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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for Kenneth P. Weiss and examiner information for Immanuel, Isidora I.

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

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

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APPLE 1016

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## DETAILED ACTION

### ***Acknowledgements***

1. This office action is in response to the claims filed 07/27/2017.
2. Claims 1-21 are elected.
3. Claims 1-28 are pending.
4. Claims 22-28 are non-elected
5. Claims 1-21 have been examined.

### ***Notice of Pre-AIA or AIA Status***

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

### ***Restriction/Election Acknowledgement***

7. During a telephone conversation with Applicant's representative John Anastasi on 08/17/2017 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Examiner's Comments***

8. Regarding claims 1, and 15, "code is generated... responsive to successful authentication...", and claim 10, "code is generated using..." are optional language because if there is no successful authentication the generating will not occur. The

limitations are optional language and therefore do not have patentable weight. *Ex parte Schulhauser*, Appeal No. 2013-007847 at 7-9 (P.T.A.B. April 28, 2016) See MPEP 2103(I)(c).

9. Regarding claim 1, with respect to claim language “interface configured to receive...”, “processors configured to retrieve...”, claims 6 and 20, “sensor is configured to capture...”, recites intended use and therefore does not have patentable weight. See MPEP 2114.

10. Regarding claims 2 and 16, “authentication code comprises a code...”, claims 8 and 15, “input comprising a personal...”, claim 9, “code comprises...”, and claim 10, “code is generated...” are nonfunctional descriptive material and therefore do not have patentable weight. See *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2111.05.

11. Regarding claim 8, the language “code is generated...”, “input is received...”, claim 11, “account is communicated...”, and claim 12, “code are encrypted...”, does not disclose a positively recited step and therefore does not patentable weight. See MPEP 2103 (I) (C), MPEP 2114.

12. Regarding claim 13, the language “sensor is configured to capture...”, claim 14, “computer system comprises one or more...” is a structural limitation in a method claim and has no patentable weight. *Ex parte Pfeiffer*, 135 USPQ 31 (Bd. App. 1961).

### ***Claim Rejections - 35 USC § 101***

13. 35 U.S.C. 101 reads as follows:

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

14. Claims 1-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

#### Subject Matter Eligibility Standard

15. When considering subject matter eligibility under 35 U.S.C. 101, it must be determined whether the claim is directed to one of the four statutory categories of invention, i.e., process, machine, manufacture, or composition of matter. If the claim does fall within one of the statutory categories, it must then be determined whether the claim is directed to a judicial exception (i.e., law of nature, natural phenomenon, and abstract idea), and if so, it must additionally be determined whether the claim is a patent-eligible application of the exception. If an abstract idea is present in the claim, any element or combination of elements in the claim must be sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. Examples of abstract ideas include fundamental economic practices; certain methods of organizing human activities; an idea itself; and mathematical relationships/formulas. (*Alice Corporation Pty. Ltd. v. CLS Bank International, et al. US Supreme Court, No. 13-298, June 19, 2014*).

#### Analysis

16. In the instant case, claim 1 is directed to a system, claim 8 is directed to a method and claim 15 is directed to a storage medium.

17. The claims recite “receiving identification information...”, “retrieving account information...”, and “using the retrieved account information...” Additionally, the claim is directed towards a fundamental economic practice, in this case, authenticating a user

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