

EXHIBIT 3



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,576	03/16/2011	6034652	2988.002REX0	1567

27572 7590 05/20/2011

HARNES, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/20/2011

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



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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

1100 NEW YORK AVENUE, N.W.

WASHINGTON, DC 20005

MAILED

MAY 20 2011

CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/011,576

PATENT NO. 6034652

ART UNIT 3992

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/011,576	Patent Under Reexamination 6034652	
	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 16 March 2011 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)

ORDER GRANTING REQUEST FOR *EX PARTE* REEXAMINATION

1. Substantial new questions of patentability ("SNQ") affecting claims 4-8, 11, and 15-18 of USP 6,034,652 ("**652 patent**") have been proposed by the third party requester ("3PR") in the *ex parte* reexamination request filed Mar. 16, 2011 ("Request").

References Cited Proceeding

2. USP 5,748,190 to Kjorsvik filed Sep. 5, 1995. ("**Kjorsvik**")
3. USP 5,781,894 to Petrecca filed Aug. 11, 1995. ("**Petrecca**")
4. USP 5,913,040 to Rakavy filed Aug. 22, 1995. ("**Rakavy**")
5. USP 5,740,549 to Reilly filed Jun. 12, 1995. ("**Reilly**")
6. USP 5,796,945 to Tarabella filed Jun. 7, 1995. ("**Tarabella**")
7. Roberts, Jason. Director Demystified. Peachpit Press. 1995. ("**Roberts**")
8. Salm, Walter. "Buying a Real Computer Monitor". Popular Electronics. October 1984. pp. 102-103, 132, and 134. ("**Salm**")

Prosecution History

9. The prosecution history of the application (08/620,641) which became the '**652 patent**' is presented below.
 - On Mar. 22, 1996, claims 1-67 were presented for examination.
 - On Feb. 3, 1998, claims 1-67 were rejected.
 - Claims 1-19, 21-31, 33-46, and 48-67 were rejected as being anticipated by Judson. (USP 5,572,643)
 - Claims 19, 21-22, 46, and 48 were rejected as being anticipated by Pirani. (USP 5,105,184)
 - Claims 19, 20, 25-28, 32, 41-47 were rejected as being anticipated by PointCast as described in the Feb. 13, 1996 Wall Street Journal article by Joan E. Rigdon.

Art Unit: 3992

- Claims 1-20, 22-47, and 49-67 were rejected as being anticipated by Schena (WO 96/30864).
- On July 9, 1998, applicant filed remarks and amended claims 1 and 66.
- On Sept. 22, 1998, claims 1-67 were finally rejected.
- On Jan. 22, 1999, applicant filed a continued prosecution application.
- On Feb. 10, 1999, claims 1-67 were again finally rejected.
- On Jun. 14, 1999, applicant filed remarks and amended claims 49, 53, and 54.
- On Jul. 23, 1999, applicant's arguments of Jun. 14, 1999 were reconsidered and, *inter alia*, claim 13, 20, 32-40, 47, 51-54, 58, and 65 were amended was objected to as being allowable if rewritten in independent form to include all of the limitations of the base claim and the intervening claims . (see pg. 4) The Examiner did not provide a specific reason for indicting allowable subject matter other than the Judson, Pirani, PointCast, and Schena did not teach these elements.
- On Aug. 12, 1999, applicant filed after-final amendments cancelling claims 1-12, 14-19, 21-31, 41-46, 48-50, 55-57, 59-64, and 66-67. Claims 13, 20, 32-40, 47, 51-54, 58, and 65 were amended to included all of the limitations of the base claim and the intervening claims.
- On Aug. 26, 1999, claims 13, 20, 32-40, 47, 51-54, 58, and 65 were allowed.
- On Nov. 13, 2001, dependent claims 19-33 were added via a certificate of correction.

10. Since the prosecution history does not make clear the reasons for indicating allowability, the Examiner considers any teaching as to *a method or system for engaging the peripheral attention of a person in the vicinity of a display device such as the display monitor of a computer* to form the basis of an SNQ as to claims 4-8, 11, and 15-18.

Decision

11. **Petrecca** discloses an advertising system to be used with personal computers which enables sponsors to present advertisements to a user during periods of waiting-time which are inherent in normal computer use. (Abstract) **Petrecca** was not before the Examiner during the prosecution of the application that became the '652 patent. However, there is a substantial likelihood that a reasonable examiner would consider this teaching of **Petrecca** important in deciding whether claims 4-8, 11, and 15-18 are patentable. Accordingly, **Petrecca** raises a substantial new question of patentability as to claims 4-8, 11, and 15-18 which have not been decided in a previous examination.

Conclusion

12. For the reasons set forth above, claims 4-8, 11, and 15-18 of the '652 patent will be reexamined.

13. 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
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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

Registered users of EFS-Web may alternatively submit such correspondence via

Art Unit: 3992

the electronic filing system EFS-Web, at:

<https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>.

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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.

Signed:

/Deandra M. Hughes/
Primary Examiner, AU3992

Conferees:

/A. J. G./
Examiner, Art Unit 3992



MARK J. REINHART
CRU SPE-AU 3992

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Substitute for form 1449/PTO		<i>Complete if Known</i>	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>		Control Number	90/011,576 <i>(to be assigned)</i> <i>(Reexamination of U.S. Patent No. 6,034,652; Issued: March 7, 2000)</i>
		Filing Date	(herein) Mar. 16, 2011
		Inventors	FREIBERGER <i>et al.</i>
		Art Unit	(to be assigned) 3992
		Examiner Name	(to be assigned) D. Hughes
Sheet	1	of	1
		Attorney Docket Number	2988.002REX0

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Document Number		Publication Date MM/DD/YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)				
	US1	5,748,190		05/05/1998	Kjorsvik	
	US2	5,781,894		07/14/1998	Petrella <i>et al.</i>	
	US3	5,913,040		06/15/1999	Rakavy <i>et al.</i>	
	US4	5,740,549		04/14/1998	Reilly <i>et al.</i>	
	US5	5,796,945		08/18/1998	Tarabella	
	US6					
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FOREIGN PATENT DOCUMENTS							
Examiner Initials*	Cite No. ¹	Foreign Patent Document		Publication Date MM/DD/YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Country Code ³ Number ⁴ Kind Code ⁵ (if known)					
	FP1						
	FP2						
	FP3						
	FP4						
	FP5						
	FP6						
	FP7						
	FP8						
	FP9						

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Examiner Signature	Date Considered
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FIRST SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>				Control Number	90101,576 <i>(to be assigned)</i> <i>(Reexamination of U.S. Patent No. 6,034,652; Issued: March 7, 2000)</i>
				Filing Date	(herewith) Mar. 16, 2011
				Inventors	FREIBERGER <i>et al.</i>
				Art Unit	(to be assigned) 3992
				Examiner Name	(to be assigned) D. Hughes
Sheet	1	of	1	Attorney Docket Number	2988.002REX0

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issu number(s), publisher, city and/or country where published	7 ²
	NPL1	Roberts, Jason, "Director Demystified," Peachpit Press, 1995.	
	NPL2		
	NPL3		
	NPL4		
	NPL5		
	NPL6		
	NPL7		
	NPL8		
	NPL9		
	NPL10		

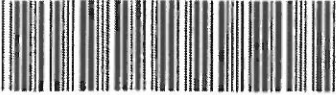
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Examiner Signature	/Deandra Hughes/ (05/05/2011)	Date Considered	
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Reexamination 	Application/Control No. 90011576	Applicant(s)/Patent Under Reexamination 6034652
	Certificate Date	Certificate Number

Requester Correspondence Address: Patent Owner Third Party

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
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WASHINGTON, DC 20005

LITIGATION REVIEW <input checked="" type="checkbox"/>	DMH (examiner initials)	05/14/2011 (date)
Case Name		Director Initials
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