

EXHIBIT 3



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,576	03/16/2011	6034652	2988.002REX0	1567

27572 7590 05/20/2011

HARNES, DICKEY & PIERCE, P.L.C.
 P.O. BOX 828
 BLOOMFIELD HILLS, MI 48303

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/20/2011

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



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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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1100 NEW YORK AVENUE, N.W.

WASHINGTON, DC 20005

MAILED

MAY 20 2011

CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/011,576

PATENT NO. 6034652.

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. 90/011,576	Patent Under Reexamination 6034652	
	Examiner Deandra M. Hughes	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 16 March 2011 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)).

/Deandra M Hughes/ Primary Examiner, Art Unit 3992		
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cc Requester (if third party requester)

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Art Unit: 3992

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ORDER GRANTING REQUEST FOR *EX PARTE* REEXAMINATION

1. Substantial new questions of patentability ("SNQ") affecting claims 4-8, 11, and 15-18 of USP 6,034,652 ("**652 patent**") have been proposed by the third party requester ("3PR") in the *ex parte* reexamination request filed Mar. 16, 2011 ("Request").

References Cited Proceeding

2. USP 5,748,190 to Kjorsvik filed Sep. 5, 1995. ("**Kjorsvik**")
3. USP 5,781,894 to Petrecca filed Aug. 11, 1995. ("**Petrecca**")
4. USP 5,913,040 to Rakavy filed Aug. 22, 1995. ("**Rakavy**")
5. USP 5,740,549 to Reilly filed Jun. 12, 1995. ("**Reilly**")
6. USP 5,796,945 to Tarabella filed Jun. 7, 1995. ("**Tarabella**")
7. Roberts, Jason. Director Demystified. Peachpit Press. 1995. ("**Roberts**")
8. Salm, Walter. "Buying a Real Computer Monitor". Popular Electronics. October 1984. pp. 102-103, 132, and 134. ("**Salm**")

Prosecution History

9. The prosecution history of the application (08/620,641) which became the '**652 patent**' is presented below.
 - On Mar. 22, 1996, claims 1-67 were presented for examination.
 - On Feb. 3, 1998, claims 1-67 were rejected.
 - Claims 1-19, 21-31, 33-46, and 48-67 were rejected as being anticipated by Judson. (USP 5,572,643)
 - Claims 19, 21-22, 46, and 48 were rejected as being anticipated by Pirani. (USP 5,105,184)
 - Claims 19, 20, 25-28, 32, 41-47 were rejected as being anticipated by PointCast as described in the Feb. 13, 1996 Wall Street Journal article by Joan E. Rigdon.

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- Claims 1-20, 22-47, and 49-67 were rejected as being anticipated by Schena (WO 96/30864).
- On July 9, 1998, applicant filed remarks and amended claims 1 and 66.
- On Sept. 22, 1998, claims 1-67 were finally rejected.
- On Jan. 22, 1999, applicant filed a continued prosecution application.
- On Feb. 10, 1999, claims 1-67 were again finally rejected.
- On Jun. 14, 1999, applicant filed remarks and amended claims 49, 53, and 54.
- On Jul. 23, 1999, applicant's arguments of Jun. 14, 1999 were reconsidered and, *inter alia*, claim 13, 20, 32-40, 47, 51-54, 58, and 65 were amended was objected to as being allowable if rewritten in independent form to include all of the limitations of the base claim and the intervening claims . (see pg. 4) The Examiner did not provide a specific reason for indicting allowable subject matter other than the Judson, Pirani, PointCast, and Schena did not teach these elements.
- On Aug. 12, 1999, applicant filed after-final amendments cancelling claims 1-12, 14-19, 21-31, 41-46, 48-50, 55-57, 59-64, and 66-67. Claims 13, 20, 32-40, 47, 51-54, 58, and 65 were amended to included all of the limitations of the base claim and the intervening claims.
- On Aug. 26, 1999, claims 13, 20, 32-40, 47, 51-54, 58, and 65 were allowed.
- On Nov. 13, 2001, dependent claims 19-33 were added via a certificate of correction.

10. Since the prosecution history does not make clear the reasons for indicating allowability, the Examiner considers any teaching as to *a method or system for engaging the peripheral attention of a person in the vicinity of a display device such as the display monitor of a computer* to form the basis of an SNQ as to claims 4-8, 11, and 15-18.

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Decision

11. **Petrecca** discloses an advertising system to be used with personal computers which enables sponsors to present advertisements to a user during periods of waiting-time which are inherent in normal computer use. (Abstract) **Petrecca** was not before the Examiner during the prosecution of the application that became the '652 patent. However, there is a substantial likelihood that a reasonable examiner would consider this teaching of **Petrecca** important in deciding whether claims 4-8, 11, and 15-18 are patentable. Accordingly, **Petrecca** raises a substantial new question of patentability as to claims 4-8, 11, and 15-18 which have not been decided in a previous examination.

Conclusion

12. For the reasons set forth above, claims 4-8, 11, and 15-18 of the '652 patent will be reexamined.

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

By Mail to: Mail Stop Ex Parte Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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

By hand: Customer Service Window
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401 Dulany Street
Alexandria, VA 22314

Registered users of EFS-Web may alternatively submit such correspondence via

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the electronic filing system EFS-Web, at:

<https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>.

EFS-Web offers the benefit of quick submission to the particular area of the Office that needs to act on the correspondence. Also, EFS-Web submissions are "soft scanned" (i.e., electronically uploaded) directly into the official file for the reexamination proceeding, which offers parties the opportunity to review the content of their submissions after the "soft scanning" process is complete.

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

Signed:

Conferees:

/Deandra M. Hughes/
Primary Examiner, AU3992

/A. J. G./
Examiner, Art Unit 3992



MARK J. REINHART
CRU SPE-AU 3992

Equivalent of Form PTO/SB/08A (04-07)
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Substitute for form 1449/PTO				<i>Complete if Known</i>	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>				Control Number	90/011,576 <i>(to be assigned)</i> <i>(Reexamination of U.S. Patent No. 6,034,652; Issued: March 7, 2000)</i>
				Filing Date	(herein) Mar. 16, 2011
				Inventors	FREIBERGER <i>et al.</i>
				Art Unit	(to be assigned) 3992
				Examiner Name	(to be assigned) D. Hughes
Sheet	1	of	1	Attorney Docket Number	2988.002REX0

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Document Number		Publication Date MM/DD/YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)				
	US1	5,748,190		05/05/1998	Kjorsvik	
	US2	5,781,894		07/14/1998	Petrella <i>et al.</i>	
	US3	5,913,040		06/15/1999	Rakavy <i>et al.</i>	
	US4	5,740,549		04/14/1998	Reilly <i>et al.</i>	
	US5	5,796,945		08/18/1998	Tarabella	
	US6					
	US7					
	US8					
	US9					
	US10					
	US11					
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	US19					
	US20					

FOREIGN PATENT DOCUMENTS							
Examiner Initials*	Cite No. ¹	Foreign Patent Document		Publication Date MM/DD/YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Country Code ³ Number ⁴ Kind Code ⁵ (if known)					
	FP1						
	FP2						
	FP3						
	FP4						
	FP5						
	FP6						
	FP7						
	FP8						
	FP9						

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Examiner Signature	Date Considered
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This collection of information is required by 37 CFR 1.97 and 1.98. 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 1.14. This collection is estimated to take 2 hours 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, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /D.H./

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FIRST SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>		Control Number	<i>(to be assigned)</i> <i>(Reexamination of U.S. Patent No. 6,034,652; Issued: March 7, 2000)</i> 90101,576
		Filing Date	(herewith) Mar. 16, 2011
		Inventors	FREIBERGER <i>et al.</i>
		Art Unit	(to be assigned) 3992
		Examiner Name	(to be assigned) D. Hughes
		Attorney Docket Number	2988.002REX0
Sheet	1	of	1

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issu number(s), publisher, city and/or country where published	7 ²
	NPL1	Roberts, Jason, "Director Demystified," Peachpit Press, 1995.	
	NPL2		
	NPL3		
	NPL4		
	NPL5		
	NPL6		
	NPL7		
	NPL8		
	NPL9		
	NPL10		

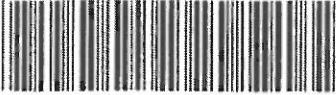
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Examiner Signature	/Deandra Hughes/ (05/05/2011)	Date Considered	
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¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.98. 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 1.14. This collection is estimated to take 2 hours 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, P.O. Box 1460, Alexandria, VA 22313-1460. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /D.H./**

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Reexamination 	Application/Control No. 90011576	Applicant(s)/Patent Under Reexamination 6034652
	Certificate Date	Certificate Number

Requester Correspondence Address: Patent Owner Third Party

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
 1100 NEW YORK AVENUE, N.W.
 WASHINGTON, DC 20005

LITIGATION REVIEW <input checked="" type="checkbox"/>	DMH (examiner initials)	05/14/2011 (date)
Case Name		Director Initials
Interval Licensing v. AOL (OPEN) 2:10cv1385		<i>MM for IY</i>

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