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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes fields for EXAMINER (MOORE JR, MICHAEL J), ART UNIT (2467), PAPER NUMBER, NOTIFICATION DATE (08/02/2011), and DELIVERY MODE (ELECTRONIC).

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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 08/485,507	<b>Applicant(s)</b> HARVEY ET AL.	
	<b>Examiner</b> MICHAEL J. MOORE, JR.	<b>Art Unit</b> 2467	

**-- 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 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 11 April 2011.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  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**

- 4)  Claim(s) 33-63 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 33-63 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  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).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**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).  
a)  All    b)  Some \* c)  None of:
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)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statements (IDS) submitted on 4/30/99, 4/7/97, 4/17/96, 2/6/96, 12/22/95, and 12/11/95 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### *Double Patenting*

2. 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.

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).

3. Claims **33-63** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **2, 4-15, 22-26, 28, 38-40, 45-48, and 51** of copending *Application No. 08/474145*. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following correspondences.

Regarding claim **33**, “a method of inhibiting piracy of information or enabling a presentation of programming at a subscriber station” corresponds to “a method of inhibiting piracy of information at a subscriber station” in claim **2** of the above copending application.

“Receiving an information transmission from a first remote station” corresponds to “receiving ... an information transmission from a remote station” in claim **2** of the above copending application.

“Detecting instruct-to-sample instructions in the information transmission” corresponds to “detecting instruct-to-sample instructions ... in the information transmission” in claim **2** of the above copending application.

“Processing, under control of said instruct-to-sample instructions, a datum at said subscriber station” corresponds to the same in claim **2** of the above copending application.

“Comparing, under control of said instruct-to-sample instructions, selected comparison information of said instruct-to-sample instructions to a selected sample of preprogrammed operating information at said subscriber station, said selected comparison information and said selected sample of preprogrammed operating information being selected based on said step of processing, whereby a successful match indicates that said subscriber station is properly programmed and a failed match suggests that said preprogrammed operating information at said subscriber station has been tampered with” corresponds to “detecting ... including selected comparison information” as well as “processing ... resulting in selection of a selected sample of preprogrammed operating information” as well as “comparing, under control of said instruct-to-sample instructions, said selected comparison information of said instruct-to-sample instructions to said selected sample of preprogrammed operating information at said subscriber station, whereby a successful match indicates that said subscriber station is properly programmed and a failed match suggests that said preprogrammed operating information at said subscriber station has been tampered with” in claim **2** of the above copending application.

Lastly, “performing, under control of said instruct-to-sample instructions, at said subscriber station at least one of: disabling the functionality of some portion of said subscriber station when said step of comparing results in a determination that said

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