

# **EXHIBIT 10**



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 KAI-CHING CHU  
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EXAMINER

ESCALANTE, OVIDIO

ART UNIT	PAPER NUMBER
3992	

MAIL DATE	DELIVERY MODE
04/23/2010	PAPER

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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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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**MAILED**

**APR 23 2010**

**CENTRAL REEXAMINATION UNIT**

**Transmittal of Communication to Third Party Requester  
*Inter Partes* Reexamination**

REEXAMINATION CONTROL NUMBER 95/001,283.

PATENT NUMBER 7,283,172.

TECHNOLOGY CENTER 3900.

ART UNIT 3992.

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.

**ORDER GRANTING/DENYING  
REQUEST FOR INTER PARTES  
REEXAMINATION**

Control No.	Patent Under Reexamination	
95/001,283	7283172	
Examiner	Art Unit	
OVIDIO ESCALANTE	3992	

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

The request for *inter partes* reexamination has been considered. Identification of the claims, the references relied on, and the rationale supporting the determination are attached.

Attachment(s):     PTO-892             PTO/SB/08             Other: \_\_\_\_\_

1.  The request for *inter partes* reexamination is GRANTED.

An Office action is attached with this order.

An Office action will follow in due course.

2.  The request for *inter partes* reexamination is DENIED.

This decision is not appealable. 35 U.S.C. 312(c). Requester may seek review of a denial by petition to the Director of the USPTO within ONE MONTH from the mailing date hereof. 37 CFR 1.927. EXTENSIONS OF TIME ONLY UNDER 37 CFR 1.183. In due course, a refund under 37 CFR 1.26(c) will be made to requester.

**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 Order.

**DECISION GRANTING *INTER PARTES* REEXAMINATION**

1. A substantial new question of patentability affecting claims 1-19 of United States Patent Number 7,283,172 is raised by the request for *inter partes* reexamination.

***References Cited in the Request***

2. The Request identifies the following printed publications as providing teachings relevant to the claims of the '172 patent.

PA-A "Cleanser 5 User Manual

PA-B "Cleaner MPEG Charger User Manual

PA-C "Avid Xpress"

[http://web.archive.org/web/20000815061831/  
www.avid.com/products/pdf/xpress.pdf](http://web.archive.org/web/20000815061831/www.avid.com/products/pdf/xpress.pdf)

PA-D "Avid Xpress DV"

[http://web.archive.org/web/20010331173804/  
www.avid.com/products/avidxpressdv/index.html](http://web.archive.org/web/20010331173804/www.avid.com/products/avidxpressdv/index.html)

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www.avid.com/products/avidxpressdv/press\\_quotes.html](http://web.archive.org/web/20010414031420/www.avid.com/products/avidxpressdv/press_quotes.html)

PA-E Washino U.S. Patent 6,370,198

PA-F MPEG Standard

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***Detailed Explanation of How the Cited Prior Art is Applied to Every Claim for Which  
Reexamination is Requested.***

- Issue 1: Cleaner 5 User Manual is asserted as rendering claims 1-19 anticipated.
- Issue 2: Cleaner 5 User Manual in view of Cleaner MPEG Charger is asserted as rendering claims 5, 6 and 8 obvious.
- Issue 3: Avid Xpress in view of Avid Xpress DV and further in view of MPEG standard is asserted as rendering claims 1-3, 5, 7, 9 and 13-19 obvious.
- Issue 4: Washino is asserted as rendering claims 1-12, 15 and 19 anticipated.

***Prosecution History***

The '172 patent issued from Application No. 11/342,280 filed on July 27, 2006 and is a continuation of Application No. 10/202/999 filed on July 23, 2002 (hereinafter the '999 application).

In the First Office Action dated February 5, 2007, the Examiner rejected claim 16 under 35 U.S.C. § 101 for statutory type double patenting because claim 16 of the '280 application was identical to issued claim 1 of U.S. 7,009,655 (issued from the '999 application). Claims 17-19 were objected to as being dependent on rejected claim 16. The Examiner further rejected claims 1-15 and 20 on the ground of nonstatutory obviousness-type double patenting in view of the issued claims of U.S. 7,009,655.

In response to the Examiner's rejections, Applicant canceled claim 16 and amended claim 17 to be in independent form by including the limitations of claim 16 there within and modifying the language "TV standard" to read "video presentation

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standard." Additionally, Applicant filed a terminal disclaimer to overcome the obvious-type double patenting rejection.

The application was subsequently allowed.

*Statement of Substantial New Question*

The Examiner Notes that the Requester's Substantial New Question is based on a showing that the cited prior art references discloses a system for converting video information in an incoming format into an outgoing format, which is one of a plurality of formats using computer software and then writing the video information on a medium.

*Discussion of References that Raise a SNQ*

*Issues 1 and 2 - Cleaner 5 User Manual and Cleaner MPEG Charger*

*As asserted in the Request*, Cleaner 5 raises a substantial new question of patentability with respect to the claims of the '172 patent because it is not cumulative of any art previously of record and its teachings are such that a reasonable examiner would have considered Cleaner 5 pertinent to deciding the question of patentability of the requested claims. Specifically, Cleaner 5 discloses a software system for carrying out the steps of the claim.

The **Examiner** notes that **Cleaner 5** discloses a system for converting incoming DV to an outgoing MPEG-1 or MPEG-2 stream, (pp. 141 and 206). Additionally, Cleaner 5 uses a continuous pass (e.g., single pass) conversion process to encode movies free from intermediary files into a single file, (pp. 64 and 206). Cleaner 5 further discloses also a capture code directed to receiving source material in DV format (i.e., video information in a first format) from a DV

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camera, (pp. 5, 8) and converts the DV stream format video information to an uncompressed raw video format, such as YUV, (p. 138).

A user is allowed to select a different output media format based upon a first input. For example, the user "can easily produce MPEG-1 files for Video CD projects by selecting the Video CD preset in the Advanced Settings window," (p. 209). Cleaner 5 also supports MPEG-2 files for the DVD output media format, (p. 62). A user may also choose between NTSC or PAL (i.e., desired video presentation standard) based upon the preset the user selects, (pp. 204, 205).

Cleaner 5 discloses converting the uncompressed raw video information to the selected image size through a resizing operation, (p. 204). In Cleaner 5, 720 x 480 pixels is the image size associated with a DVD output media format in an NTSC TV standard, (p. 62, 204, 209).

Additionally, 720 x 576 pixels is the image size associated with an DVD output media format in a PAL TV standard, (p. 62, 204, 209). Cleaner 5 discloses a frame rate of 29.97 frames per second is associated with VCD and DVD output media formats for the NTSC TV standard and a frame rate of 25 frames per second is associated with VCD and DVD output media formats for the PAL TV standard, (p. 62, 207, 209).

A user can select to process the video into an elementary video stream when outputting MPEG 1 and MPEG 2 files, (p. 206). Cleaner 5 discloses that when an MPEG 1 system stream is selected, the elementary video stream is processed or multiplexed with the audio stream to form a single multiplexed stream of audio and video information in the desired NTSC or PAL TV standard based on the desired VCD output media format, (pp. 7, 206).



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Given the above teachings, there is a substantially likelihood that a reasonable examiner would consider these teachings important in deciding whether or not the instant claims under reexamination are patentable.

The teaching of "a system for converting video information in an incoming format into an outgoing format, which is one of a plurality of formats using computer software and then writing the video information on a medium" was not considered or discussed on the record during the prosecution of the application which became the '172 patent. Therefore, it is agreed that Cleaner 5 raises a SNQ over at least claims 1-19 of the instant '172 Patent.

### *Issue 3*

#### *Avid Xpress and Avid Xpress DV*

*As assert in the Request*, the combination raises a substantial new question of patentability with respect to the claims of the '172 patent because it is not cumulative of any art previously of record and its teachings are such that a reasonable examiner would have considered Avid Xpress in view of Avid Xpress DV and MPEG standard pertinent to deciding the question of patentability of the requested claims. Specifically, Avid Xpress in view of Avid Xpress DV and MPEG standard discloses a software system for carrying out the steps of the claim.

The **Examiner** notes that the **Avid Xpress** system is a software system for converting and editing video and multimedia content quickly and in a single step, ( p. 1). Additionally, **Avid Xpress DV** is a related application to Avid Xpress having a variety of exporting options including MPEG output abilities, (p. 1 and FEATURES, p. 1).

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**Avid Xpress** discloses having code to receive video in many different input formats including popular animation files on Windows, Macintosh and SGI, and QuickTime formats, (pp. 1, 3). Further, Avid Xpress supports the ITU R-601 standard for converting video into broadcast digital formats, (p. 1). **Avid Xpress DV**, also receives RealMedia, Windows Media/ASF, IWMV, AVI and OMF/JFIF files input formats, (FEATURES, p. 1)

**Avid Xpress** further discloses code for converting video information into uncompressed video using its uncompressed video option, (pp. 1-2) and code to output video in many different output formats including popular animation files on Windows, Macintosh and SGI, and QuickTime formats, ( pp. 1, 3). Further, Avid Xpress supports the ITU R-601 standard for converting video into broadcast digital formats, (p. 1). Furthermore, **Avid Xpress DV** also supports output formats such as MPEG-1, MPEG-2 and OMF/JFIF formats, (FEATURES, p. 1). Avid Xpress DV enhances Avid Xpress capabilities providing MPEG outputs and media formats including Web, DVD, and tape, (p. 1 and FEATURES, p. 1).

**Avid Xpress** discloses the ITU R-601 standard for outputting broadcast quality outputs in both the NTSC and PAL TV standards, (p. 3). In addition, **Avid Xpress** includes code directed to resizing input video information in a size associated with the desired output media format and TV standard (720 x 486 NTSC; 720 x 576 PAL), (p. 3). Furthermore, Avid Xpress can output projects as uncompressed video for the best possible image quality, (p. 2). Therefore, Avid Xpress can resize the input video and output an uncompressed video file in the desired size for the output media format and TV standard, (pp. 2-3). **Avid Xpress DV** enhances Avid Xpress capabilities providing MPEG outputs and media formats including Web, DVD, and tape, (p. 1

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and FEATURES, p. 1). **Avid Xpress DV** software is companion software to Avid Xpress and includes code directed to exporting files in the MPEG format, (p.1 and FEATURES, p. 1).

**Avid Xpress** and its companion software **Avid Xpress DV** include code for processing the elementary stream into an output audio-visual file having the characteristics required based upon the output media format and desired TV standard. Specifically, Avid Xpress discloses processing the output audio-visual file based on broadcast industry standards and the output media format (storage for online broadcasting), (Avid Xpress at p. 1). Avid Xpress also discloses many other output formats such as Quicktime, and other Windows and Macintosh platform files, (Avid Xpress at p. 1). **Avid Xpress DV** enhances Avid Xpress capabilities providing MPEG outputs and media formats including Web, DVD, and tape, (Avid Xpress DV at p. 1 and FEATURES, p. 1).

Given the above teachings, there is a substantially likelihood that a reasonable examiner would consider these teachings important in deciding whether or not the instant claims under reexamination are patentable.

The teaching of "a system for converting video information in an incoming format into an outgoing format, which is one of a plurality of formats using computer software and then writing the video information on a medium" was not considered or discussed on the record during the prosecution of the application which became the '172 patent. Therefore, it is agreed that Avid Xpress and Avid Xpress DV raises a SNQ over at least claims 1-3, 5, 7, 9 and 13-19 of the instant '172 Patent.

*Issue 4 - Washino*

The Examiner notes that Washino discloses a multi-format digital video production system that enables a user to process an input video program to produce an output version of the program in a final format, (Abstract, lines 1-3). Washino also discloses inputting video information in a first format, (Col 11, lines 51-54) and converting the inputted video information in the first format to an uncompressed format, such as YUV, (Col 11, lines 54-63).

Washino further discloses that outputs can be configured to RGB format or other output media formats, (Col 11, lines 51-54) and that the video data stream may undergo a number of modifications based on the desired output format such as NTSC/PAL or HDTV, (Col. 21, line 56 to Col. 22, line 11; Col 11, lines 54-63).

Washino discloses that images are re-sized horizontally and vertically by pixel interpolation and frame rates are adapted by inter-frame interpolation, (Abstract; Col. 18, lines 50-63) and adjusting the frame rate of the uncompressed format to the desired frame rate of the video presentation standard, (Abstract; Col. 18, lines 53-63). Washino discloses processing the uncompressed format in any selected size and frame rate into an elementary video stream, (col. 18, lines 50-63; Col. 20, lines 6-10).

Washino also discloses processing the video format with audio information in the desired output media format. Specifically, Washino discloses adjusting the pitch of the audio based on the frame rate of the video which is related to the desired video standard, (Col. 21, lines 45 to Col. 22, lines 15; Col. 22, lines 49-53).

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Given the above teachings, there is a substantially likelihood that a reasonable examiner would consider these teachings important in deciding whether or not the instant claims under reexamination are patentable.

The teaching of “a system for converting video information in an incoming format into an outgoing format, which is one of a plurality of formats using computer software and then writing the video information on a medium” was not considered or discussed on the record during the prosecution of the application which became the ‘172 patent. Therefore, it is agreed that Washino raises a SNQ over at least claims 1-12, 15 and 19 of the instant ‘172 Patent.

#### ***Scope of Reexamination***

3. Claims 1-19 will be reexamined as requested in the request.

#### ***Conclusion***

4. Extensions of time under 37 CFR 1.136(a) will not be permitted in *inter partes* reexamination proceedings because the provisions of 37 CFR 1.136 apply only to “an applicant” and not to the patent owner in a reexamination proceeding. Additionally, 35 U.S.C. 314(c) requires that inter partes reexamination proceedings “will be conducted with special dispatch” (37 CFR 1.937). Patent owner extensions of time in inter partes reexamination proceedings are provided for in 37 CFR 1.956. Extensions of time are not available for third party requester

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comments, because a comment period of 30 days from service of patent owner's response is set by statute. 35 U.S.C. 314(b)(3).

5. The Patent Owner is reminded of the continuing responsibility under 37 CFR 1.985(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving the US Patent 7,283,172 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 through the course of this reexamination proceeding. See MPEP § 2686 and 2686.04.

All correspondence relating to this *inter partes* reexamination proceeding should be directed:

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

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Alexandria, Virginia 22313-1450

**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.

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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.

Ovidio Escalante

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Primary Examiner

Central Reexamination Unit - Art Unit 3992

(571) 272-7537

Conferee: /r.g.f./

Conferee: *ESK*