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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/008,965	12/18/2007	5617567	6883.23 (3)	5913

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MACPHERSON KWOK CHEN & HEID LLP
2033 GATEWAY PLACE
SUITE 400
SAN JOSE, CA 95110

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/14/2008

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



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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

Date:

Donald Daybell
ORRICK, HERRINGTON & SUTCLIFFE, LLP
4 Park Plaza, IP PROSECUTION DEPT., SUITE 1600
Irvine, CA 92614-2558

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. : 90008965
PATENT NO. : 5617567
ART UNIT : 3992

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

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

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/008,965	Patent Under Reexamination 5617567	
	Examiner CHARLES R. CRAVER	Art Unit 3992	

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

The request for *ex parte* reexamination filed 18 December 2007 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) PTO-892, b) PTO/SB/08, c) Other: DETAILED ACTION

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

RESPONSE TIMES ARE SET AS FOLLOWS:

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

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

2. The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a) by Treasury check or,
b) by credit to Deposit Account No. 15-0665, or
c) by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

cc:Requester (if third party requester)

DETAILED ACTION

1. A Substantial New Question of Patentability (SNQ) affecting claims of US Patent **5,617,567** is **not** raised by the request for reexamination filed 12/18/07 by the Third Party requestor.
2. Reexamination has been requested of claims 1-16 of the instant '567 Patent.
3. The instant Patent is currently assigned to FST and issued 4/1/97 based on US Pat Application Ser. No. 08/439,013, filed 5/11/95 as a Division of Serial Number 08/083,361, itself a continuation of Serial Number 07/526,424, filed 5/21/90. The instant Patent is still within its enforceability period.
4. The instant Patent under Reexamination is currently under litigation, see *Financial Systems Technology, et al. v. Oracle Corporation*, Case No. 2:04-CV-358-TJW (E.D. Tex.), October 12, 2004.
5. In the request, the Third Party asserts that claims are anticipated under 35 USC 102, rendered unpatentable under 35 USC 103 or rendered unpatentable under Double Patenting by the following references:
 - a. Ramez Elmasri and Shamkant B. Navathe, *Fundamentals of Database Systems* (1989);
 - b. Toby J. Teorey, et al., *A Logical Design Methodology for Relational Databases Using the Extended Entity-Relationship Model*, *Computing Surveys*, Vol. 18, No. 2 (June 1986);
 - c. M.M. Zloof, *Query-by-Example: a data base language*, *IBM Systems Journal*, No. 4, 1977, pp. 324-343;
 - d. US Patent No. 4,506,326 to Philip S. Shaw, et al.
6. The Third Party asserts that above listed prior art anticipates instant claims as follows:
 - a. It is asserted that Elmasri et al anticipates claims 1-16;
7. The Third Party asserts that above listed prior art renders unpatentable instant claims as follows:
 - a. It is asserted that Elmasri et al in view of Shaw renders obvious claims 1-16;
 - b. It is asserted that Shaw in view of Zloof and Teorey renders obvious claims 1-16;
 - c. It is asserted that Zloof in view of Teorey renders obvious claims 1-16.
8. The above references **fail** to raise an SNQ over claims 1-16 of the instant Patent. First, the Zloof, Shaw and Teorey references are of record in a copending reexamination proceeding before the Office, namely 90/007,705, and have been considered thusly by a reasonable Examiner with regards to the instant claims. Secondly, the Elmasri reference fails to raise an SNQ in that it is considered cumulative to the record of art previously cited with regards to the instant Patent. Note that the Elmasri reference teaches a *basic* overview of relational databases including features that are taught by other of the numerous references of record before the Office, as even noted by the Third Party in the description of Elmasri

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(see the instant Request at 17-27). The proffered references thus fail to raise a substantial new question of patentability regarding claims 1-16 in the instant Patent.

9. Regarding Third Party's statements on pp. 116-131 of the instant Request, such are drawn to arguments in response to a different reexamination proceeding than the instant one and thus said statements fall out of the scope of the instant reexamination proceeding and are not considered. It is noted that even if said response was filed in the copending 90/007,705 proceeding, no reply or submission from the Requestor will be considered after that filed in response to a duly-filed Patent Owner's statement in an Ex Parte reexamination. Please see MPEP 2251 and 37 CFR 1.535.
10. Claims 1-16 will not be reexamined in the instant proceeding.

Conclusion

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

The Patent Owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving the instant Patent throughout the course of this reexamination proceeding.

ALL correspondence relating to this *ex parte* reexamination proceeding should be directed as follows:

Please mail any communications to:

Attn: Mail Stop "Ex Parte Reexam"
Central Reexamination Unit
Commissioner for Patents
P. O. Box 1450
Alexandria VA 22313-1450

Please FAX any communications to:

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