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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/588,084	08/17/2012	John McCue	141-1 US/PCT CON	4986
24949 7590 09/19/2013 TEITELBAUM & MACLEAN 280 SUNNYSIDE AVENUE OTTAWA, ON K1S 0R8 CANADA			EXAMINER BATURAY, ALICIA	
			ART UNIT 2441	PAPER NUMBER
			NOTIFICATION DATE 09/19/2013	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.

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Office Action Summary	Application No.	Applicant(s)	
	13/588,084	MCCUE ET AL.	
	Examiner	Art Unit	
	Alicia Baturay	2441	

-- 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 14 August 2013.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ 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

- 5) ☒ Claim(s) 46-63 and 65-68 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☒ Claim(s) 58-63 is/are allowed.
- 7) ☒ Claim(s) 46-57 and 65-68 is/are rejected.
- 8) ☒ Claim(s) 55 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 17 August 2012 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).

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:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ 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) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Information Disclosure Statement(s) (PTO-893)
- 3) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 4) ☐ Other:

DETAILED ACTION

1. This Office Action is in response to the amendment filed 14 August 2013.
2. Claims 52, 53, 58, and 65-67 were amended.
3. Claims 1-45 and 65 were cancelled.
4. Claim 68 was added.
5. Claims 46-63 and 65-68 are pending in this Office Action.

Response to Amendment

6. The rejection of claim 53 under 35 U.S.C. § 112, 2nd paragraph regarding indefiniteness was addressed and is withdrawn.
7. Applicant's amendments and arguments with respect to claims 1-20 and new claims 21-59 filed on October 21, 2004 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

Response to Arguments

8. Applicant's arguments filed 14 August 2013 have been fully considered, but they are not persuasive for the reasons set forth below.
9. ***Applicant Argues:*** Daoud et al. do not teach computer readable code, which when executed by a computer, causes said computer to *send a request to* a network-based server, the request

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including a unique identifier for identifying an audio stream, and to load a list of library servers *received from the* network-based server, the list of library servers determined in dependence upon the unique identifier.

In Response: The examiner respectfully submits that the combination of Daoud, Zuniga, Hunter, and Griffin teaches send a request to a network-based server (direct the transaction to a server), the request including a unique identifier (the data packet can include an email message to be delivered to a recipient, a uniform resource locator (URL) requesting a hypertext markup language (HTTP) page from the corresponding Internet site, etc. – see Daoud, Fig. 2; col. 4, lines 6-22) for identifying an audio stream (when a user selects content from the content providers web site, a user request-playback data file is created containing the identification numbers of the selected audio tracks – see Zuniga, page 5, paragraph 55); load a list of library servers received from the network-based server (when the transaction is received at the load balancer, the load balancer reads the requested level of service from the service tag), the list of library servers determined in dependence upon the unique identifier (Based on the server index, the load balancer selects the server from the server group that is best providing the requested level of service (e.g., “premium”). The server ID is indicated as a group of servers. That is, Servers A, B, and C, are providing a “premium” level of service. For example, where the service tag indicates that the requested level of service is “premium,” the load balancer directs the transaction to any one of the servers 511, 512, and 513 in the premium group. The load balancer can use conventional load balancing algorithms (e.g., fastest available) to select a specific server 511, 512, 513 within the premium group – see

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Daoud, Fig. 6; col. 8, lines 31-50). This renders the rejection proper, and thus the rejection stands.

10. **Applicant Argues:** The cited combination cannot teach *a non-transitory computer readable storage medium* including computer readable code, which when executed by a computer, causes said computer to: *send a request to a network-based server, load a list of library servers received from the network-based server, and download a first digital audio file from the plurality of digital audio files for playback with a media player.*

In Response: The examiner respectfully submits that the combination of Daoud, Zuniga, Hunter, and Griffin teaches download a first digital audio file from the plurality of digital audio files for playback with a media player (when the content file is copied from a first user device to a second user device, it is copied without any information transmitted from the first user device to the second user device indicating the play back status of the content file. As a result, if the content file is partially consumed on the first user device and then the content file is copied to a second user device, the content must either be displayed from the beginning of the content file or the user must manually attempt to locate the point where the display of the consumption on the first user device – see Griffin, page 1, paragraph 3).

The other limitations have been discussed above or within the instant office action.

This renders the rejection proper, and thus the rejection stands.

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