

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re *Ex Parte* Reexamination of:)
)
Lisa T. Wood et al.) Control No.: 90/012,987
)
U. S. Patent No. 7,765,482) Group Art Unit: 3992
)
Issued: July 27, 2010) Examiner: John S. Heyman
)
For: WEB-BASED MEDIA SUBMISSION)
TOOL)

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PATENT OWNER'S APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

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I. Introduction

In response to the Final Office Action dated May 21, 2014 (“5/21/14 OA”), and the Advisory Action dated August 13, 2014, rejecting claims 38, 40, 44-46 and 49 of U.S. Patent No. 7,765,482 (“the ’482 Patent”), and in support of the Notice of Appeal filed on September 22, 2014, Summit 6 LLC, the owner of the ’482 Patent, files this Appeal Brief.

II. Real Party In Interest

The real party in interest is the assignee, Summit 6 LLC, a corporation formed under the laws of Delaware having a principal office address in Dallas, Texas.

III. Related Appeals, Interferences, and Trials

The following judicial proceedings involve an application or patent owned by the Patent Owner, are known to the Patent Owner, the Patent Owner’s legal representative, or assignee, and may be related to, directly affect or be directly affected by or have a bearing on the decision in the pending appeal:

1) *Summit 6 LLC v. Samsung Electronics Co., et al.*,¹ Case No. 2013-1648, -1651, currently pending in the United States Court of Appeals for the Federal Circuit. This appeal is from the United States District Court for the Northern District of Texas in Case No. 11-CV-0367, which entered a judgment in favor of Summit 6 LLC on all of its claims.

2) *Summit 6 LLC v. HTC Corp., et al.*,² Case No. 7:14-cv-00014, currently pending in the United States District Court for the Northern District of Texas.

IV. Summary of Claimed Subject Matter

Claim 38 is the only independent claim involved in this appeal. It does not include any means plus function or step plus function language.

Claim 38 is an independent claim directed to a computer implemented method for pre-processing digital content in a client device for subsequent electronic distribution. The method includes initiating, by the client device, a transfer of digital content from the client device to a

¹ U.S. Patent No. 6,895,557 is also at issue in this litigation.

² U.S. Patent No. 8,612,515 is also at issue in this litigation.

server device (*see, e.g.*, '482 Patent 2:52-54, 3:15-17) where the digital content includes one or more of image content, video content, and audio content (*see, e.g., id.* at 2:44-51); pre-processing the digital content at the client device in accordance with one or more pre-processing parameters (*see, e.g., id.* at 2:14-17, 4:52-56) provided to the client device from a device separate from the client device (*see, e.g., id.* at 5:7-30), the one or more pre-processing parameters controlling the client device in a placement of the digital content into a specified form in preparation for publication to one or more devices that are remote from a server device and the client device (*see, e.g., id.* at 2:60-3:11, 4:46-5:4); and transmitting a message from the client device to the server device for subsequent distribution to the one or more devices that are remote from the server device and the client device, where the transmitted message includes the pre-processed digital content (*see, e.g., id.* at 2:52-54, 2:62-64, 3:17-19).

V. Grounds of Rejection To Be Reviewed On Appeal

1. The rejection of claims 38, 40, 44-46 and 49 under 35 U.S.C. § 102(e) based on U.S. Patent No. 6,930,709 to Creamer et al. ("*Creamer*");
2. The rejection of claims 38, 40, 44-46 and 49 under 35 U.S.C. § 102(e) based on U.S. Patent No. 6,038,295 to Mattes ("*Mattes*"); and
3. The rejection of claim 46 under 35 U.S.C. § 103(a) based on *Mattes* in view of *Creamer*.

VI. Argument

A. Introduction

Claim 38 of the '482 Patent recites "pre-processing said digital content at said client device in accordance with one or more pre-processing parameters . . . said one or more pre-processing parameters controlling said client device in a placement of said digital content into a specified form in preparation for publication to one or more devices that are remote from a server device and said client device." ('482 Patent at 14:1-9.) When properly construed, neither *Creamer* nor *Mattes* discloses this claim limitation. As is demonstrated below, when claim 38 is construed under the broadest reasonable interpretation based on the evidence in the record,

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