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|-------------------------------------------------------------------------------------------------------|-------------|----------------------|-----------------------------|------------------------|
| APPLICATION NO.                                                                                       | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO.       |
| 12/096,933                                                                                            | 06/11/2008  | John McCue           | 141-1 US/PCT                | 6429                   |
| 24949 7590 10/12/2010<br>TEITELBAUM & MACLEAN<br>280 SUNNYSIDE AVENUE<br>OTTAWA, ON K1S 0R8<br>CANADA |             |                      | EXAMINER<br>BATURAY, ALICIA |                        |
|                                                                                                       |             |                      | ART UNIT<br>2441            | PAPER NUMBER           |
|                                                                                                       |             |                      | MAIL DATE<br>10/12/2010     | DELIVERY MODE<br>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.**

12/096,933

**Applicant(s)**

MCCUE ET AL.

**Examiner**

Alicia Baturay

**Art Unit**

2441

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

THE REPLY FILED 28 September 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): See Continuation Sheet.  
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: 34.  
Claim(s) rejected: 1,5,10,12,13,17-20,22,25,28,30,32-34,40-42 and 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 of 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: See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Wing F. Chan/  
Supervisory Patent Examiner, Art Unit 2441

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claim 41 under 35 U.S.C. § 101 regarding non-statutory subject matter has been addressed and is withdrawn.

Continuation of 11. does NOT place the application in condition for allowance because:

The rejection of claim 41 under 35 U.S.C. § 101 regarding non-statutory subject matter has been addressed and is withdrawn.

Applicant Argues: Zuniga does not teach a descriptor including at least one of a start time, an end time, and a play time of each small digital audio file within the audio stream.

In Response: The examiner respectfully submits that the combination of Zuniga and Arons teaches a descriptor including at least one of a start time, an end time, and a play time of each small digital audio file within the audio stream (specify the order in which some or all of the selected content is played back. Sequentially ordered to reflect the selected playback order. Playback order is equivalent to play time - see Zuniga, page 5, paragraph 55).

Applicant Argues: Zuniga does not teach a descriptor for use with a media player for reproducing the audio stream using the plurality of small digital audio files without reconstruction of the audio stream.

In Response: The examiner respectfully submits that the combination of Zuniga and Arons teaches the descriptor for use with a media player (user interface means for presenting stored audio content for playback selection = media player. Finally, during playback of a selected audio track, it may be paused or caused to resume using a toggle button, for instance, using button 2. Further, rapidly pressing button 2 twice may commence manual browsing and playback mode. When the user wishes to stop listening to audio material, then the user may de-activate the terminal by using a button or voice activated controls - see Zuniga, page 1, paragraph 10; and page 7, paragraph 75) for reproducing the audio stream using the plurality of small digital audio files without reconstruction of the audio stream (Available audio tracks or programs may be stored on wireless servers as a sequence of small files. The first file in a sequence of such files may be a text file containing an identification number and title of the audio track or program - see Zuniga, page 4, paragraph 45).

Applicant Argues: Zuniga actually teaches away from segmenting an audio stream into a plurality of small digital audio files using natural language gaps in the audio stream.

In Response: The examiner respectfully submits that the combination of Zuniga and Arons teaches segmenting an audio stream into a plurality of small digital audio files (audio segment is broken into several audio files - see Zuniga, page 2, paragraph 20; and Available audio tracks or programs may be stored on wireless servers as a sequence of small files. The first file in a sequence of such files may be a text file containing an identification number and title of the audio track or program - see Zuniga, page 4, paragraph 45 - see Zuniga, page 4, paragraph 45) using natural language gaps in the audio stream (An adaptive speech detector was developed for shortening and removing pauses and to provide data for segmentation. A value several decibels above this peak is selected as the dividing line between speech and background noise. Successfully segmented into speech and background noise. The lengths of the pauses in a recording can be used to segment the speech. Segmenting a recording with a pause threshold of 0.02 would select the segments of speech that occur just after the longest 2% of the pauses in the recording - see Arons, page 8, 2.2, 2.2.1 and page 9, 2.3.1).

Applicant Argues: It would not have been obvious to one skilled in the art to modify Zuniga in view of Arons in order to enable segmenting an audio stream using natural language gaps in the audio stream.

In Response: The examiner respectfully submits that in this case, it has been shown that Zuniga is directed to a system and method that facilitate efficient use of data networks while providing for personalized audio content selection and coordinated distribution of selected content are disclosed. The invention categorizes audio content to be delivered over wireless networks such that the categories correspond to a different delivery priority. Category 3 content, such as music, audio books and so on, has the least urgent delivery priority. The categories are used to coordinate audio content delivery to efficiently use available bandwidth and network resources by delivering content at off-peak times. The invention also allows the downloading process to be interruptible such that it can be resumed at about the point of an interruption to conserve resources (see Zuniga, Abstract). In analogous art, Arons is drawn to successfully segmenting audio files into speech and background noise (see Arons, page 9, first full paragraph).

Additionally, the motivation to combine Zuniga and Arons was given in the rejection as "exploit acoustic cues to segment recorded speech into semantically meaningful chunks (Arons, page 4, 4th full paragraph)."

Moreover, the KSR decision supports the rationale that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Zuniga was used as the primary reference, which is seen as disclosing all of the claimed subject matter except for that using natural language gaps in the audio stream. However, the segmenting using natural language gaps procedure limitations are covered by Arons. So all of the component parts of the claim are known in Zuniga and Arons. Thus, it would have been obvious to one having ordinary skill in the art to use the segmenting using natural language gaps procedure taught by Arons with the system of downloading each small audio file successively discussed in the Zuniga reference, since a segmenting using natural language gaps procedure could be used in combination with downloading each small audio file to achieve the

predictable results of providing advantages of breaking each audio file into smaller ones automatically which allows for a quicker download. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Zuniga and Arons.

Applicant Argues: Zuniga does not teach transmitting a second small digital audio files in the plurality of small digital audio files from the server to the client while playing the first small digital audio file.

In Response: The examiner respectfully submits that the combination of Zuniga and Arons teaches transmitting a second small digital audio file in the plurality of small digital audio files from the server to the client while playing the first small digital audio file (allocate space to accommodate the expected audio content. Audio content downloading is initiated or resumed with the audio content being saved in appropriate directories or fields. If the user has selected a desired playback order when originally selecting the content or has later created a deserved playback order, then playback commences upon the start of playback mode - see Zuniga, page 6, paragraphs 70-71).

Applicant Argues: Madden et al. does not teach selecting the audio stream using a bookmark.

In Response: The examiner respectfully submits that the combination of Zuniga, Arons , and Madden teaches selecting the audio stream using a bookmark (the current position being saved 608 as a virtual chapter can be saved as a time offset relative to the media item from start of the media item - see Madden, page 16, paragraph 211).

Applicant Argues: The proposed combination does not teach using a time offset from one of the descriptor and a bookmark to select the first small digital audio file to be transmitted.

In Response: The examiner respectfully submits that the combination of Zuniga, Arons , and Madden teaches using a time offset from one of the descriptor and a bookmark (the current position being saved 608 as a virtual chapter can be saved as a time offset relative to the media item from start of the media item. Beginning of a chapter = descriptor for creating a bookmark - see Madden, page 16, paragraph 211).

Applicant Argues: Madden does not teach purging in a plurality of small digital audio files in dependence of a time offset.

In Response: The examiner respectfully submits that the combination of Zuniga, Arons , and Madden teaches purging a plurality of small digital audio files in the list in dependence upon at least one of a current time offset in the audio stream and a bookmarked time offset (For example, a chapter navigation input can pertain to a next chapter input or a previous chapter input. When the decision 606 determines that a chapter navigation input has been received, then a current position within the media data of the media item is saved 608 as a virtual chapter. Here, at the point at which the navigation input is received, the playing of the media data is normally at a random position within a chapter. Hence, the current position is saved as a virtual chapter. This subsequently allows the current position to be returned to in response to a chapter navigation input. The current position being saved 608 as a virtual chapter can be saved as a time offset relative to the media item (e.g., from beginning of a chapter or from start of the media item) - see Madden, page 16, paragraph 211).

Applicant Argues: Zuniga does not teach playing the selected audio stream using a media player in less than about 5 seconds such that the transition between successive small digital audio files is seamless to a user of the media player. In fact, it is submitted that Zuniga teaches concatenating the plurality of files so that there is no transition between successive small files.

In Response: The examiner respectfully submits that the combination of Zuniga, Arons , and Madden teaches playing the selected audio stream using a media player (user interface means for presenting stored audio content for playback selection = media player. Finally, during playback of a selected audio track, it may be paused or caused to resume using a toggle button, for instance, using button 2. Further, rapidly pressing button 2 twice may commence manual browsing and playback mode. When the user wishes to stop listening to audio material, then the user may de-activate the terminal by using a button or voice activated controls - see Zuniga, page 1, paragraph 10; and page 7, paragraph 75) in less than about 5 seconds and such that the transition between successive small digital audio files (each audio segment may be delivered as a collection of several audio files - see Zuniga, page 3, paragraph 31) is seamless to a user of the media player (the collection of the subsequent small audio files, when concatenated represents the audio file of the audio track or program - see Zuniga, page 4, paragraph 45), wherein play is begun from a predetermined position within the selected audio stream (specify the order in which some or all of the selected content is to be played back - see Zuniga, page 5, paragraph 55).