

EXHIBIT 4

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/010,891	Patent Under Reexamination 6,101,531	
	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 07 March 2010 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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GRANT OF REQUEST FOR *EX PARTE* REEXAMINATION

1. A substantial new question of patentability ("SNQ") affecting claims 1-3, 5-6, and 11 of USP 6,101,531 ("**531 Patent**") is alleged to be raised by the *ex parte* reexamination request filed Mar. 07, 2010 ("Request").

References Cited in this Action

2. Smith et al. "Trials of Wireless Secure Electronic Mail". IEEE Personal Communications. August 1995. ("**Smith**")
3. USP 5,742,905 to Pepe et al. published Apr. 21, 1998 ("**Pepe**")
4. USP 5,559,800 to Mousseau et al. published Sep. 24, 1996 ("**Mousseau**")
5. USP 5,742,905 to Hamalainen et al. published Sep. 01, 1998 ("**Hamalainen**")

Proposed SNQs

6. Third Party Requester ("3PR") allege that the following raise SNQs affecting claims 1-3, 5-6, and 11 of the '531 Patent (Request, pg. 5).

- (A) Claims 1, 5-6, and 11 are anticipated by **Smith**.
- (B) Claims 1, 5-6, and 11 would have been obvious over **Pepe** in view of **Hamalainen**.
- (C) Claims 1, 5-6, and 11 would have been obvious over **Pepe** in view of **Mousseau**.
- (D) Claims 2-3 would have been obvious over **Smith** in view of the general knowledge in the field as described by the examiner of the '531 patent.
- (E) Claims 2-3 would have been obvious under 35 USC §103(a) based on **Pepe** in view of **Hamalainen** and further in view of the general knowledge in the field as described by the examiner of the '531 patent.
- (F) Claims 2-3 would have been obvious under 35 USC §103(a) based on **Pepe** in view of **Mousseau** and further in view of the general knowledge in the field as described by the examiner of the '531 patent.

Prosecution History

7. The '531 patent is a system which includes a virtual session manager ("VSM") for establishing and maintaining a virtual session, via a session-less communication path with a 1st data processing device (e.g. mobile client) on the one hand and a *session-oriented* communications path with a 2nd data processing device (e.g. a host system) on the other hand. (col. 2:55-67 to col. 3:1-13). The VSM and the 1st data processing device (e.g. mobile client) are coupled via a tariffed network or connection. (id.). However, the virtual session, via a session-less oriented communication protocol between the VSM and the mobile client, permits remote access to the host server without the expense of a circuit switched connection on the tariffed network. (id.)

The system also provides for the application of user-definable filter parameters on data being transferred between the mobile client and the host server. (col. 3:5-8) These user-definable filter parameters limit the data being transferred over the tariffed networks between the mobile client and the host server, thereby controlling the use of these expense-bearing networks. (col. 3:15-20)

The '531 patent is a continuation of application 08/574,537 filed Dec. 19, 1995, now abandoned. The Examiner issued a first action notice of allowance of application 09/060,686 which became the '531 patent. The Examiner stated the following reasons for allowing independent claims 40, 44, and 55 (now claims 1, 5, and 11, respectively).

The prior art of record fails to teach or suggest individually or in combination:

- (A) preparing a set of plurality of user-selected criteria at a wireless client communication unit; and

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- (B) communicate the set of user-selected criteria to a communication server in a virtual session;
- (C) for filtering subsequent data units transferred from a host device to said wireless client communication unit. (NOA in 09/060,686 dated Apr. 4, 2000; pg. 3, 1st ¶)

Accordingly, a prior art publication teaching the above elements would form the proper basis for a SNQ as to claims 1-3, 5-6, and 11 of the '531 Patent.

SNQs (A) and (D): Smith

8. **Smith** is a report on the Department of Defense ("DOD") trials of wireless secure e-mail via commercial wireless data networks. (pg. 28, col. 2, 2nd ¶). The report is based on a broad-based trial in which multiple wireless services, email packages, security packages, and mobile computers were selected and integrated into various combinations. (pg. 28, col. 2, 3rd ¶)

Smith discloses a means by which mobile users who were concerned with transmission costs associated with low priority messages could select filters on incoming mail and specify which messages were downloaded to the mobile computer. (pg. 30, col. 1, 2nd ¶)

In these DOD trials, RAM, ARDIS, and CDPD services were employed for the wireless connection of the mobile unit to the mail server on the users Local Area Network. (Id.) Note figures 1 and 2 of **Smith** which disclose a RAM or ARDIS network connection from the mobile clients to the mail routers.

3PR argues that since RAM, ARDIS, and CDPD are identified as session-less oriented networks in the '531 specification, the wireless system of **Smith**, which is

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disclosed as RAM, ARDIS, or CDPD, are session-less oriented networks. As such, these connections are necessarily virtual sessions because they are session-less.

(Request, pg. 38, last ¶).

However, this argument rests on the assumption that communications established via session-less oriented networks are necessarily virtual sessions. The Examiner does not agree that communications established via session-less oriented protocols are necessarily virtual sessions because of the following explanation in the '531 patent.

"The session-oriented communication protocol with the host system permits remote access to, e.g., LAN-based applications, while the **virtual session, via a session-less oriented communication protocol**, between the VSM and remote (i.e., coupled via a tariffed network or connection) client permits this access to be carried out without the expense of a dedicated/circuit switched connection." (emphasis added; col. 2:62-67)

Consequently, the '531 patent discloses that a virtual session is established via a session-less oriented communication protocol. It does not disclose that all communications established via a session-less oriented communication protocol are virtual sessions.

As such, the teachings of **Smith** do not form the proper basis for an SNQ as to claims 1, 5-6, and 11 because **Smith** does not containing a teaching of communicating the set of user-selected criteria to a communication server in a virtual session, which a reasonable Examiner would consider important in deciding whether claims 1, 5-6, and 11 are patentable. For at least this reason, the request for reexamination of claims 1, 5-6, and 11 over **Smith** is DENIED.

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As to SNQ (D), the Request for reexamination must be based on prior patents and publications. 35 USC §302. Here, 3PR has presented an SNQ based on "the general knowledge in the field as described by the examiner of the '531 patent."

(*Requet, pg. 5*). "The general knowledge in the field as described by the examiner of the '531 patent" is not a proper basis for an SNQ because it is not a prior patent or publication. As such, the request for reexamination based on SNQ (D) is DENIED.

SNQs (B) and (E): Pepe in view of Hamalainen

9. **Pepe** is a personal communications device with the ability to remotely control the receipt and delivery of wireless and wireline voice and text messages.

Pepe discloses, *inter alia*:

- (A) profile management allows the user to modify wireless messaging and call command services by updating certain elements in the user's service profile. (*col. 21:64-67*); and
- (B) the user edits the profile on a personal digital assistant ("PDA") and sends an upload request to a server requesting permission to send the updated profile elements (*col. 22:37-39*); and
- (C) the server checks the profile, filters messages by message length, and communicates the filtered messages to the PDA (*col. 6:5-10 and fig. 2*).

However, **Pepe** does not teach communicating the set of user-selected criteria to a communication server in a virtual session.

Hamalainen teaches creating a virtual channel where a mobile station and a data service unit are provided with a number of stored parameters relating to each other. (*Abstract*). When a mobile station wants to transmit or receive data packets between the mobile station and a data service unit, a packet data transfer channel is

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established making use of the parameters of the virtual channel and thereby using substantially less signaling than the channel establishment signaling characteristic of the network, one part thereof being a radio channel and the other part a time slot in the digital trunk line. (*Id*). On termination of data packet transfer, at least said radio channel is disassembled but the virtual channel is maintained until the disconnection of the mobile station from the data service. (*Id*).

As such, the combination of **Pepe** in view of **Hamalainen** form the proper basis for an SNQ as to claims 1, 5-6, and 11, which a reasonable Examiner would consider important in deciding whether claims 1, 5-6, and 11 are patentable. The combination of **Pepe** in view of **Hamalainen** was not before the Examiner in the prosecution of the application which became the '531 patent. For this reason, the request for reexamination of claims 1, 5-6, and 11 over **Pepe** in view of **Hamalainen** is GRANTED.

As to SNQ (**E**), the combination **Pepe** in view of **Hamalainen** alone forms the proper basis of a SNQ as to claims 2-3. As such, the request for reexamination based on SNQ (**E**) is GRANTED because the combination **Pepe** in view of **Hamalainen**, without the alleged 'teaching' of the general knowledge of the Examiner in the '531 patent, forms the proper basis of a SNQ as to claims 2-3.

SNQ (C) and (F): Pepe in view of Mousseau

10. **Pepe** does not teach communicating the set of user-selected criteria to a communication server in a virtual session. 3PR provides **Mousseau** to teach communication between a user device and a host server via a session-less oriented

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protocol. (Request, pg. 60). For the reasons set forth above, the Examiner does not consider a teaching of a communication via a session-less oriented protocol to be a teaching of a virtual session. As such, the combination of **Pepe** in view of **Mousseau** does not form the proper basis of a SNQ and the request for reexamination of claims 1, 5-6, and 11 over **Pepe** in view of **Mousseau** is DENIED.

As to SNQ (F), the Request for reexamination must be based on prior patents and publications. 35 USC §302. Here, 3PR has presented an SNQ based on "the general knowledge in the field as described by the examiner of the '531 patent." (Requst, pg. 5). "The general knowledge in the field as described by the examiner of the '531 patent" is not a proper basis for an SNQ because it is not a prior patent or publication. As such, the request for reexamination based on SNQ (F) is DENIED.

Conclusion

11. For the reasons set forth above, claims 1-3, 5-6, and 11 will be reexamined.
12. **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
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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13. Registered users of EFS-Web may alternatively submit such correspondence via the electronic filing system EFS-Web, at:

<https://portal.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.

14. 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:

/Deandra M. Hughes/

Deandra M. Hughes
Primary Examiner
Central Reexamination Unit 3992
(571) 272-6982

May 7, 2010

Conferees:

/Christina Leung/

Eric Kessel