Document 79-9

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Filed 12/09/2006 Pa

Apple Computer Inc. v. Burst.com, Inc.

Doc. 79 Att. 8

APBU-00000657

Dockets.Justia.com

· .	Application No. 08/896,727	Applicant(s)	Leng	
Office Action Summary	Examiner Huy Ngi	Jyen	Group Art Unit 2712	
K Responsive to communication(s) filed on Jun	1, 1998	······		·
] This action is FINAL.				
Since this application is in condition for allow in accordance with the practice under <i>Ex par</i>			on as to the mer	its is closed
A shortened statutory period for response to this s longer, from the mailing date of this communi application to become abandoned. (35 U.S.C. § 37 CFR 1.136(a).	cation. Failure to respond w	ithin the period	d for response v	vill cause the
Disposition of Claims		·		
X Claim(s) <u>195-218</u>		is/are	pending in the a	pplication.
Of the above, claim(s)	·	is/are w	ithdrawn from c	consideration.
Cieim(s)		is	s/are allowed.	
X Claim(s) <u>195-218</u>		i	s/are rejected.	
Claim(s)		is	s/are objected to	D.
Claims	are sub	ject to restrict	ion or election r	equirement.
 The proposed drawing correction, filed on The specification is objected to by the Example The oath or declaration is objected to by 	eminer.	аррко че д L	_disapproved.	
Priority under 35 U.S.C. § 119 Acknowledgement is made of a claim for All Some* None of the CER received. received in Application No. (Series received in this national stage appli	TIFIED copies of the priority Code/Serial Number)	documents ha	ve been	
*Certified copies not received:		0.0 6 110/0	· · · · · · · · · · · · · · · · · · ·	·····
Acknowledgement is made of a claim for	comestic priority under 35 U		:	
Attachment(s) INotice of References Cited, PTO-892				
Information Disclosure Statement(s), PTO	-1449, Paper No(s).			
Interview Summary, PTO-413				
 Notice of Draftsperson's Patent Drawing Notice of Informal Patent Application, PT(
	- · • • • · · · ·			
SEE OFFI	CE ACTION ON THE FOLLOWI	NG PAGES		
Patent and Trademark Office	Office Action Summary		D	Paper No.

Application/Control Number: 08/896,727

Page 2

Art Unit: 2712

Later

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321[©] may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 195-218 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-70 of Patent No.4,963,995 . Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims 195-218 of the present application and US Pat No .4,963,995 is that claims 195-218 of the present application recites that the video information is representing for a full motion program . However, it is noted that transmitting and receiving a video motion program is well known in the art at the time the invention was made . Therefore, Official Notice is taken and it would have been obvious to one of ordinary skill in the art to modify claims 1-80 of US Pat No. 4,963,995 by proving the transreceiver as recited in claim 1-80 of the US Pat No.

Application/Control Number: 08/896,727

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Art Unit: 2712

4,963,995 with the video information as motion video information and transmitting the video motion program from the transceiver apparatus to produce the claims 195-218 of the present application.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Nguyen whose telephone number is (703) 305-4775. The examiner can normally be reached on Monday to Friday from 6:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy Garber, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

4. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

Application/Control Number: 08/896,727

Page 4

Art Unit: 2712

(703) 308-5399, (for informal or draft communications, please label "PROPOSED" or

"DRAFT")

hand

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington.

VA., Sixth Floor (Receptionist).

HUY T NGUYEN PATENT EXAMINER

H.N

September 25, 1998

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Under the Pe	(+) inside this box→ + perwork Raduction Act of 1995, no p control number.	Appr Patent and Trademan Patent and Trademan Sate foculted to respon	PTO/SBA oved for use through 6/30/99, OMB (k Office: U.S. DEPARTMENT OF CO d to a collection of information unless
		Application Number	08/896.727
A 1 1	ATTORNEY OR	Filing Date	07/18/97
	ION OF AGENT,	First Named Inventor	Lang 2712
	OMPANYING CATION	Group An Unit Exeminer Name	
APPLI	CATION	Attomay Docket Numbe	H. Nguyen
OR			Place Customer Number Bar Coc Label here
X Practitioner(s) r	Name		Registration Number
Charl	es B. Katz	36,5	
John	S. Ferrell	34,9	
nal			
Grego	t D. Wasson ry J. Koerner (s) or agent(s) to prosecut	40,2 38,5 te the application ider	519 Intilied above, and to transi
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as my/our attorney business in the Pat Please change the The above-mer	ry J. Koerner (s) or agent(s) to prosecut ent and Trademark Office correspondence address	38, s te the application ider connected therewith for the above-identifi	519 ntilled above, and to trans).
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Grego as my/our attorney business in the Pat Please change the The above-mer OR X Firm or Individual Name Address City Country Telephone I arn the: IX Applicant. Assignee of Certificate Name Signatures	ry J. Koerner (s) or agent(s) to prosecut ent and Trademark Office correspondence address ntioned Customer Number Carr & Ferrell LL 2225 East Bayshor Pale Alto USA (650) 812-3400 of record of the entire inte under 37 CFR 3.73(b) is SIGNATURE of Applic	38, 1 te the application ider connected therewith for the above-identifi r.	519 ntified above, and to trans led application to: 00 CA 71P 9430 (650) 812-3444

#40 6-99

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Under the Paperwork Reduction Act a valid OMB control number. PETITION FOR EXTENSION OF	TIME UNDER 3	· · · · · · · · · · · · · · · · · · ·	Docket Number (Optional) 816US
· · · · · · · · · · · · · · · · · · ·	In re Application	of Richard La	ng
	Application Num	^{iber} 08/896,727	Filed 7-18-97
	For Burst Tr	ransmission App	paratus and Method
	Group Art Unit 2712	Examiner H. Ngur	7en
This is a request under the pro a response in the above identi	ovisions of 37 CF		
The requested extension and	appropriate non-	small-entity fee are	as follows
(check time period desired): One month (37 CFR	R 1.17(a)(1))		\$
Two months (37 CF	R 1.17(a)(2))	•	\$
X Three months (37 C	FR 1.17(a)(3))		\$
Four months (37 CF	R 1.17(a)(4))		\$
Five months (37 CF	R 1.17 (a)(5))		\$/
X Applicant is a small shown above is red A small entity stater	uced by one-half	, and the resulting f	herefore the fee amoun ee ls: \$ _435
is enclosed.		•	
X has already	been filed in this	application.	• •
X A check in the amo			
The Commissioner application to a Dep		n authorized to cha	rge fees in this
X The Commissioner be required, or cred Number06-060	is hereby authori it any overpayme 00 I have	zed to charge any f ent, to Deposit Acco enclosed a duplicat	ees which may ount e copy of this sheet.
I am theassignee of re	cord of the entire	interest.	
applicant.			
X attorney or age	ent of record.		
	ent under 37 CFF number if acting u	R 1.34(a). nder 37 CFR 1.34(a).	<i>f</i> .
3-25-99		h	Sht
Date		Charles P V	Signature
			atz, Reg. No. 36,5 ed or printed name

APBU-00000662

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OIPE Jo	· · · · · · · · · · · · · · · · · · ·	· ·		PTO/SB/22 (12-97)
MAR 3 0 1999	Under the Paperwork Reduction Act of a valid OM8 control number.	App Patent and Tradema 1995, no persons are required to res	proved for use ark Office; U.S spond to a coll	a through 9/30/00. OMB 0651-003 5. DEPARTMENT OF COMMERCE ection of information unless it display
FICH & TRADEMART	PETITION FOR EXTENSION OF	,		Docket Number (Optional) 816US
		In re Application of Richa	ard Lang	g
		Application Number 08/89	96,727 ^{FI}	^{led} 7-18-97
		For Burst Transmiss:	ion Appa	aratus and Method
•		Group Art Unit Examiner 2712	H. Nguye	en
	This is a request under the prov a response in the above identifi	visions of 37 CFR 1.136(a) ed application.) to extend	I the period for filing
	The requested extension and a (check time period desired):	ppropriate non-small-entity	y fee are a	as follows
	One month (37 CFR	1.17(a)(1))		\$
	Two months (37 CFR	1.17(a)(2))	•	\$ \$ 870
	X Three months (37 CF	R 1.17(a)(3))		\$
	Four months (37 CFF	(1.17(a)(4))		\$¢
	Five months (37 CFR	1.17 (a)(5))		Ψ
	shown above is redu	ntily under 37 CFR 1.9 and sed by one-half, and the re ent under 37 CFR 1.27;	d 1.27, the esulting fe	erefore the fee amount e is: \$ _435
	is enclosed.			
	X has already b	een filed in this application	ı. ·	
	X A check in the amou	nt of the fee is enclosed.		
	The Commissioner h application to a Depo	as already been authorize sit Account.	d to charg	e fees in this
	X The Commissioner is be required, or credit Number 06-0600	hereby authorized to char any overpayment, to Depo . I have enclosed a	oslt Accou	nt
	I am the assignee of rec	ord of the entire interest.		
1. S.	applicant.			
	X attorney or ager	t of record.		
		at under 37 CFR 1.34(a). umber if acling under 37 CFF	R 1.34(a).	' <u></u> '
	3-25-99		nly	
	Date	Charle	s B. Kat	tz, Reg. No. 36,564
		······································	Туре	d or printed name
	Burden Hour Statement: This form is estimat individual case. Any comments on the amou information Officer, Patent and Trademark OI TO THIS ADDRESS. SEND TO: Assistant C	it of time you are required to com fice, Washington, DC 20231. DC	plete this for	m should be sent to the Chief DFEES OR COMPLETED FORMS

APBU-00000663

#41 4-6-99 MC



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Richard Lang	
SERIAL NO.:	08/896,727	•
FILING DATE:	July 18, 1997	
TITLE:	Burst Transmission Apparatus and Met Audio/Video Information	hod for
EXAMINER:	Huy Nguyen	RECEIVED
ART UNIT:	2712	APR 0 5 1999
ATTY. DKT. NO:	816US	Group 2700
	•	

CERTIFICATE OF MAILING I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date printed below:

March 25, 1999 Date: _

Charles B. Kat

Assistant Commissioner for Patents Washington, DC 20231

Sir:

RESPONSE

In response to the Office Action mailed September 28, 1998, paper number

38, please consider the remarks set forth below:

04/01/1999 NHASSAHI 00000021 08896727 01 FC:217 435.00 OP

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REMARKS

Reconsideration of the Application is hereby respectfully requested.

Claims 195-218 are pending in the Application. In the aforementioned Office Action, claims 195-218 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-70 of co-owned U.S. Pat. No. 4,963,995 (the '995 Patent). To overcome this rejection, Applicant has enclosed herewith a terminal disclaimer in compliance with 37 C.F.R. §1.321. Withdrawal of the rejection and passage of the Application to issue is thus believed to be in order.

If the Examiner has questions regarding this case, he is invited to telephone the Applicant's undersigned representative at the number given below.

Respectfully submitted,

Richard Lang

Date: 3-24-99

By: Phillest

Charles B. Katzl Reg. No. 36,564 Carr & Ferrell LLP 2225 East Bayshore Road, Suite 200 Palo Alto, CA 94303 (650) 812-3446

2712 Þ

Atty. Docket No.: 816US

In re application or:	
Serial No.:	
Filing Date	;) ;)
Title:	/ .
Contract	

Burst Transmission Apparatus And Method For Audio/Video

Fee

APR 0 5 1999

Group 2700

Fee

Washington, D.C. 20231

ASSISTANT COMMISSIONER FOR PATENTS

Sir:

Transmitted herewith is an amendment in the above-identified application.

Richard Lang 08/896,727

July 18, 1997

- Small entity status of this application under 37 CFR §§ 1.9 and 1.27 has been established by a verified statement [X] previously submitted.
- A verified statement to establish small entity status under 37 CFR §§ 1.9 and 1.27 is enclosed. **[**]
- [X] No additional fee is required.

The filing fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)	Sma	ll Entity	or		han a Small Intity
	Claims Remaining After Amendment		Highest Number Previously Paid For	Number of Extra Claims Present	Rate	Additional Fee	or	Rate	Additional Fee
Total	*24	minus	**164	0	x \$9 =	\$		x \$18 =	\$
Indep.	*4	minus	***11	0	x \$39 =	\$	or	x \$78 =	\$
[] First	Presentation of	Multiple	Dependent Cl	aims	+\$130 =	\$		+\$260 =	\$
	<u></u>			······································	Total	\$0.00		Total	\$

If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space

*** If the Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space. The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment or the number of claims originally filed.

Please charge my Deposit Account No. 06-0600 in the amount of \$____. A duplicate copy of this sheet is [] attached.

A check in the amount of \$_ [] _ is attached.

The Commissioner is hereby authorized to charge payment of the following fees associated with this [X] communication or credit any overpayment to Deposit Account No. 06-0600. A duplicate copy of this sheet is attached.

[x] [x]

Any filing fees under 37 CFR § 1.16 for the presentation of extra claims. Any patent application processing fees under 37 CFR § 1.17.

March 25. (9 Dated:

Respectfully submitted,

Charles B. Katz, Reg. No.36,564 Carr & Ferrell LLP 2225 East Bayshore Road, Suite 200 Palo Alto, California 94303 TEL: (650) 812-3446 FAX: (650) 812-3444

APBU-00000666

In re application of:	Richard Lang	
Serial No.:	08/896,727	Atty. Docket No.: 816US
Filing Date:	July 18, 1997	
Title: (MAR 3 0 1995	Burst Transmission Apparatus And I	Method For Audio/Video Information
ASSISTANT COMMINS	NER FOR PATENTS	APR U 5 1999
Washington, D.C. 20231		Group 2700

Sir:

S F т

A W

Lynki

Transmitted herewith is an amendment in the above-identified application.

Diah

- Small entity status of this application under 37 CFR §§ 1.9 and 1.27 has been established by a verified statement [X] previously submitted.
- A verified statement to establish small entity status under 37 CFR §§ 1.9 and 1.27 is enclosed.
- [] [X] No additional fee is required.

The filing fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)	Sma	ll Entity	or		han a Small
		`						E	Intity
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	Remaining		Number	-Claims Present		Fee	or		Fee
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	Amendment		Paid For						
Total	*24	minus	**164	0	x \$9 =	\$		x \$18 =	\$
Indep.	*4	minus	***11	0	x \$39 =	\$	or	x \$78 =	\$
[] First	Presentation of	Multiple	Dependent C	laims	+\$130 =	\$		+\$260 =	\$
<u> </u>				,,,, <u>,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u>	Total	\$0.00		Total	\$ ·

If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.

If the Highest Number Previously Pald For" IN THIS SPACE is less than 3, write "3" in this space. The "Highest Number Previously Paid For" (Total or *** Independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment or the number of claims originally filed.

Please charge my Deposit Account No. 06-0600 in the amount of \$____. A duplicate copy of this sheet is [] attached.

_ is attached. [] A check in the amount of \$_

[X] The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 06-0600. A duplicate copy of this sheet is attached. [X]

Any filing fees under 37 CFR § 1.16 for the presentation of extra claims. [x]Any patent application processing fees under 37 CFR § 1.17. [x]

Dated: March 25, 6999

Respectfully submitted,

Fee

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Fee

APBU-00000667

Charles B. Katz, Reg. No.36,564 Carr & Ferrell LLP 2225 East Bayshore Road, Suite 200 Palo Alto, California 94303 TEL: (650) 812-3446 FAX: (650) 812-3444

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MAR 3 n 1998			PTO/SRI 28 (10
ALL ALL ALL	S	Approved for use Patent and Trademark Office; U.	through 10/31/99, OMB 0651-0 S. DEPARTMENT OF COMMEP
TRADE	the Paperwork Reduction Act of 1995, no persons are required to resp TERMINAL DISCLAIMER TO OBVIATE A DOUBI REJECTION OVER A PRIOR PATE	LEPATENTING	Docket Number (Optional 816US
•	In re Application of: Richard A. Lang Application No. 08/896,727 Filed: July 18, 1997	Apparatus and Method.	<u>La constanta de la constanta d</u>
	Instant Video The owner*, Technologies, Inc of disclaims, except as provided below, the terminal pa application, which would extend beyond the expirat	100.percent interest in the int rt of the statutory term of any pat ion date of the full statutory term	stant application hereby entgranted on the instant defined in 35 U.S.C. 154
	to 156 and 173, as presently shortened by any termin owner hereby agrees that any patent so granted on the such period that it and the prior patent are commonly the instant application and is binding upon the gran	e instant application shall be enfo vowned. This agreement runs w	rceable only for and during
	In making the above disclaimer, the owner do the instant application that would extend to the expir 154 to 156 and 173 of the prior patent, as presently sh expires for failure to pay a maintenance fee, is held jurisdiction, is statutorily disclaimed in whole or te cancelled by a reexamination certificate, is reissue its full statutory term as presently shortened by any	ation date of the full statutory ter ortened by any terminal disclaim 1 unenforceable, is found invali rminally disclaimed under 37 C d, or is in any manner terminate	m as defined in 35 U.S.C. ler, in the event that it later: d by a court of competent FR 1.321, has all claims
	Check either box 1 or 2 below, if appropriate.		
	1. For submissions on behalf of an organization agency, etc.), the undersigned is empower		
	I hereby declare that all statements made her made on information and belief are believed to be tr knowledge that willful false statements and the like under Section 1001 of Title 18 of the United States C the validity of the application or any patent issued th	ue; and further that these stater so made are punishable by fine Code and that such willful false st	nents were made with the or imprisonment, or both,
	2. X The undersigned is an attorney of reco	rd. MAN	
/01/1999 NHASSA FC:248	II 00000021 08896727	(Intma-	<u>3~20~7</u>
FU1670	55.00 OP	Charles B. Katz, Red	q. No. 36,564
	Terminal disclaimer fee under 37 CFR 1.2	Typed or pri	
	*Certification under 37 CFR 3.73(b) is required if te Form PTO/SB/96 may be used for making this cert	• •	assignee (owner).

L.A.

· · · · · · · · · · · · · · · · · · ·	Application No. 08/896,727	Applicant(s)		
Notice of Allowability	Examiner	 	Lang Group Art Unit	
·	HUY NGUYE	N	2712	
All claims being allowable, PROSECUTION ON THE MERIT herewith (or previously mailed), a Notice of Allowance and mailed in due course.	S IS (OR REMAINS) C I Issue Fee Due or oth	LOSED in t ier appropri	this application. ate communica	If not included tion will be
X This communication is responsive to <u>Amendment filed</u>	d June 1, 1998 and	Terminal D	isclaimer filed	<u>March 30,</u> 195
X The allowed claim(s) is/are <u>195-218 being renumbered</u>	l as 1-24			I
The drawings filed on are accept	able.			
Acknowledgement is made of a claim for foreign priorit	y under 35 U.S.C. § 1	119(a)-(d).		
All Some* None of the CERTIFIED copies	of the priority docum	ents have l	been	
🗋 received.				
received in Application No. (Series Code/Serial No.)	umber)	<u> </u>		
\square received in this national stage application from th	e International Bureau) (PCT Rule	17.2(a)).	
*Certified copies not received:				
Acknowledgement is made of a claim for domestic prio	rity under 35 U.S.C.	§ 119(e).		
A SHORTENED STATUTORY PERIOD FOR RESPONSE to a THREE MONTHS FROM THE "DATE MAILED" of this Offic ABANDONMENT of this application. Extensions of time m	ce action. Failure to t	imely comp	olγ will result∕in	
Note the attached EXAMINER'S AMENDMENT or NOTI that the oath or declaration is deficient. A SUBSTITUT				ich discloses
X Applicant MUST submit NEW FORMAL DRAWINGS				
because the originally filed drawings were declared	by applicant to be info	ormal.		
Including changes required by the Notice of Draftspecture to Paper No	erson's Patent Drawin	g Review, I	PTO-948, attac	hed hereto or
including changes required by the proposed drawing approved by the examiner.	correction filed on	Sep 27,	<u>1993</u> , whic	ch has been
including changes required by the attached Examine	r's Amendment/Comr	nent.		
Identifying indicia such as the application number (see drawings. The drawings should be filed as a separate p Draftsperson.				
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'Attachment(s)				
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Information Disclosure Statement(s), PTO-1449, Page 10, 10, 10, 10, 10, 10, 10, 10, 10, 10,	per No(s).			
Notice of Draftsperson's Patent Drawing Review, PT	0-948		11	
Notice of Informal Patent Application, PTO-152			Min	
Interview Summary, PTO-413			HUYNGUYE	N
Examiner's Amendment/Comment			RIMARY EXAN	IINER
Examiner's Comment Regarding Requirement for De	posit of Biological Ma	terial		
Examiner's Statement of Reasons for Allowance				
J. S. Patent and Trademark Office PTO-37 (Rev. 9-95) Notice	of Allowability		Part of	Paper No. 43

				Application No. 08/896,727	Applicant(s)	Lang		
		Notice of Refere	ences Cited	Examiner HUY NGU		oup Art Unit 2712		Page 1 of 1
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LM61/0901 CARR & FERRELL LLP 2225 EAST BAYSHORE ROAD STE 200 PALO ALTO CA 94303

 APPLICATION NO.
 FILING DATE
 TOTAL CLAIMS
 EXAMINER AND GROUP ART UNIT
 DATE MAILED

 08/896.727
 07/16/97
 024
 NGUYEN, H
 2712
 06/21/99

 First Named Applicant
 LANG, TITLE OF BURST TRANSMISSION APPARATUS AND METHOD FOR AUDIO/VIDEO INFORMATION
 INFORMATION

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 CLASS-SUBCLASS
 BATCH NO.
 APPLN. TYPE
 SMALL ENTITY
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THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.

THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.

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APBU-00000671

U.S. GPO: 1998-437-639/80023

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF MAILING			
ATTY.DKT.NO.:	PA816US		
EXAMINER:	H. Nguyen	GROUP ART UNIT:	. 2712
TITLE:	Burst Transmissi Audio/Video Inf	on Apparatus and Method ormation	for
FILING DATE:	July 18, 1997	NOTICE OF ALLOW	ANCE: June 21, 1999
SERIAL NO.:	08/896,727	BATCH NO .:	U77
APPLICANT(S):	Richard Lang		#44

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LETTER TO THE CHIEF DRAFTSMAN

SIR:

Subject to the approval of the Primary Examiner in the above-entitled patent application, please substitute the enclosed four (4) sheets of formal drawings containing Figures 1 through 4 for the four (4) sheets of informal drawings containing Figures 1

Richard Lang

By:

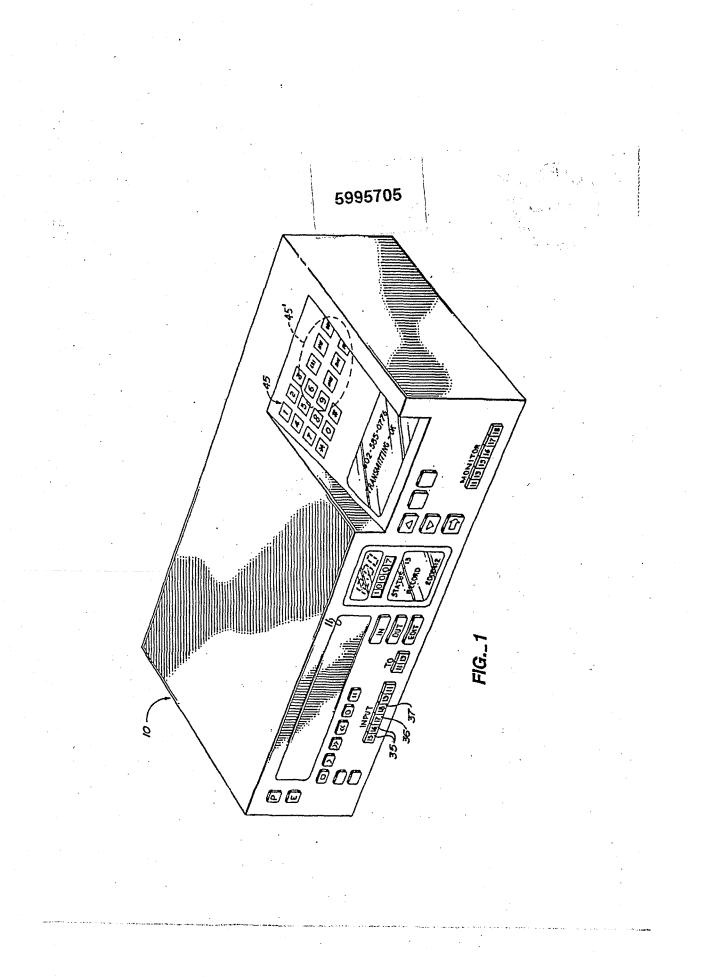
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Respectfully submitted,

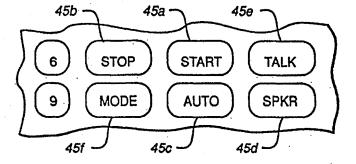
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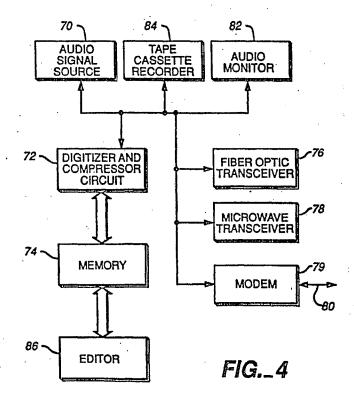
Jobn D. Henkhaus, Reg. No. 42,656 CARR & FERRELL LLP 2225 East Bayshore Road, Suite 200 Palo Alto, CA 94303 TEL: (650) 812-3467 FAX: (650) 812-3444



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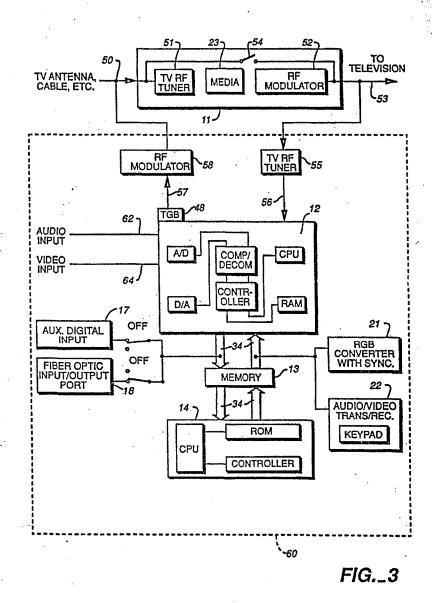






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PATENT NO.:	5,995,705	46
ISSUE DATE:	November 30, 1999	
TITLE:	Burst Transmission Ap Information	paratus and Method for Audio/Video
INVENTOR:	Richard A. Lang	APPROVED GERTIFICATE
ATTY.DKT.NO.:	PA816US	APR 1 5 2002 NW FEB 2 7 2002
COMMISSIONER FOR WASHINGTON, D.C.		FOR THE DIRECTOR OF USPTO OF CORRECTION

ATTENTION: Decision and Certificate of Correction. Branch of the Patent Issue Division

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICATION'S MISTAKE (37 C.F.R. § 1.323)

SIR:

It is noted that a minor error appears in this patent as more fully described below. The error occurred in good faith and correction thereof does not involve such changes in the patent as would constitute new matter or would require re-examination. A Certificate of Correction is requested.

Patent number 5,995,705 (*705) is a file wrapper continuation of application No. 08/624,958, filed March 28, 1996, now abandoned, which is a continuation of application No. 07/976,542, filed Nov. 16, 1992, now abandoned, which is a division of application No. 07/775,182, filed November 11, 1991, now Pat. No. 5,164,839, which is a division of application No. 07/347,629, filed May 5, 1989, now Pat. No. 5,057,932, which is a continuation-in-part of application No. 07/289,776, filed December 27, 1988, now Pat. No. 4,963,995.

02/19/2002 MAHKED2 0000000B 5995705 01 FC:145 100.00 DP

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Due to a good faith mistake by applicant, the '705 patent incorrectly identifies application No. 07/775,182 as being a division of application No. 07/289,776. It is, in fact, a division of 07/347,629, which is in turn a continuation-in-part of application No. 07/289,776. Application No 07/775,182, now Pat. No. 5,164,839, correctly identifies its heritage. Applicant's good faith error appears on the cover page of the patent under Section 63- Related U.S. Application Data.

Case law supports the classification of this type of error as being of minor character and correctable by Certificate. In the matter of In re Lambach,¹ Patent No. 3,009,855 ('855) was a division of application No. 753,644, which was a continuation-in-part of application No. 531,274.² No claim of priority was made in the '855 specification, but a reference to application No. 753,644 was made in the oath.³ The examiner noticed the reference, and added application No. 753,644 to the specification by examiner's amendment.⁴ The applicant requested a certificate of correction based on 37 CFR 1.322 (PTO mistake) or, in the alternative, 37 CFR 1.323 (Applicant mistake).⁵ The court denied the 1.322 claim, finding that the mistake was, in fact, the applicants, and then denied the 1.323 claim because of the absence of any showing that the mistake was made in good faith.⁶ However, the court specifically stated:

[M]ost of the requirements for granting a Certificate appear to be met. Omission of a reference to an earlier application on which priority is based is a mistake "of minor character" which is correctable by Certificate. In re Van Esdonk et al., 187 USPQ 671. Correction would not involve the addition of new matter, since the relation between the several cases here involved is a matter of record. No reexamination would be required.7

The facts involved in the '705 patent are analogous to the facts involving the '855 patent.

Both patents made a claim to prior application and both patents incorrectly traced the lineage of

¹ 202 USPQ 620 (Comm'r Pat. 1976). ² Id. at 621. 3 Id. 4 Id. ⁵ Id. Id.

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that prior application. Although the Commissioner of Patents and Trademarks denied a Certificate in *Lambrech*, the decision was based on a failure to show that the mistake was made in good faith.⁸ The Commissioner went on to unequivocally state that he would grant a Certificate "if a renewed request is filed, accompanied by a suitable showing of good faith and upon payment of the required fee."⁹

Applicant's attorney (authority pursuant to 37 C.F.R. 1.34(a)) submits a statement (below) attesting to the fact that the aforementioned error was made in good faith. Applicant also encloses a check for the required fee. Should the amount on the check be insufficient, the enclosed fee transmittal form authorizes the Commissioner to charge any additional fees which may be required to Deposit Account No. 06-0600.

Because applicant has satisfied the requirements specified by the Commissioner of Patents and Trademarks, applicant respectfully requests a Certificate of Correction be sent to John S. Ferrell, Esq. at Carr & Ferrell LLP, 2225 East Bayshore Road, Suite 200, Palo Alto, California 94303.

I affirm and acknowledge that the error in tracing the lineage of the prior cited patent application occurred in good faith.

Date

Βv Morgan Malino, Reg. No. 41 Carr & Ferfell LLP

⁷ Id. at 622. ⁸ In re Lambrech, 202 USPQ 620, 622 (Comm'r Pat. 1976). ⁹ Id

3 of 4

Page 26 of 31

Respectfully submitted,

Richard A. Lang

Dated: 1/18/02

By:

Morgan Malizo, Reg. No. 41,177 Carr & Ferrell *LLP* 2225 East Bayshore Road, Suite 200 Palo Alto, CA 94303 TEL: (650) 812-3400 FAX: (650) 812-3444

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date printed below:

18/02 Dated:

B١ Morgan/Maling



Case 3:06-cv-00019-MHP

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	Name (PrintiType) Morgan Malino		(Attorneyi	Agent	4	1,177	, 	Telephone	(650) 812-	3400
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UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

PATENT NO. : 5,995,705 DATED : November 30, 1999 INVENTOR(S) : Richard Lang Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title page,

Attest:

Attesting Officer

Related U.S. Application Data, should read as follows: -- [63] Continuation of application No. 08/624,958, filed March 28, 1996, now abandoned, which is a continuation of application No. 07/976,542, filed Nov. 16, 1992, now abandoned, which is a division of application No. 07/775,182, filed November 11, 1991, now Pat. No. 5,164,839, which is a division of application No. 07/347,629, filed May 5, 1989, now Pat. No. 5,057,932, which is a continuation-inpart of application No. 07/289,776, filed December 27, 1988, now Pat. No. 4,963,995.

Signed and Sealed this

Thirtieth Day of April, 2002

JAMES E. ROGAN Director of the United States Patent and Trademark Office