

**DEFENDANTS' RESPONSIVE BRIEF ON
CLAIM CONSTRUCTION**

EXHIBIT 5



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/010,831	01/22/2010	5,490,216	2914.001REX0	2214
26111	7590	08/05/2011	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			ART UNIT	PAPER NUMBER

DATE MAILED: 08/05/2011

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Intent to Issue
Ex Parte Reexamination Certificate**

Control No. 90/010,831	Patent Under Reexamination 5,490,216	
Examiner MATTHEW HENEGHAN	Art Unit 3992	

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

1. Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. Cf. 37 CFR 1.313(a). A Certificate will be issued in view of
 - (a) Patent owner's communication(s) filed: 18 March 2011.
 - (b) Patent owner's late response filed: _____.
 - (c) Patent owner's failure to file an appropriate response to the Office action mailed: _____.
 - (d) Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
 - (e) Other: _____.

Status of *Ex Parte* Reexamination:

 - (f) Change in the Specification: Yes No
 - (g) Change in the Drawing(s): Yes No
 - (h) Status of the Claim(s):
 - (1) Patent claim(s) confirmed: 1-20.
 - (2) Patent claim(s) amended (including dependent on amended claim(s)): _____
 - (3) Patent claim(s) canceled: _____.
 - (4) Newly presented claim(s) patentable: _____.
 - (5) Newly presented canceled claims: _____.
 - (6) Patent claim(s) previously currently disclaimed: _____
 - (7) Patent claim(s) not subject to reexamination: _____.

2. Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."

3. Note attached NOTICE OF REFERENCES CITED (PTO-892).

4. Note attached LIST OF REFERENCES CITED (PTO/SB/08 or PTO/SB/08 substitute).

5. The drawing correction request filed on _____ is: approved disapproved.

6. Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some* c) None of the certified copies have
 - been received.
 - not been received.
 - been filed in Application No. _____.
 - been filed in reexamination Control No. _____.
 - been received by the International Bureau in PCT Application No. _____.

* Certified copies not received: _____.

7. Note attached Examiner's Amendment.

8. Note attached Interview Summary (PTO-474).

9. Other: _____.

cc: Requester (if third party requester)

STATEMENT OF REASONS FOR PATENTABILITY AND/OR CONFIRMATION

The following is an examiner's statement of reasons for patentability and/or confirmation of the claims found patentable in this reexamination proceeding:

During reexamination, claims are given the broadest reasonable interpretation consistent with the specification and limitations in the specification are not read into the claims (*In re Yamamoto*, 740 F.2d 1569, 222 USPQ 934 (Fed. Cir. 1984)). Where there exists a final decision by the Court of Appeals for the Federal Circuit regarding the construction of claims, an interpretation is not reasonable where it is inconsistent with that decision. The Patent Owner has persuasively argued that, based on such decisions regarding the '216 patent, Hellman cannot be reasonably construed as teaching to a local licensee unique ID generating means or a remote licensee unique ID generating means.

The licensee unique ID generated by the means recited in each of the claims must be derived from at least piece of information that is specific to the user, such as name, billing information, or product information unique to the instantiation entered by the user. The information cannot be specific to the computer or independently generated by the computer. Hellman's ID has four inputs: a computer-specific key (SK), a number of uses requested (N), a random number generated by the computer (R), and a hash of a code for the type of software package, which is general to all installations of that package (H). Since none of these are user-specific, Hellman's algorithm does not generated the claimed licensee unique ID.

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It is also noted that the means itself must be an algorithm that, at least to some extent, must comprise a summation. The means provided by Hellman for combining the fields is DES, an encryption algorithm that does not involve summation; alternatively, Hellman suggests that digital signatures may be used (see Hellman, column 11, lines 42-47). Hellman further stresses that faster cryptographic alternatives could also be used (see column 7, line 67 to column 8, line 12). Given that there were a finite number of such algorithms available at the time of the Patent Owner's invention, it would have been obvious at that time to try any recognized alternative in the implementation of Hellman. As the Federal Circuit has pointed out, the MD5 algorithm (described in RFC 1321, attached to this action) could be such a means.

Of the other art of record, the only^{one} that suggests that use of user-specific information in the computation of fields is Grundy. The Patent Owner has persuasively argued that the summation disclosed by Grundy is used in the context of merely verifying the correctness of information related to the user and is not being used to generate an ID per se. Since the information is not being used for the same purpose, one skilled in the art therefore would not use the algorithm of Grundy as part of the generation of the claimed licensee unique ID.

Any comments considered necessary by PATENT OWNER regarding the above statement must be submitted promptly to avoid processing delays. Such submission by the patent owner should be labeled: "Comments on Statement of Reasons for Patentability and/or Confirmation" and will be placed in the reexamination file.