

Exhibit 5

July 14, 2010 Order entered by the USPTO granting *ex parte* reexamination of U.S. Patent No. 5,848,105.



UNITED STATES PATENT AND TRADEMARK OFFICE

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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS
BRIENT INTELLECTUAL PROPERTY LAW LLC
2300 LAKEVIEW PARKWAY
SUITE 700
ALPHARETTA, GA 30009

Date:

MAILED

JUL 14 2010

CENTRAL REEXAMINATION UNIT

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. : 90010971
PATENT NO. : 5848105
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)).



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/010,971	04/28/2010	5,848,105	0919/01036	8081

8156 7590 07/14/2010

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SACRAMENTO, CA 95814

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/14/2010

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

Order Granting / Denying Request For Ex Parte Reexamination	Control No.	Patent Under Reexamination	
	90/010,971	5,848,105	
	Examiner	Art Unit	
	Deandra M. Hughes	3992	

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

The request for *ex parte* reexamination filed 28 April 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)

Art Unit: 3992

ORDER GRANTING REQUEST FOR *EX PARTE* REEXAMINATION

1. Substantial new questions of patentability (“**SNQ**”) affecting **claims 1-12** of **USP 5,848,105** (“**105 patent**”) have been proposed by the third party requester (“**3PR**”) in the *ex parte* reexamination request filed April, 28, 2010 (“**Request**”).

References Cited in this Action

2. Gardner, W.A. “Exploitation of Spectral Redundancy in Cyclostationary Signals”. IEEE Signal Processing Magazine. Vol. 8. No. 2. pp. 14-36. (“**Gardner-I**”)
3. Laurent, P.A. “Exact and approximate construction of digital phase modulations by superposition of amplitude modulated pulses (AMP)” IEEE Transactions on Communication. Vol. Com-34. No.2. pp.150-160. Feb. 1986. (“**Laurent**”)
4. Kaleb, G.K. “Simple Coherent Receivers for Partial Response Continuous Phase Modulation.” IEEE Journal on Selected Areas in Communications. Dec. 1989. Pgs. 1427-1436. Vol. 7. No. 9. (“**Kaleb**”)
5. Gardner, W.A. “Cyclic Wiener Filtering: Theory and Method” January 1993. Pg.s 151-163. Vol. 41. No. 1. (“**Gardner-II**”)

Prosecution History

6. The prosecution history of the application (08/729,625) which became the **'105 patent** is presented below.

- On October 10, 1996, **claims 1-12** were presented for examination.
- On July 24, 1998, the Examiner issued a first action allowance of **claims 1-12**.
- As to the statement for reasons for allowance, the Examiner merely repeated the claim language of **claim 1**.

7. Based on the prosecution history of 08/729,625, the Examiner considers a teaching as to *an apparatus or method for extracting a signal of interest from a plurality of spectrally and temporally overlapping input signals comprising a time-shifting means,*

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a frequency-shifting means, or a linear-combining means to form the proper basis of an SNQ for **claims 1-12** of the '**105 patent**.

Decision

8. **Gardner-II** illustrates a theory for separating temporally and spectrally overlapping communication signals that involves conventional time and space filtering of stationary random signals, which amounts to forming linear combinations of time translates and space translates, and exploiting the temporal and spatial coherency of the signals. (*Abstract*) **Gardner-II** was not before the Examiner during the prosecution of the '**105 patent** and there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether **claims 1-12** are patentable. Accordingly, **Gardner-II** raises an SNQ as to **claims 1-12**, which question has not been decided in a previous examination of the '**105 patent**.

Conclusion

9. **All** correspondence relating to this 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

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

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the electronic filing system EFS-Web, at:

<https://sportal.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.

11. 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

Conferees:

ESK
C

Substitute for form 1449/PTO (Revised 07/2007) INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(Use as many sheets as necessary)</i>				Complete if Known				
				Application Number		08/729,625 90/010,971		
				Filing Date		October 10, 1996		
				Patent Number		5,848,105 (Exhibit A)		
				Issue Date		December 8, 1998		
				First Named Inventor		Gardner, <i>et al.</i>		
				Art Unit		2733 AU3992		
Examiner Name		Congvan Tran Deandra M. Hughes						
Sheet	1	of	1	Attorney Docket Number 0919/01036				
OTHER DOCUMENTS								
Examiner Initials*	Cite No.	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-issue number(s), publisher, city and/or country where published.			English Language Translation Attached			
/DMH/	1	GARDNER, Exploitation of Spectral Redundancy in Cyclostationary Signals, IEEE Signal Processing Magazine, April 1991, Vol. 8, No. 2, Pages 14-36. (Exhibit B)						
/DMH/	2	LAURENT, Exact and Approximate Construction of Digital Phase Modulations by Superposition of Amplitude Modulated Pulses (AMP), February 1986, Pages 150-160, Vol. Com-34, No. 2, IEEE Transactions on Communications (Exhibit C)						
/DMH/	3	KALEH, Simple Coherent Receivers for Partial Response Continuous Phase Modulation, Journal, December 1989, Pages 1427-1436, Volume 7, No. 9, IEEE Journal on Selected Areas in Communications (Exhibit D)						
/DMH/	4	GARDNER, Cyclic Wiener Filtering: Theory and Method, January 1993, Pages 151-163, Volume 41, No. 1, IEEE Transactions on Communications (Exhibit E)						
Examiner Signature	/Deandra M. Hughes/			Date Considered	July 9, 2010			

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.