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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/563,227	11/27/2006	Safi Qureshey	1116-028A	1577
71739	7590	02/02/2011	EXAMINER	
WITHROW & TERRANOVA CT 100 REGENCY FOREST DRIVE , SUITE 160 CARY, NC 27518			TRAN, PABLO N	
			ART UNIT	PAPER NUMBER
			2618	
			MAIL DATE	DELIVERY MODE
			02/02/2011	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.



**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 8, 10, 12, and 17 of copending Application No. 11/563,232 and unpatentable over claim 31 of copending Application No. 09/805,470. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 6, 8, 10, 12, and 17 of copending Application No. 11/563,232 and claim 31 of copending Application No. 09/805,470 encompass all the limitations of claims 1, 9, and 15 of the instant application. Claims 2-8, 10-14, and 16-26 are dependent claims, respectively, and are rejected for the same reasoning.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Allowable Subject Matter***

3. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 1, 9, and 15, none of the prior arts of record, in combination or individual, show or make it obvious a network-enable audio device of identifying ones of the plurality of songs in the playlist that are not stored on the electronic device and providing information to the electronic device enabling the electronic device to obtain

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the ones of the plurality of songs that are not stored on the electronic device from at least one remote source (check the electronic device's data storage space for songs listed on the assigned playlist and a network connection is made to upload the file if the songs needed to from the playlist are not stored on the electronic device's data storage space, see specification 0021). Claims 2-8, 10-14, and 16-26 are dependent claims, respectively, and are allow for the same reasoning..

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (571)272-7898. The examiner normal hours are 9:30 -5:00 (Monday-Friday). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached at (571)272-7899. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

6. 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.

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