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

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

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APPLE 1017

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<b>Office Action Summary</b>	<b>Application No.</b> 15/661,943	<b>Applicant(s)</b> Weiss, Kenneth P.	
	<b>Examiner</b> ISIDORA I IMMANUEL	<b>Art Unit</b> 3685	<b>AIA Status</b> No

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

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 07/27/2017
  - A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_\_
- 2a)  This action is **FINAL**.                                  2b)  This action is non-final.
- 3)  An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims\***

- 5)  Claim(s) 1-28 is/are pending in the application.
  - 5a) Of the above claim(s) 1-7 and 22-28 is/are withdrawn from consideration.
- 6)  Claim(s) \_\_\_\_\_ is/are allowed.
- 7)  Claim(s) 8-21 is/are rejected.
- 8)  Claim(s) \_\_\_\_\_ is/are objected to.
- 9)  Claim(s) See office action are subject to restriction and/or election requirement.

\* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see [http://www.uspto.gov/patents/init\\_events/pph/index.jsp](http://www.uspto.gov/patents/init_events/pph/index.jsp) or send an inquiry to [PPHfeedback@uspto.gov](mailto:PPHfeedback@uspto.gov).

**Application Papers**

- 10)  The specification is objected to by the Examiner.
- 11)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

**Certified copies:**

- a)  All      b)  Some\*\*      c)  None of the:
  - 1.  Certified copies of the priority documents have been received.
  - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)<br/>Paper No(s)/Mail Date <u>07/27/2017</u></li> </ul> | <ul style="list-style-type: none"> <li>3) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date _____</li> <li>4) <input type="checkbox"/> Other: _____</li> </ul> |
|--|---|



## DETAILED ACTION

### *Acknowledgements*

1. This office action is in response to the claims filed 07/27/2017.
2. Claims 8-21 are elected.
3. Claims 1-28 are pending.
4. Claims 1-7 and 22-28 are non-elected
5. Claims 8-21 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 2, claims 8-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-7 and 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 8 and 15, "wherein the enablement signal is only received after successful validation of the identification information" and "wherein the generating the one-time authentication code occurs responsive to successful authentication...", are optional language because if there is no validation the signal will not be received and 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 claims 9 and 16, “authentication code comprise a code...,” 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.

10. 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).

11. Regarding claim 20, “sensor is configured to capture...” recites intended use and therefore does not have patentable weight. See MPEP 2114.

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

12. 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.

13. Claims 8-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

### **Subject Matter Eligibility Standard**

14. 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

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

16. The claims recite “authenticating the user...”, “retrieving account information...”, “generating...”, “wirelessly transmitting...”, and “receiving an enablement signal...”. Additionally, the claim is directed towards a fundamental economic practice, in this case, authenticating a user which is similar to Alice which is drawn to receiving, storing and processing information and dealt with intermediated settlement. Therefore, based on case law precedent, the claims are claiming subject matter similar to concepts already identified by the courts as dealing with abstract ideas. See *Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2356 (citing *Bilski v. Kappos*, 561, U.S. 593, 611 (2010)). Claim 15 is directed towards the generic computer used to implement the method of claim 8 and is therefore also directed towards a judicial exception regarding an abstract idea involving

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