

Transmittal of Communication to Third Party Requester Inter Partes Reexamination	Control No.	Patent Under Reexamination	
	95/000,659	6629163	
	Examiner	Art Unit	
	SALMAN AHMED	3992	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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MAILED
AUG 16 2013
CENTRAL REEXAMINATION UNIT

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above-identified reexamination proceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an *ex parte* reexamination has been merged with the *inter partes* reexamination, no responsive submission by any *ex parte* third party requester is permitted.

All correspondence relating to this *inter partes* reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

OFFICE ACTION IN INTER PARTES REEXAMINATION	Control No.	Patent Under Reexamination
	95/000,659	6629163
	Examiner	Art Unit
	SALMAN AHMED	3992

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Responsive to the communication(s) filed by:
 Patent Owner on 03 December, 2012
 Third Party(ies) on 02 January, 2013

RESPONSE TIMES ARE SET TO EXPIRE AS FOLLOWS:

For Patent Owner's Response:

2 MONTH(S) from the mailing date of this action. 37 CFR 1.945. EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.956.

For Third Party Requester's Comments on the Patent Owner Response:

30 DAYS from the date of service of any patent owner's response. 37 CFR 1.947. NO EXTENSIONS OF TIME ARE PERMITTED. 35 U.S.C. 314(b)(2).

All correspondence relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

This action is not an Action Closing Prosecution under 37 CFR 1.949, nor is it a Right of Appeal Notice under 37 CFR 1.953.

PART I. THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892
2. Information Disclosure Citation, PTO/SB/08
3. _____

PART II. SUMMARY OF ACTION:

- 1a. Claims 1,15 and 35 are subject to reexamination.
- 1b. Claims _____ are not subject to reexamination.
2. Claims _____ have been canceled.
3. Claims _____ are confirmed. [Unamended patent claims]
4. Claims _____ are patentable. [Amended or new claims]
5. Claims 1,15 and 35 are rejected.
6. Claims _____ are objected to.
7. The drawings filed on _____ are acceptable are not acceptable.
8. The drawing correction request filed on _____ is: approved. disapproved.
9. Acknowledgment is made of the claim for priority under 35 U.S.C. 119 (a)-(d). The certified copy has:
 been received. not been received. been filed in Application/Control No 95000659.
10. Other _____

DETAILED ACTION

In view of the petition decision of July 12, 2013, prosecution is hereby re-opened.

A non-final rejection is hereby issued.

Reexamination History

- U.S. Patent No. 6,629,163 ["the '163 patent"] issued on September 30, 2003.
- An *ex parte* reexamination certificate "C1" was issued for the ' 163 patent on June 22, 2010.
- A request for *inter partes* reexamination was filed February 13, 2012 and assigned control no. 95/000,659. Reexamination was requested of claims 1, 15 and 35 of the '163 patent.
- In an order mailed April 3, 2012 ["Order"], the *inter partes* request was granted-in-part and denied-in-part. Overall, the examiner granted the request as to claims 1, 15 and 35.
- A first action on the merits was mailed concurrently with the Order.
- On May 3, 2012, the third party requester timely filed a petition requesting reconsideration of the denial of portions of the request.
- An action closing prosecution was mailed on October 1, 2012.

Petition Decision

- On July 12, 2013, the petition was granted-in-part with the following:

Art Unit: 3992

1. Based on a *de novo* review of the record as a whole, the petition is granted-in-part.
2. The proposed rejections of claims 1, 15 and 35 corresponding to Issues 16 (for claims 15 and 35), 17-26, 28, 30 (for claims 15 and 35) and 31-40 are determined to raise a RLP and are subject to reexamination for resolution of the question of anticipation/obviousness by the subject prior-art references. The examiner must determine in the next Office action whether to adopt the proposed rejections.
3. The proposed rejections of claims 1, 15 and 35 corresponding to Issue 27 are determined not to raise a RLP.
4. The proposed rejections of claims 1, 15 and 35 corresponding to Issues 2-14, 41-43, 45 and 46 are determined not to raise a RLP.
5. The proposed rejections of claim 1 corresponding to Issues 15 and 29 are determined not to raise a RLP.
5. This decision is final and non-appealable. See 35 U.S.C. § 312(c) and 37 C.F.R. § 1.927. No further communication on this matter will be acknowledged or considered.

Therefore, as mandated by the above petition decision, this Office action addresses issues 16 (for claims 15 and 25), 17-26, 28, 30 (for claims 15 and 35) and 31-40 in addition to the issues that were already addressed in the Office action dated 10/1/2012.

In addition to the petition-decision, this Office action further addresses claims 1, 15 and 35 of United States Patent No. 6,629,163 (Balassanlan, Edward) in response to Patent Owner (hereinafter PO) response dated 12/3/2012 and Third Party Comment dated 1/2/2013 for *inter partes* reexamination.

Information Disclosure Statement

1. The information disclosure statements (IDS) have been considered by the examiner to the extent that they have been explained in the submissions.

Status of the Claims

2. Original claims 1, 15 and 35 are rejected.

Response to Arguments

III. B. Decasper in view of Message Limitations:

Patent Owner's Argument (pages 16-18):

Patent Owner argues that Decasper never mentions, much less teaches, the concept of processing messages. Nothing in the ACP overcomes these deficiencies. Page 94 of the ACP discusses the "flows" in Decasper and concludes that a "flow would comprise a 'message' under Implicit's apparent claim constructions. See section IV.C." Section IV.C appears to be a reference to the table at page 22 of Juniper's request for reexamination, which includes the following proposed construction for messages: "A collection or stream of data that is related in some way." This language is similar to the construction that the court adopted in its *Markman* order and is also similar to the language in col. 2, 11.45-47 of the ' 163 Patent. But the "flows" on which the ACP relies are not messages under Implicit's proposed litigation construction for one simple reason: such flows, as seen by the Decasper router, are not guaranteed to include all the packets of a message. The words "collection" and "stream" on their face suggest that a message includes the entire set of packets (e.g., all the packets associated with a TCP session that defines the stream). The language does not qualify these terms by stating that they are "partial collections" or "partial streams," as one would expect to see

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