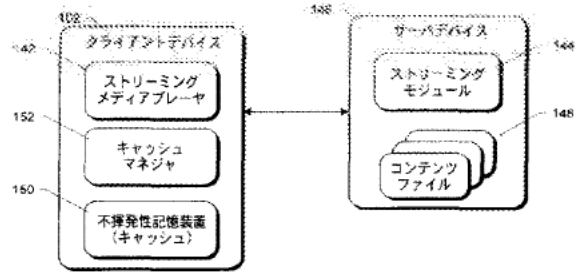
【図８Ａ】ストリーミングメディアコンテンツをクライアントデバイスにキャッシュするかどうかを判定する例示的プロセスを示すフローチャートである。
【図８Ｂ】ストリーミングメディアコンテンツをクライアントデバイスにキャッシュするかどうかを判定する例示的プロセスを示すフローチャートである。
【図９】本発明に係わる技術を実施するのに使用できる例示的な一般的コンピュータ環境を示す図である。
【符号の説明】
１００　ネットワーク環境
１０２（１）、１０２（２）、１０２（ｘ）　クライアントデバイス
１０４（１）、１０４（２）、１０４（ｘ）　オリジンサーバデバイス
１０６　ネットワーク
１０８　キャッシングプロキシサーバ
１４２　ストリーミングメディアプレーヤ
１４４　ストリーミングモジュール
１４６　ソースサーバデバイス
１４８　コンテンツファイル
１５０　不揮発性記憶装置（キャッシュメモリ）
１５２　キャッシュマネジャ
１８０　データ構造
１８２　スタートライン部分
１８４　ヘッダ
１８６　空のライン
１８８　メッセージ本体
４００　コンピュータ環境
４０２　コンピュータ
４０４　処理装置
４０６　システムメモリ
４０８　システムバス
４１０　ＲＡＭ
４１２　ＲＯＭ
４１４　ＢＩＯＳ
４１６　ハードディスクドライブ
４１８　磁気ディスクドライブ
４２０　磁気ディスク
４２２　光ディスクドライブ
４２４　光ディスク
４２５　データメディアインタフェース
４２６　オペレーティングシステム
４２８　アプリケーションプログラム
４３０　プログラムモジュール
４３２　プログラムデータ
４３４　キーボード
４３６　ポインティングデバイス（マウス）
４３８　他の入力装置（他のデバイス）
４４０　入出力インターフェース
４４２　モニタ
４４４　ビデオアダプタ
４４６　プリンタ
４４８　遠隔コンピュータ装置
４５０　ＬＡＮ

４５２　ＷＡＮ（インターネット）
４５６　モデム
４５８　リモートアプリケーションプログラム

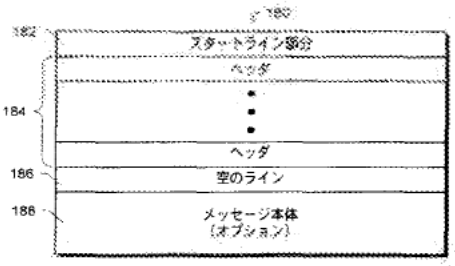
【図１】



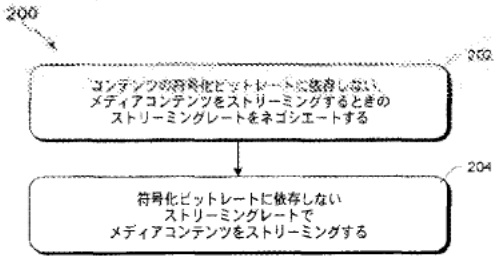
【図２】



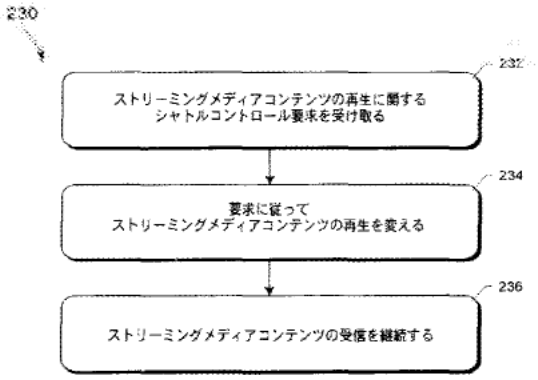
【図３】



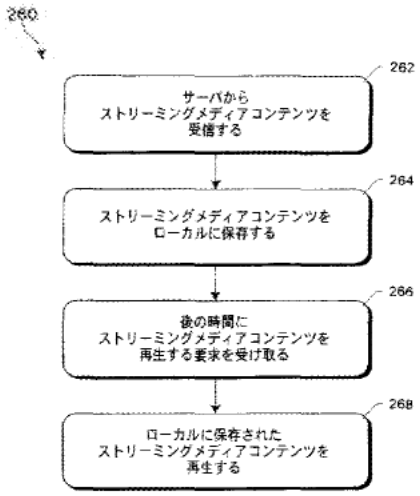
【図４】



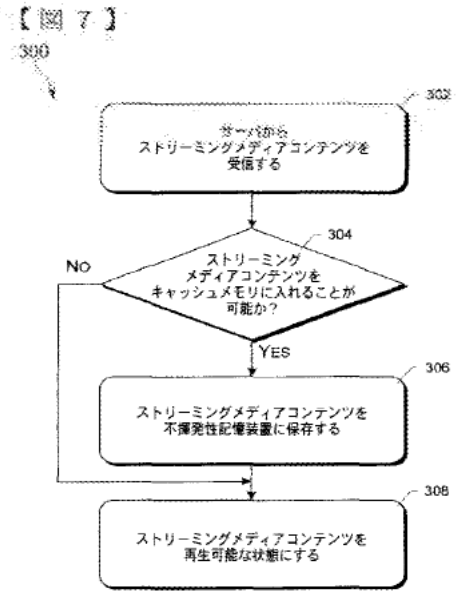
【図５】


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ストリーミングメディアコンテンツの再生に関する
シャトルコントロール要求を受け取る
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要求に従って
ストリーミングメディアコンテンツの再生を変える
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ストリーミングメディアコンテンツの受信を継続する

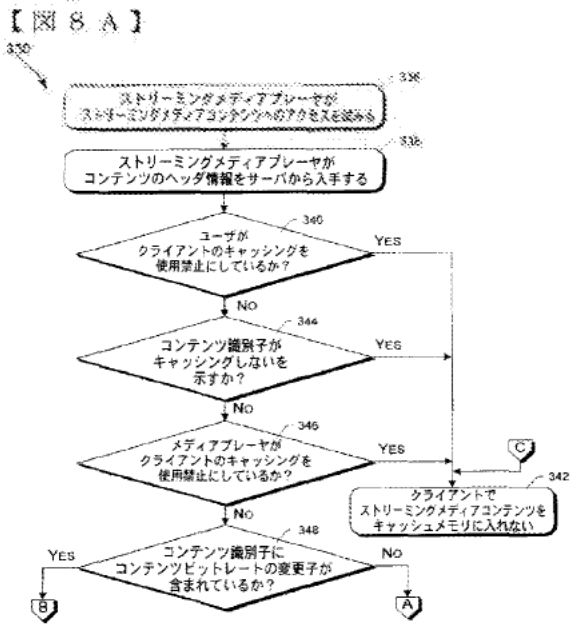
【図６】


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サーバから
ストリーミングメディアコンテンツを
受信する
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ストリーミングメディアコンテンツを
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266
後の時間に
ストリーミングメディアコンテンツを
再生する要求を受け取る
268
ローカルに保存された
ストリーミングメディアコンテンツを
再生する

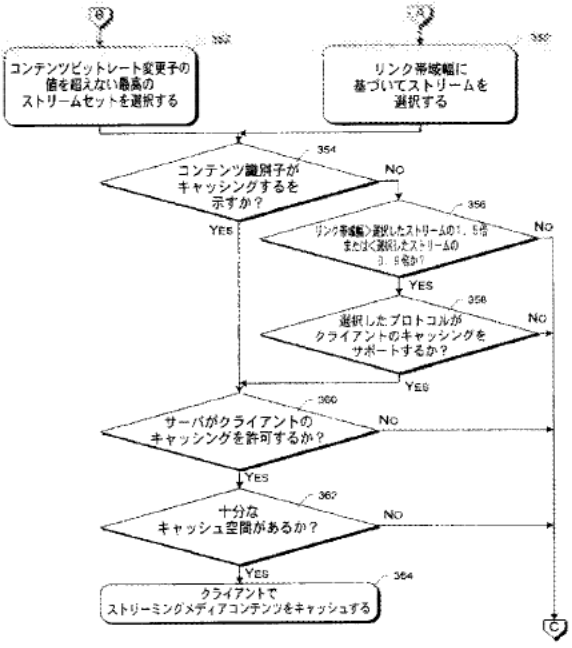
【図７】


300
302
サーバから
ストリーミングメディアコンテンツを
受信する
304
ストリーミング
メディアコンテンツを
キャッシュメモリに入れることが
可能か？
NO
YES
306
ストリーミングメディアコンテンツを
不揮発性記憶装置に保存する
308
ストリーミングメディアコンテンツを
再生可能な状態にする

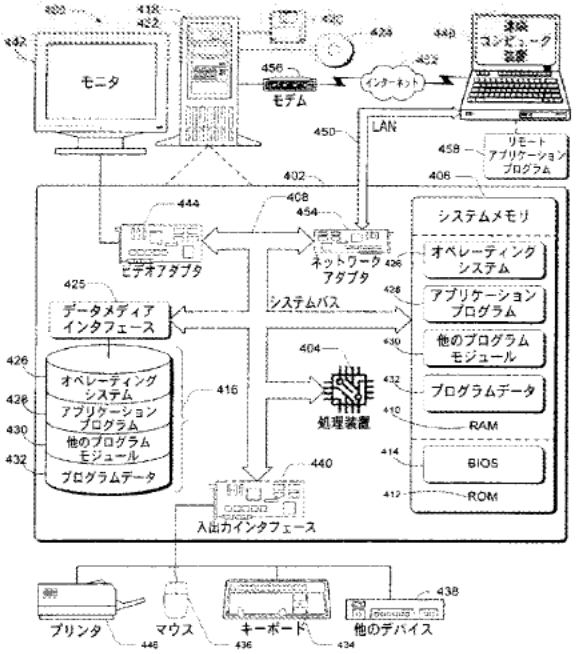
【図８Ａ】


330
336
ストリーミングメディアプレーヤが
ストリーミングメディアコンテンツへのアクセスを始める
338
ストリーミングメディアプレーヤが
コンテンツのヘッダ情報をサーバから入手する
340
ユーザが
クライアントのキャッシングを
使用禁止にしているか？
YES
NO
344
コンテンツ識別子が
キャッシングしないを
示すか？
YES
NO
346
メディアプレーヤが
クライアントのキャッシングを
使用禁止にしているか？
YES
C
342
クライアントで
ストリーミングメディアコンテンツを
キャッシュメモリに入れない
NO
348
コンテンツ識別子に
コンテンツビットレートの変更子が
含まれているか？
YES
NO
B
A

【図８Ｂ】


B
B
352
コンテンツビットレート変更子の値を超えない最高のストリームセットを選択する
350
リンク帯域幅に基づいてストリームを選択する
354
コンテンツ識別子がキャッシングするを示すか？
NO
YES
356
NO
YES
358
選択したプロトコルがクライアントのキャッシングをサポートするか？
NO
YES
360
サーバがクライアントのキャッシングを許可するか？
NO
YES
362
十分なキャッシュ空間があるか？
NO
YES
364
クライアントでストリーミングメディアコンテンツをキャッシュする
C

【図９】


モニタ
モデム
インターネット
遠隔コンピュータ装置
LAN
リモートアプリケーションプログラム
システムメモリ
オペレーティングシステム
アプリケーションプログラム
他のプログラムモジュール
プログラムデータ
RAM
BIOS
ROM
ビデオアダプタ
ネットワークアダプタ
データメディアインタフェース
システムバス
処理装置
入出力インタフェース
プリンタ
マウス
キーボード
他のデバイス

フロントページの続き

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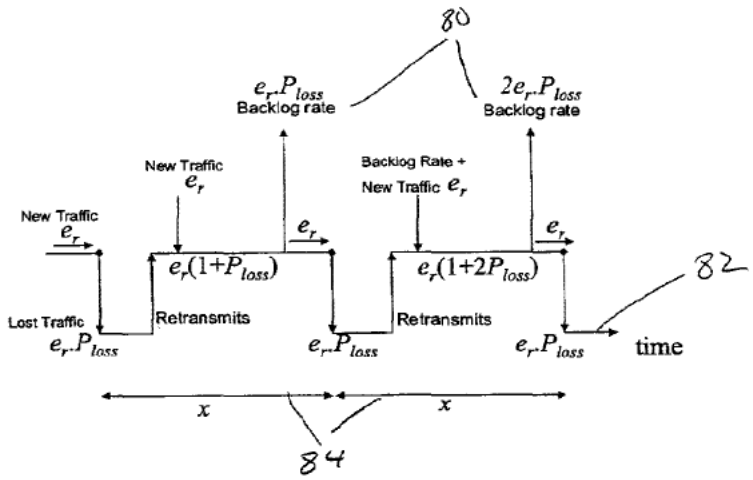
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(54) Title: APPARATUS AND METHOD FOR PREDICTABLE AND DIFFERENTIATED DELIVERY OF MULTIMEDIA STREAMING ON THE INTERNET



(57) Abstract: The inventive method detects network congestion which interferes with streaming of multimedia audio and video packets from and reacts to it and guarantees delivery of packets. The streaming of the multimedia audio and video packets is performed when a server process executing on a sending computing device sends the packets to a player process executing on a receiving computing device via a network, such as the Internet. The detection of the network congestion is performed by communicating configuration information including network parameters from a service manager via the network to the at least one sending computing device and to the at least one receiving computing device. The network congestion (80) is then confirming by transmitting and retracting network probes. At least one buffer management technique is executed to limit degradation in the streaming of the packets. The end of the network congestion is detected by transmitting and retracting said network probes and the rate of streaming of the packets is configured accordingly (82, 84).

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APPARATUS AND METHOD FOR PREDICTABLE AND DIFFERENTIATED DELIVERY OF MULTIMEDIA STREAMING ON THE INTERNET

TECHNICAL FIELD

This invention relates to the field of multimedia audio and video streaming on the Internet, and more particularly, to an apparatus and method for predictable and differentiated delivery of multimedia streaming on the Internet.

BACKGROUND OF THE INVENTION

Multimedia streaming involves broadcast of audio and video information from content providers called streaming servers or senders via the Internet to clients or receivers on user computing devices called streaming players. Real-time delivery of the multimedia streaming on the Internet is inherently uncontrollable and consequently unpredictable. When an Internet delivery path is congested, packets of multimedia streaming are typically dropped, thus causing degraded audio and video playback to be received by the streaming players. Typically, manifested forms of congestion can be classified into two types: instantaneous and sustained (longer-term). Instantaneous congestion is caused by random variations in the arrival patterns of packets of multimedia streaming at different Internet routers and switches, and due to the varying sizes of these packets.

These variations cause varying amounts of delay as the packets of multimedia streaming travel from the streaming server to the streaming receiver. If the delay accumulates beyond a certain point, the packets of multimedia streaming can get lost. This type of congestion typically causes sporadic delays and losses of over hundreds of milliseconds to a few seconds, and is hence referred to as "instantaneous congestion." In contrast, sustained congestion is longer-term and results during periods of excessive demand by the streaming players, e.g., demand for multimedia streaming from popular websites over the network paths on the Internet. During these periods, packet traffic surges can overwhelm the packet buffers in network routers, which are network traffic routing and forwarding computing devices, and packets of multimedia streaming can get

lost in bursts. This is similar to a rush-hour traffic scenario on highways at peak hours. Unlike instantaneous congestion, sustained congestion can last from tens of seconds up to a few minutes.

It is well known that instantaneous congestion is an easy problem to solve. The client or the streaming player can buffer incoming packets of multimedia streaming for a short duration before playback. This reduces the effect of short-term delay between packets of multimedia streaming. Additionally, by requesting that a lost packet be immediately retransmitted, the streaming player can counter the loss of packets of multimedia streaming due to instantaneous congestion. Several existing streaming systems use these techniques, i.e., short-term buffering along with retransmits of lost packets, to isolate the streaming player from the effects of instantaneous congestion. Examples of these systems include the Robust-User Datagram Protocol (UDP) feature in the Real system from Real Networks and the NetShow 3.0 MediaPlayer from Microsoft.

The problem of sustained congestion is harder to solve. This difficulty relates to the fact that the Internet delivery lacks a uniform real-time control. Several standardization and research efforts have proposed ways to introduce such control; however, none have succeeded in creating a global Internet standard. The referred to standardization and research efforts include the following:

1. L. Kleinrock, "On Flow Control in Computer Networks", International Conference on Communications (ICC'78), pages 27.2.1-27.2.5;
2. D.E. Comer, R. S. Yavatkar, "A Rate-based Congestion Avoidance and Control Scheme for Packet Switched Networks", The 10th International Conference on Distributed Computing Systems, pages 390-397, 1990;
3. K.K. Ramakrishnan, R. Jain, "A Binary Feedback Scheme for Congestion Avoidance in Computer Networks", ACM Transactions on Computer Systems, Vol. 8, No. 2, May 1990, Pages 158-181; and
4. D. Mitra, "Asympotically Optimal Design of Congestion Control for High Speed Data Networks", IEEE Transactions on Communications, Vol. 40, No. 2, February 1992.

For example, the RSVP effort, described in Braden, R., Zhang, L., Berson, S., Herzog, S., and Jamin, S., "Resource Reservation Protocol (RSVP) - Version 1

Functional Specification", RFC 2205, Proposed Standard, September 1997, seeks to add "quality of service" control within each network router and switch within the Internet. Another effort that seeks to create fast paths on the Internet is the "differentiated service" effort within the Internet Engineering Task Force (IETF) described in the following publications:

1) Nichols, K., Jacobson, V. and Zhang, L., "A Two-bit Differentiated Services Architecture for the Internet", Internet Draft, December 1997;
2) Ferguson, P., "Simple Differential Services: IP TOS and Precedence, Delay Indication, and Drop Preference", Internet Draft, November 1997; and
3) Clark, D. and Wroclawski, J., "An Approach to Service Allocation in the Internet", Internet Draft, July 1997.

The problem with these approaches is that they require structural changes throughout the Internet. This requirement assumes an explicit cooperation between various managers of the equipment comprising the Internet, which is an impractical assumption. Consequently, these efforts have stalled or are expected to have limited success. An alternative approach is to offer "adaptive applications". This approach proposes that application content be adapted based on the level of congestion. Methods based on this approach degrade the "experience" of an application in a controlled manner, but do not attempt to guarantee predictability or isolation from congestion effects. This approach is discussed in I. Busse, B. Deffner, H. Schulzrinne, "Dynamic QoS Control of Multimedia Applications based on RTP", May 30, 1995 and Real Networks, "White Paper on SureStream Technology", Available at http://www.real.com/devzone/library/whitepapers/surestrm.html.

What is needed is a "delivery framework" that will isolate streaming players from the effect of sustained congestion by providing a "predictable" delivery. Furthermore, there is also a need for a "differentiated streaming" framework that will provide for multiple levels of delivery isolation to the streaming players, without requiring structural changes in the Internet, as in K. Nichols et al., P. Ferguson and D. Clark, discussed above.

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SUMMARY OF THE INVENTION

The object of the present invention is to achieve a particular level of delivery isolation on particular streaming players. This level of delivery isolation may be based on factors like an importance "value" associated with particular streaming players, or the price the user of the streaming players are charged, etc. As an example, the streaming server may place specific streaming players in the high "value" category based on the demographic information on their owners, while other streaming players may be placed in the low "value" category.

Another object of the present invention is to ensure that the high value users of streaming players always receive consistent, predictable delivery of streaming content, even if there is an excessive user demand. If there is a situation of sustained congestion, wherein not all users can be satisfied, the content provider might want to ensure that the high value users are promised predictable delivery.

Accordingly, the present invention provides a method and an apparatus for predictable and differentiated streaming on the Internet. The system consists of software and random-access memory-based buffers installed at the streaming server and at the streaming players along with a service manager at a separate location. The method prescribes the manner in which the system is used to achieve predictable and differentiated delivery of streaming multimedia packets.

The invention is based on streaming multimedia packets between the software on the streaming server and the software on the streaming. The buffer sizes in the computing devices of the streaming player and of the streaming server are initialized based on the configuration information provided by the service manager software at the start of the execution of the inventive method. This configuration information includes:

a) the expected duration of sustained congestion periods,

b) the worst-case packet loss rate during the sustained congestion period,

c) the encoded bit-rate of streaming source information, and etc.

During the delivery of the streaming multimedia packets, the software on the streaming server relays the streaming packets to the software on the streaming player, which stores the packets in a playout buffer before playing them out. The playout buffer takes care of

Ex. 1018-873

delay variation that may arise due to instantaneous congestion on the network path. In case of short-term losses caused by instantaneous congestion, the software on streaming player immediately requests the server-end software to retransmit the lost information.

Predictable Delivery Method

To deal with sustained congestion ("congestion") the invention incorporates the following method. The software on the streaming player uses estimation techniques based on probes to detect and confirm the onset of sustained congestion. Once the congestion status is verified, the streaming player software informs the streaming server software about this event. The streaming server software then modifies the manner in which it streams packets to the streaming player software. In particular, the streaming server software ensures that the transmission rate of packets never exceeds the encoded bit-rate of the streaming source. Furthermore, it gives preemptive priority to the retransmitted packets over new packets. This creates a backlog of new packets at one of the streaming server buffers.

Meanwhile, the streaming player software continuously monitors the status of received packets and detects the end of congestion through estimation techniques based on probes. Once the end of congestion is confirmed, the streaming player software informs the streaming server software about this event. The streaming server software then begins to stream its backlog of new packets to the streaming player software. The transmission rate of this stream is increased based on the estimation information from the streaming player software along with feedback obtained from other streaming players in the network. This rate is carefully selected to ensure that the network is not flooded back into congestion. The buffer sizing at the streaming player and at the streaming server is based on the configuration information and ensures that the user experiences an uninterrupted playback during sustained congestion. This assumes that the configuration information is the "worst-case" scenario. If the actual service parameters turn out to be worse than the configuration information, the streaming player software contacts the service manager after the service. The configuration information at the service manager is now updated in a persistent manner with the actual worst-case parameters.

In one preferred embodiment, this update happens as follows. At the next service invocation, the buffers are sized based on the updated configuration information. The method thus automatically learns the worst-case behavior from the actual behavior of the network each time. Eventually, the method can guarantee a predictable delivery based on a non-interrupted playout in most cases. Various other embodiments are also possible, wherein the buffer size is fixed, but the encoding bit-rate of the stream is modified to choose the largest encoding bit-rate that leads to an uninterrupted playback.

Differentiated Streaming Method

The method for differentiated streaming involves identical operations as the predictable streaming method, except for the mechanism for streaming the backlog of packets from the streaming server software. For differentiated streaming, the streaming server software transmits the stream based on the "value" associated with the particular user, in addition to the information used for predictable streaming.

Accounting Delivery Service

Additionally, the methodology of the mentioned invention is utilized to offer the inventive method as an "accountable delivery service" to a large number of content providers, i.e., streaming servers, and users, i.e., streaming players. Such a service may deliver performance contract-based services to users of the streaming players on the Internet.

The service manager plays a central role in this service, by keeping and exchanging the state of several streaming players, delivery paths, and content providers/streaming servers in its database. The method of the present invention tracks the "actual" delivered viewing/listening experience of users of streaming servers by computing the delivery statistics including but not restricted to metrics that quantify "pauses or interruptions", "content throughput", and "content loss". In addition to the features of predictability and differentiation, the delivery service can also answer the question of "service feasibility". That is, at the beginning of a session, the service manager can estimate, based on the historical and instantaneous information, whether a

particular user can receive an "expected quality experience." While the present invention does not describe the details of this service, it should be obvious to those skilled in the art to build such a service around the framework of the present invention.

BRIEF DESCRIPTION OF THE DRAWINGS

The above and other objects and advantages of the invention will be apparent upon consideration of the following detailed description, taken in conjunction with the accompanying drawings, in which the reference characters refer to like parts throughout and in which:

Figure 1 is a schematic diagram of the devices and programs comprising the invention.

Figure 2 is a schematic diagram of the components of the devices utilized by the invention.

Figure 3 is a schematic diagram of the operation of the invention during normal streaming.

Figure 4 is a schematic diagram of the operation of the invention during congestion.

Figure 5 is a schematic diagram of the recovery scheduling operation of the invention after congestion.

Figure 6 is a diagram of the modeling the backlog operation of the invention during congestion.

Figure 7 is a state transition diagram for streaming player module (normal streaming).

Figure 8 is a state transition diagram for streaming server module (normal streaming).

Figure 9 is diagram of a congestion processing protocol at the streaming player module (during and after congestion).

Figure 10 is a diagram of an congestion processing protocol at the streaming server module (during and after congestion).

DETAILED DESCRIPTION OF THE INVENTION

Architecture

The invention, shown in Figure 1, comprises at least one computing device 10 for executing a service manager process 12, at least one computing device 14 for executing streaming server process 16, and at least one computing device 18 for executing streaming player process 20. The service manager process 12 is shown as residing on the computing device 12 only for the clarity of presentation. It may be obvious to those skilled in the art that the service manager process 12 may reside on any computing devices 14 and 18. Furthermore, server processes 16 may be present on the computing devices 18 alongside player processes 20, and vice versa the player processes 20 may be present on the computing devices 14 alongside server processes 16. Each computing device 10, 14 and 18 are connected to a network 22 and establish data paths amongst each other. In the preferred embodiment, the network is the Internet.

The streaming server process 16 transmits a single multimedia stream to each streaming player process 20 and the streaming player process 20 receives that single multimedia stream. The streaming server process consists of three buffers:

a) Output buffer 24, used to transmit new packets from the server process 16 to the player process 20;

b) Backup buffer 26 , for maintaining temporary copies of the packets transmitted to the player process 20; and

c) Retransmit buffer 28, for maintaining retransmit requests received from the player process 20. The streaming player process 20 may comprise a player buffer 29.

Before a streaming session begins, the Service Manager process 12 downloads configuration information via the network 22 to both the computing device 14 for the use of the streaming server process 16 and to the computing device 18 for the use of the streaming player process 20. At the end of each streaming session, the configuration information on the computing device 10 is updated for the future use of the Service Manager process 12 via the network 22 by both the streaming server process 16 on the computing device 14 and the streaming player process 20 on the computing device 18.

The computing devices 10, 14, and 18 may take the configuration of any computer ranging from mainframes and personal computers (PCs) to digital telephones and hand held devices, e.g., palm pilots™. In one illustrative embodiment of this invention shown in Figure 2, such computing devices may comprise a bus 30, which is connected directly to each of the following:

1. a central processing unit (CPU) 32;
2. a memory 34;
3. a system clock 36;
4. a peripheral interface 38;
5. a video interface 40;
6. an input/output (I/O) interface 42;
7. a communications interface 44; and
8. a multimedia interface 46.

The common bus 30 is further connected

1. by the video interface 40 to a display 50;
2. by the I/O interface 42 to a storage device 52, which may illustratively take the form of memory gates, disks, diskettes, compact disks (CD), digital video disks (DVD), etc.;
3. by the multimedia interface 46 to any multimedia component 56;
4. by peripheral interface 38 to the peripherals 58, such as the keyboard, the mouse, navigational buttons, e.g., on a digital phone, a touch screen, and/or writing screen on full size and hand held devices, e.g., a palm pilot ™;
5. by the communications interface 44, e.g., a plurality of modems, to a network connection 60, e.g., an Internet Service Provider (ISP) and to other services, which is in turn connected to the network 22, whereby a data path is provided between the network 22 and the computing devices 10, 14, and 18 (Figure 1) and, in particular, the common bus 30 of these computing devices; and
6. furthermore, by the communications interface 44 to the wired and/or the wireless telephone system 54.

Normal Conditions

Turning now to Figure 3, the normal streaming operation is shown when there are either zero, i.e., no losses, or sporadic streaming losses, i.e., loss occurring due to instantaneous burst of streaming packets. The overall streaming sequence works as follows. Packets streamed from the streaming server process 16 are queued up in the streaming server output buffer 24 for transmission. The server process 16 is responsible for transmitting streaming packets 70 to the computing device 18 executing the player process 20. Periodically, this process 16 checks the output buffer 24 and the retransmit buffer 28 to determine if there are streaming packets 70 awaiting transmission or any requests form the player process. Any remaining streaming packets in the output buffer 24 are then transmitted. If retransmission requests are found, any streaming packets 70 requested for retransmission and found in the backup buffer 26 are transmitted. When streaming packets 70 are transmitted, a temporary backup copy of the transmitted streaming packets 70 is kept in the backup buffer.

The streaming player process 20 receives the streaming packets 70 and stores them at the tail-end of the player buffer 29. Periodically after a user-defined interval, the player process 20 examines the received streaming packets 70 to see if any streaming packets 70 are missing. If packets are missing, the player process 20 sends a request 72 to the server process 16 to retransmit the missing packets. After assuring that all the streaming packets 70 are received, the received streaming packets 70 are forwarded from the head-end of the player buffer to the streaming player process 20.

Congested Conditions

The invention detects congestion early on, and then may take steps so that the impact of congestion on the stream is minimized. A correctly configured framework can keep a stream completely transparent of sustained congestion, thus providing an effect equivalent to a "reservation." Two principles are at the basis of this framework, detection/reaction to congestion and congestion recovery.

1. Detecting and reacting to congestion

The invention detects congestion through probes launched by the player process 20. The probes are discussed in detail later. Once congestion is confirmed, the server process 16 reacts by using a technique called "constant bit-rate emulation." This name derives from the fact that the server process 16 tries to maintain a constant upper bound on the rate at which the streaming packets 70 are streamed to the player process 20. Typically, the upper bound is set equal to the encoding bit rate of the stream. In effect, the server process 16 emulates a constant bit-rate by substituting new server packets with packets that have been requested 72 for retransmission. Please recall that in congestion, the server has a large number of retransmit requests 72 issued from the player process 20. Figure 4 shows the flow of streaming packets 70 during this congestion situation. Two important reasons motivate the constant bit-rate emulation method:

a) The method demonstrates a "network-friendly" yet efficient behavior. The method is network-friendly, since it conserves bandwidth during congestion by lowering the upper bound of its streaming transmission rate. Additionally, the method is efficient for the following reasons. First, the upper bound on the transmission rate is set equal to the maximum encoding bit-rate of the source stream; this is not a restrictive setting. Unlike other schemes that voluntarily reduce the source rate during congestion, the present invention only reduces the transmission rate by the amount of incurred loss. This decision has an important implication in practice. Most practical congestion-processing algorithms will incur errors and delays in estimating and reacting to the start of congestion or end of congestion. Consequently, there will be temporary periods in which these algorithms "think" that the network is congested, when in practice, the network has cleared out of congestion. In situations like this, estimation errors do not degrade the streaming throughput. In fact, the invention delivers a throughput better or equal to the throughput of any other scheme, if there is no loss of streaming packets 70.

b) Assuming most connections sharing the network with streaming are using the Transmission Control Protocol (TCP), the constant bit-rate of the invention in congestion allows the TCP traffic on the same path to accurately sense the available bandwidth (most Internet or Web traffic uses TCP). An alternative design with

Ex. 1018-880

adapting bit-rate would confuse most other TCP connections and cause each to keep oscillating their TCP windows. If all TCP connections maintain a steady window-size, the performance of the network is much smoother in congestion. This behavior can drain out the congestion faster and reduce the estimation errors.

2. Detecting End-of-Congestion and Recovery from congestion

The invention detects the end of congestion through probes launched by the player process 20. Once the player process 20 confirms that congestion is over, the server process 16 enters a phase called "recovery scheduling". Figure 4 shows a recovery scheduling after congestion. To understand this phase, recall that in the previous state of congestion, the server transmits packets at a constant rate. By substituting new packets with older lost packets, the server is in effect creating a backlog of new packets in its output buffer. The idea in recovery scheduling is to exhaust the substantial backlog that may build up at the server output queue. Clearly, this backlog must not be cleared by flooding the network. Such action may cause significant losses in the intermediate switch buffers. In addition, if thousands of streams of packets 70 flood the backlog at the same time, this may cause certain network points to get congested again. Recovery scheduling is a procedure that configures the rate of streaming the backlog based on the network parameters. Additionally, recovery scheduling can also take into account the "premium" placed on the particular player process 20. The latter consideration allows the server process 16 to stream backlog of streaming packets at different priorities. "Higher value" users can receive backlog sooner than "lower value" users. This is the basic principle behind differentiated streaming.

Buffer Design

As described previously, the configuration information is downloaded to the computing devices 14 and 16 at the beginning of each streaming session. This configuration information includes the following parameters:

(1) Worst-case duration of congestion, $c*x$, where x is a sampling or retransmission interval, and c is a number of sampling intervals in a congestion period.

(2) Worst-case of loss of streaming packets 70 during congestion defined by P_{loss}

(3) Encoding bit-rate of the stream of streaming packets 70 defined by e_r

(4) Averaged and minimum service rate, SR_{avg} and SR_{min}. This is the rate at which streaming packets 70 are actually transferred from the server process 16 to the player process 20. SR_{min} is the minimum rate across the path via the Internet 22 from the server process 16 to the player process 20.

(5) Path bottleneck link bandwidth B_{min} and the hop link capacities, where B_{min} is the minimum physical bandwidth across all the hops, i.e., the routing devices between the server process 16 and the player process 20.

The parameters indicated in the list above may be obtained through historical measurements of the relevant values and through measurements made on streaming packets 70 at the computing device 14 of the server process 16. The parameters are in turn used to design the sizes of the buffers 24, 26, 28 and 29 of server process 16 and the player process 20. One preferred embodiment of achieving this is described immediately below. That embodiment ignores the upper bounds limits on the buffer sizes related to the available random-access memory 34 (Figure 2) in the computing devices 14 and 18.

Player Buffer-size (b_c)

The buffer on the computing device 18 used by the streaming player process 20 plays out the streaming packets 70 at the maximum rate of e_r bits per second. During sustained congestion, the packet loss is approximately P_{loss}, and the maximum transmission rate from the server, as explained above is e_r. It follows that the rate of the player buffer 29 fill rate equals to $e_r * (1 - P_{loss})$ bits per second. Thus, the net drain on the player buffer 29 proceeds at the rate of $e_r * P_{loss}$ bits per second. To prevent the player buffer 29 from draining out completely within the congestion period $c * x$, the buffer-size of the player buffer 29 should satisfy the constraint defined as:

$$\frac{b_c}{e_r * P_{loss}} \geq c * x \quad \text{or} \quad b_c \geq c * x * e_r * P_{loss} \qquad \text{(Equation 1)}$$

Streaming Server Output Buffer-size (b_o)

Recall that the streaming server output buffer holds the backlog of new packets created during the congestion period. Consequently, the size of this buffer is dictated by the worst-case amount of backlog during the congestion period. To calculate the worst-case backlog of the streaming packets 70, a simple model may be built up. Figure 6 shows the approximate amount of backlog as a function of time 82 during sustained congestion. As indicated, the backlog rate 80 after two retransmission intervals 84 is $2 * e_r * P_{loss}$. By extension, after c retransmission intervals 84, the backlog rate 80 will be $cx * e_r * P_{loss}$. This establishes the constraint on the size of the output buffer 14 (Figure 1) in the memory 34 (Figure 2) of the computing device 14 (Figure 1) executing streaming server process 16 (Figure 1).

$$b_o \geq c * x * e_r * P_{loss} \qquad \text{(Equation 2)}$$

Server Backup Buffer-size (b_{backup})

The backup buffer 26 (Figure 1) holds temporary copies of the server packets that have been transmitted to the player process 20 (Figure 1). The copies must be held until the server is sure that the packets have been successfully received in the player buffer 29 (Figure 1). To estimate the size of this backup buffer 26 (Figure 1) again, an operational model is built. First, the transmission rate in packets per seconds is defined as R_p. At the start of the first retransmit 84, the approximate rate of loss of the streaming packets 70 (Figure 3) is $P_{loss} * R_p$. Assuming the loss affects new as well as retransmitted streaming packets 70 (Figure 3) equally, the approximate rate of loss for older unsuccessful streaming packets 70 (Figure 3) at the second retransmit 84 is $P_{loss}^2 * R_p$. Supposing now that the number of retransmits that will reduce the loss rate for older