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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/02/2010

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



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JUL 02 2010

CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. : 90011041
PATENT NO. : 6653947
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. 90/011,041	Patent Under Reexamination 6653947	
	Examiner OVIDIO ESCALANTE	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 15 June 2010 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: _____

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. _____, or
c) by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

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cc:Requester (if third party requester)

Art Unit: 3992

DECISION GRANTING *EX PARTE* REEXAMINATION

1. A substantial new question of patentability (SNQ) is raised affecting claims 1, 2, 5, 6, 12, 15, 17 and 18 of US Pat 6,653,947 (“the ‘947 Patent”) by the request for ex parte reexamination filed May, 19, 2010.

Prior Art Relied on in the Request

1. U.S. Patent 5,920,276 to Frederick
2. MaxSea HTML User Guide
3. U.S. Provisional Application 60/153,900 to Snyder et al.

Issues Raised in the Request

2. Requester asserts that the cited references raise SNQs in the following manner:

- | | |
|---------|---|
| Issue 1 | Frederick is asserted as rendering claims 1, 2, 5, 6, 13, 15, 17 and 18 anticipated. |
| Issue 2 | Snyder et al. is asserted as rendering claims 1, 2, 5, 6, 13, 15, 17 and 18 anticipated. |
| Issue 3 | MaxSea HTML User Guide is asserted as rendering claims 1, 2, 5, 6, 13, 15, 17 and 18 anticipated. |
| Issue 4 | Frederick in view of MaxSea HTML User Guide and Snyder Provisional is asserted as rendering claims 1, 2, 5, 6, 13, 15, 17 and 18 obvious. |
| Issue 5 | MaxSea HTML User Guide in view of Snyder Provisional is asserted as rendering claims 1, 2, 5, 6, 13, 15, 17 and 18 obvious. |

Art Unit: 3992

Issue 1: The request alleges that an SNQ is raised by Frederick

This asserted substantial new question of patentability is based solely on patents and/or printed publications already cited/considered in an earlier concluded examination of the patent being reexamined. On November 2, 2002, Public Law 107-273 was enacted. Title III, Subtitle A, Section 13105, part (a) of the Act revised the reexamination statute by adding the following new last sentence to 35 U.S.C. 303(a) and 312(a):

“The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.”

For any reexamination ordered on or after November 2, 2002, the effective date of the statutory revision, reliance on previously cited/considered art, i.e., “old art,” does not necessarily preclude the existence of a substantial new question of patentability (SNQ) that is based exclusively on that old art. Rather, determinations on whether a SNQ exists in such an instance shall be based upon a fact-specific inquiry done on a case-by-case basis.

Here Frederick was applied by the Examiner during prosecution of the ‘947 patent, however, Frederick is being presented in a new light as compared with how it was used in an earlier concluded examination.

A discussion of the specifics now follows:

Substantial New Question Statement:

The Request focuses on at least two teachings of Frederick to establish a substantial new question.

Art Unit: 3992

The Request discloses that the Frederick prior art teaches both the lateral plan (two dimensional) view and the vertical (three dimensional) view displays on a single display screen, which requires a single data stream. The Request discloses that the Examiner did not consider this teaching in the Frederick prior art of the "single data stream" claims.

The Request also discloses that the Frederick prior art expressly teaches displaying the weather information only on the two dimensional portion of the display. In addition, Frederick discloses a display "capable of displaying of radar signals [including weather information] superimposed with terrain elevation data in a plan view and in supplemental front and side vertical views." See, col. 1, lines 11-13. The Frederick prior art additionally teaches, however, subtracting the weather information out of the front and side vertical (3D) views. For example, Frederick states:

The resulting image 367 on the display in FIG. 4c [sic] only includes the terrain image 341, on the display in FIG. 4b plus the selected margin of elevation 343 above the terrain image data. This would be useful for search and surveillance radars. The pilot could toggle between the ground and weather returns quickly and easily.

See, col. 10, lines 1-7 (emphasis added).

The Request notes the image in FIG. 4d (incorrectly identified as FIG. 4c) discussed in the Frederick quote above is a portion of the 3D "vertical display" image 104. 204 in Figs. 2 and 3, respectively (not some different display screen image). Accordingly, Frederick expressly teaches displaying the weather data only on the 2D lateral "plan view" by subtracting the weather information out of the 3D view.

Art Unit: 3992

The Examiner notes that the Request pointed out that during the prosecution of the application which became the '947 patent, the Patent Owner argued that "the present invention utilizes a single display screens to display disparate views. One area of the screen is an out the window type three dimensional display, and on a second area is a lateral, or plan, two dimensional view. To create both displays on a single display requires a single data stream not shown by any of the references."

The Request noted this statement was an admission and that in order to display both the three dimensional type and the two dimension view it is "required" to use a single data stream.

The Examiner notes that during the prosecution of the '947 patent the application Examiner maintained that it would have been obvious to use a single data stream in order to simply graphics processing. The Examiner further notes that the application Examiner did consider the applicant's (Patent Owner's) statement since this specific statement was made on the record and was made in response to the application Examiner's office action.

With respect to the substantial new question issue, the Examiner disagrees with the Request's position that the Patent Owner made an admission that single display requires a single data stream. This is because Frederick already discloses of two displays on a single display yet it was maintained that this was not shown by any of the references. The Examiner maintains that the Patent Owner's statement was made in view of the claims; i.e., that the claims required a single data stream for creating both displays on a single display and not that every known instance of two displays on a single display requires a single data stream. This is clear since the applicant during the prosecution stated "[t]he present invention....". The Examiner maintains that there is no support that this was an admission and applies to all display screens which are

Art Unit: 3992

capable of display two display view on a single display, thus such reliance on this statement is not sufficient to establish a substantial new question of patentability.

With respect to the second issue, the Patent Owner during the prosecution of the application noted that each of the independent claims recites that "the weather display is shown only on the two dimensional portion of the display screen. The Patent Owner noted that Frederick does not make this distinction. The Examiner notes that as noted above, Frederick provides an option to "subtract the weather information of the 3D view. Thus, Frederick provides an option to only show weather on the two dimensional portion. The purpose of this is to provide useful search and surveillance. While the pilot would still be able to toggle between ground and weather quickly, Frederick provides an option to exclude the weather information.

While the Examiner agrees that teaching of excluding the weather data on the three dimensional portion of the display along with the consideration of single stream as noted above was not considered by the application Examiner during the prosecution of the application which became the '947 patent; the Requester's position regarding "single data stream" would not have raised a substantial new question.

Thus, given the above teachings, there is not a substantially likelihood that a reasonable Examiner would consider these teachings of the asserted admission important in deciding whether or not the instant claims under reexamination are patentable. Accordingly, it is not agreed that Frederick alone raises a SNQ over at least claims 1,2,5,6,13,15,17 and 18 of the instant '947 Patent.

Art Unit: 3992

Issue 4: The Request alleges that a SNQ is raised by Frederick in view of MaxSea HTML User Guide and Snyder Provisional.

As noted above, with respect to Frederick, the Examiner maintains that Frederick can be considered since it is being presented in a new light (via its combination with Snyder Provisional or MaxSea). In addition, as further stated above, the Examiner disagreed with the Request's SNQ statement with respect to the single data stream limitation.

However, as further noted in the Request, Snyder Provisional expressly teaches: "The weather will be displayed in lateral profiles; no perspective view of weather radar will be available." See page 15, lines 10 and 11 of the Snyder Provisional. In addition, Snyder discloses that various data sources are combined by a display and the resulting display information is sent to display 106 over a single path therebetween. See Fig. 1. The Examiner agrees that the teaching of having a single data stream for the display of both a lateral two dimensional view and a three dimensional view of a single display screen of as disclosed by Snyder Provisional was not considered before during the examination of the application which became the '947 patent.

As noted in the Request, an with respect to MaxSea HTML User Guide, the Request noted that it is disclosed that multiple chart windows can be simultaneously display and that these charts can be placed side-by-side. In addition, the Request noted that under the USPTO standard of broadest reasonable interpretation, a "single data stream" is provided by any graphics processor that simultaneously creates two displays area (or windows) on a single displays screen as stated by Applicants of the '947 Patent during the prior examination." As with Frederick, the Examiner disagrees that the Patent Owner made such admission; instead, the Patent Owner (i.e.

Art Unit: 3992

applicant) noted that a single data stream is required (in view of the claimed invention) for displaying both a 2D and 3D display on a single display screen. Thus, with respect to reliance on MaxSea HTML User Guide, the Examiner maintains that a reasonable Examiner would not consider the teachings of MaxSea HTML important in deciding whether the claims under reexamination are patentable.

Thus, given the above teachings, there is a substantially likelihood that a reasonable Examiner would consider the teachings of excluding the weather data on the three dimensional portion of the display along with the consideration of single stream important in deciding whether or not the instant claims under reexamination are patentable. Accordingly, it is agreed that Frederick in combination with Snyder raises a SNQ over at least claims 1,2,5,6,13,15,17 and 18 of the instant '947 Patent.

Issue 2: The request alleges that an SNQ is raised by Snyder

Substantial New Question Statement:

The Request discloses the Snyder Provisional teaches simultaneously providing both a lateral (two dimensional) plan view and a vertical (three dimensional) view on a single display screen, and therefore, teaches providing a "single data stream" as recited in the claims. See, e.g., "Figure 6 - Graphical Waypoint Stringing."

In addition, the Request noted that the Snyder Provisional expressly teaches: "The weather will be displayed in lateral profiles; no perspective view of weather radar will be available." See page 15, lines 10 and 11 of the Snyder Provisional.

Art Unit: 3992

The Examiner, as with Issue 1, notes that the Patent Owner focused on two main issues during the prosecution of the application which became the '947 patent. The first being the inventive use of a "single data stream" for creating both displays on the single display and the second being to "only" show the weather information on the two dimensional portion of the display screen.

The Examiner agrees that Synder discloses that the weather will be displayed "in lateral profiles only; no perspective view of weather radar will be available. In addition, the Request notes that the Synder Provisional expressly teaches that the various data sources are combined by a display computer 108 and the resulting display information is sent to display 106 over a single path therebetween in Fig. 1. While there is a difference between "single data stream" and "single path", the examiner notes that this teaching at least raises a substantial new question.

The Examiner agrees that the teaching of excluding the weather data on the three dimensional portion of the display along with the consideration of single stream as noted above was not considered by the Examiner during the prosecution of the application which became the '947 patent.

Given the above teachings, there is a substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether or not the instant claims under reexamination are patentable. Accordingly, it is agreed that Frederick raises a SNQ over at least claims 1,2,5,6,13,15,17 and 18 of the instant '947 Patent.

Art Unit: 3992

Issues 3 and 5: The request alleges that a SNQ is raised by MaxSea

The Request discloses that MaxSea disclosing opening and displaying multiple chart windows simultaneously, which can be placed side-by-side on the unitary display screen. The Request notes that a user can elect to turn on the display of weather, e.g., in the left chart, while turning off the display of the weather in the right chart. This leads to no weather data being displaying along with the terrain data in the right window and maintaining weather data in the left chart window.

The Request also discloses that MaxSea discloses it can simultaneously display terrain and weather data on a unitary display screen, wherein the display screen has two display areas, a lateral two dimensional display area and a three dimensional display area and wherein the weather is displayed solely as a two dimensional graphic, and only on the two dimensional display area.

As per "single data stream", the Request noted that under the USPTO standard of broadest reasonable interpretation, a "single data stream" is provided by any graphics processor that simultaneously creates two displays area (or windows) on a single displays screen as stated by Applicants of the '947 Patent during the prior examination."

As with Frederick alone (above with Issue 1), the Examiner disagrees that the Patent Owner made such admission; instead, the Patent Owner noted that a single data stream is required (in view of the claimed invention) for displaying both a 2D and 3D display on a single display screen. With respect to reliance on MaxSea HTML User Guide, the Examiner maintains that a reasonable Examiner would not consider the teachings of MaxSea HTML important in deciding whether the claims under reexamination are patentable.

Art Unit: 3992

In addition, as per reliance on two side by side charts, the Examiner notes that the claim is directed to "a graphics processor for receiving terrain data form at least a terrain data bases and weather data form a weather data source and for converting the received data into a single data stream to provide an input data stream to the display screen. The claim further states that the weather is displayed on the lateral two dimensional area and the terrain data on at least the three dimensional area of the display screen.

The screen, by default, comprises these two separate portions of the same display. This type of display system is not the same type of display system disclosed in the '947 patent specification nor that of Frederick in that in MaxSea a user is merely creating multiple charts of the same information that can be on one chart. Having more than one chart and having a user select what can be seen or not seen in the different charts including weather information does not meet the limitation of having the graphics process providing this information to the display and not displaying the weather information on the 3D area..

In addition, the MaxSea reference is directed to a different filed of endeavor, namely a sea based charting system rather than the flight display system as claimed.

Thus, there is not a substantially likelihood that a reasonable Examiner would consider the above teachings important in deciding whether or not the instant claims under reexamination are patentable. Accordingly, it is not agreed that MaxSea raises a SNQ over at least claims 1,2,5,6,13,15,17 and 18 of the instant '947 Patent.

Art Unit: 3992

In addition, as per MaxSea in view of Synder, this issue (i.e. Issue 5), does not raise an SNQ for the same reasons noted above. In addition, the Request points out that the Synder Provisional suggests such display [of weather] is not necessary for aircraft that move in three dimensional space. The Request further notes that if three dimensional view of weather is not required for aircraft, then it certainly would not be necessary for the ship navigation of the MaxSea HTML User Guide which only move in 2D space.

While, the Examiner agrees that Synder raises a SNQ, the combination of MaxSea in view of Synder do not raise an SNQ since the Examiner disagrees with the Request's position regarding "single data stream" which was relied upon as being disclosed in MaxSea. In addition, the regarding the Request's position regarding using a ship navigation system (rather than the claimed flight display system) and the Request's position of using two side by side charts that was created by the user rather by the system and the reliance on teachings that apply to aircraft which can move in 3D space to teachings which rely on ship navigation which can only move in 2D space also does not teach a SNQ with respect to "single data stream" or "displaying the weather data only on the 2D display".

Thus, there is not a substantially likelihood that a reasonable Examiner would consider the above teachings important in deciding whether or not the instant claims under reexamination are patentable. Accordingly, it is not agreed that MaxSea in view of Synder raise a SNQ over at least claims 1,2,5,6,13,15,17 and 18 of the instant '947 Patent.

Art Unit: 3992

Scope of Reexamination

3. Since requester did not request reexamination of claims 3,4,7-12,14,16,19-20 and did not assert the existence of a substantial new question of patentability (SNQP) for such claims (see 35 U.S.C. § 311(b)(2); see also 37 CFR 1.915b and 1.923), such claims will not be reexamined.

This matter was squarely addressed in *Sony Computer Entertainment America Inc., et al. v. Jon W. Dudas*, Civil Action No. 1:05CV1447 (E.D.Va. May 22, 2006), Slip Copy, 2006 WL 1472462. (Not Reported in F.Supp.2d.) The District Court upheld the Office's discretion to not reexamine claims in an *inter partes* reexamination proceeding other than those claims for which reexamination had specifically been requested. The Court stated:

To be sure, a party may seek, and the PTO may grant, *inter partes* review of each and every claim of a patent. Moreover, while the PTO in its discretion may review claims for which *inter partes* review was not requested, nothing in the statute compels it to do so. To ensure that the PTO considers a claim for *inter partes* review, § 311(b)(2) requires that the party seeking reexamination demonstrate why the PTO should reexamine each and every claim for which it seeks review. Here, it is undisputed that Sony did not seek review of every claim under the '213 and '333 patents. Accordingly, Sony cannot now claim that the PTO wrongly failed to reexamine claims for which Sony never requested review, and its argument that AIPA compels a contrary result is unpersuasive.

The *Sony* decision's reasoning and statutory interpretation apply analogously to *ex parte* reexamination, as the same relevant statutory language applies to both *inter partes* and *ex parte* reexamination. 35 U.S.C. § 302 provides that the *ex parte* reexamination "request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested" (emphasis added), and 35 U.S.C. § 303 provides that "the Director will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request..." (Emphasis added). These provisions are analogous to the language of

Art Unit: 3992

35 U.S.C. § 311(b)(2) and 35 U.S.C. § 312 applied and construed in *Sony*, and would be construed in the same manner. As the Director can decline to reexamine non-requested claims in an *inter partes* reexamination proceeding, the Director can likewise do so in *ex parte* reexamination proceeding. See Notice of Clarification of Office Policy To Exercise Discretion in Reexamining Fewer Than All the Patent Claims (signed Oct. 5, 2006) 1311 OG 197 (Oct. 31, 2006). See also MPEP § 2240, Rev. 5, Aug. 2006.

Therefore, claims 3,4,7-12,14,16,19-20 will not be reexamined in this *ex parte* reexamination proceeding.

4. Claims 1,2,5,6,13,15,17 and 18 will be reexamined as requested in the request.

Conclusion

5. 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 Patent No. 6,653,947 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

6. All correspondence relating to this *ex parte* reexamination proceeding should be directed:

By EFS: registered users may submit via the electronic filing system EFS-Web, at <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>.

By Mail to: Mail Stop Ex Parte Reexam
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Art Unit: 3992

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand: Customer Service Window
Attn: Central Reexamination Unit
Randolph Building, Lobby Level
401 Dulany Street
Alexandria, VA 22314

For EFS-Web transmissions, 37 CFR 1.8(a)(1)(i) (C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the Office's electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the data of transmission, which is prior to the expiration of the set period of time in the Office action.

Any inquiry by the patent owner concerning this communication or earlier communications from the Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/Ovidio Escalante/
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Conferee: /r.g.f./

Conferee: *ESK*