

REQUEST FOR CONTINUED EXAMINATION(RCE)TRANSMITTAL (Submitted Only via EFS-Web)

Application Number	12570343	Filing Date	2009-09-30	Docket Number (if applicable)	1028.4	Art Unit	2614
First Named Inventor	C. Earl Woolfork			Examiner Name	Andrew C. Flanders		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
 Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. The Instruction Sheet for this form is located at WWW.USPTO.GOV

SUBMISSION REQUIRED UNDER 37 CFR 1.114

Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____

Other _____

Enclosed

Amendment/Reply

Information Disclosure Statement (IDS)

Affidavit(s)/ Declaration(s)

Other _____

MISCELLANEOUS

Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of months _____
 (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

Other _____

FEES

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

The Director is hereby authorized to charge any underpayment of fees, or credit any overpayments, to Deposit Account No 504576

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Patent Practitioner Signature

Applicant Signature

Signature of Registered U.S. Patent Practitioner			
Signature	/Megan Lyman/	Date (YYYY-MM-DD)	2010-08-04
Name	Megan Lyman	Registration Number	57054

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**REQUEST FOR REEXAMINATION AND RESPONSE TO THE FINAL
REJECTION DATED 06/07/10**

RESPONSE TO REJECTION OF CLAIMS 1 -11, 13-26 UNDER 35 U.S.C. 103

A finding of obviousness requires that "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertain." 35 U.S.C. §103(a). In *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007), the Supreme Court stated that the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), control an obviousness inquiry: (1) the scope and content of the prior art; (2) the differences between the prior art and the claimed invention; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *KSR*, 127 S. Ct. at 1734, 82 USPQ2d at 1388 (quoting *Graham*, 383 U.S. at 17-18, 14 USPQ at 467).

The *KSR* Court rejected a rigid application of the "teaching, suggestion, or motivation [TSM]" test previously applied by the Court of Appeals for the Federal Circuit. *KSR*, 127 S. Ct. at 1739 USPQ2d at 1395. However, the Supreme Court affirmed that it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does...because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." *KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396. Once the *Graham* factors have been addressed, the Examiner may apply the TSM test, asking whether (1) a teaching, suggestion or motivation exists in the prior art to combine the references cited, and (2) one skilled in the art would have a reasonable expectation of success. See USPTO Guidelines at 57534.

Further, in order to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Additionally, in considering a prior art reference, the reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *WL Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Moreover,

it is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731,743,218 USPQ 769, 779 (Fed. Cir. 1983). Indeed, "an applicant may rebut a prima facie case of obviousness by showing that the prior art teaches away from the claimed invention *in any material respect.*" *In re Peterson*, 315 F.3d 1325, 1331 (Fed. Cir. 2003) (Emphasis added).

Moreover, a prior art reference is only appropriate where the "invention as a whole would be obvious to a person of ordinary skill in the field." *In re Kumar*, 418 F.3d 1361, 76 USPQ2d 1048, 1053 (Fed. Cir. 2005).

Claims 1-11, 13, 15, 17, 19, 21, 23 and 25 rejected as unpatentable over Altstatt in view of Li

The obviousness rejection is that the digital wireless communication of Li could be replaced by the FM modulation communication taught in Altstatt. Li is cited for teaching a device for use in portable implementations. It is stated that doing so is the substitution of one known element (i.e., the digital CDMA transmitter/receiver) for another (i.e., analog FM transmitter) to obtain predictable results. The Applicant respectfully disagrees.

Altstatt does not disclose a direct one-to-one digital transmitter-to-headphone communication link. Thus, Altstatt cannot realize the benefits of such a digital link as asserted (Examiner Office Action Mailed 08-09-2005, page 6: "However the system of Altstatt is an analog transmission system that, in operation, lacks the benefits of a digitally encoded and transmitted audio signal" and Office Action Mailed 05-17-2006, page 6 and Office Action Mailed 10-02-2006, page 10: "However, the system of Altstatt an analog transmission system that, operation lacks the benefits digitally encoded and transmitted audio signal."). Additionally, Li clearly discloses a cellular communication system (Li col. 1 lns. 57 – 63 "CDMA digital cellular communications system . . . ,” col. 6 lns. 55 – 62 "IMT 2000 . . . IS95 . . . CDMA 2000). IMT 2000, IS95 and CDMA 2000 are all cellular (i.e., cell phone) standards and each requires the centralized control of a base station for operation. Li's centralized control base station system does not disclose a direct one-to-one transmitter-to-headphone communication link.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.