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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/012,400	07/20/2012	5974120	A2DL-003/00US 305918-2028	3202
58249	7590	11/19/2013	EXAMINER	
COOLEY LLP ATTN: Patent Group 1299 Pennsylvania Avenue, NW Suite 700 Washington, DC 20004			RALIS, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3992	
			MAIL DATE	DELIVERY MODE
			11/19/2013	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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**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/012,400.

PATENT NO. 5974120.

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)).

## DETAILED ACTION

### *I. Pertinent Prosecution History*

1. On 20 July, 2012 a third party requester (“Requester”) filed an *ex parte* reexamination request (“Request”) in the reexamination control number 90/012,400 proceedings (“’12400 Proceedings”) for claim 61 of United States Patent Number 5,974,120 (“’120 patent”). In the ‘120 patent, claim 61 depends from claim 56.
2. On 05 September 2012, the Office mailed an Order granting the *ex parte* reexamination of the ‘120 patent (“Order”) in the ’12400 Proceedings. In particular, the Office ordered reexamination of claim 61 of the ‘120 patent (“Reexamined Claims”). Because Requester did not request reexamination of claims 1-60 and 62-81 and did not assert the existence of a substantial new question of patentability (SNQ) for such claims, claims 1-60 and 62-81 of the ‘120 patent were not reexamined in the ’12400 Proceedings.
3. In the ’12400 Proceedings, the Office issued a non-Final Office action on 01 January 2013 (“2013 Non Final Office Action”) rejecting claim 61 of the ‘120 patent. In particular, the 2013 Non Final Office Action rejected claim 61 of the ‘120 patent in view of Thomas E. Calabrese, “Advanced Function VRU Application,” 12-14 September 1989 (“**Calabrese**”) and “Automated Student Registration Using Touch-Tone Telephone/Voice Response,” Publication No. 3230202A, 1986, Periphonics Corporation (“**Student Registration**”); and Moosemiller et al., “AT&T’s Conversant™ I Voice System”, Speech Technology 88 (Mar./Apr. 1986) (“**Moosemiller et al.**”), Student Registration and **Szlam et al.** (U.S. Patent No. 4,797,911).

4. On 18 March 2013, Owner filed a “Response in Ex Parte Re-Examination” (“March 2013 PO Response”). The March 2013 PO Response contained arguments with respect to the rejected claims and a declaration by Dr. Arthur T. Brody, PhD. (“March 2013 Brody Declaration”).

5. On 04 September 2013, the Office issued a Final Office action (“2013 Final Office Action”). In particular, the 2013 Final Office Action entered the March 2013 Brody Declaration; maintained the rejections of claim 61 of the ‘120 patent in view of *Calabrese* and *Student Registration*; and *Moosemiller et al.*, *Student Registration*, and *Szlam et al.*; and addressed the arguments provide by Owner in light of the March 2013 Brody Declaration.

6. Based upon a review of the prosecution history of the ‘120 patent as set forth in the Image File Wrapper (“IFW”) system, the Examiner finds that the phrase “*utilizing, for qualified callers, the identification signals that indicate the telephone numbers to avoid prompting certain callers with a certain previously provided cue or cues*” was first recited in the ‘120 patent family in U.S. Patent Application No. 07/425,779, filed 23 October 1989 now U.S. Patent No. 5,128,984 (“‘984 patent”). Thus, the earliest priority date afforded claim 61 is deemed 23 October 1989.

7. The ‘120 patent is terminally disclaimed to the ‘984 patent. The ‘984 patent expired on 23 October 2009. Because the ‘984 patent expired on 23 October 2009, the Examiner finds that ‘120 patent also expired on 23 October 2009. Therefore, the ‘120 patent currently undergoing *ex parte* reexamination in the instant proceeding is expired.

8. Based upon a review of the IFW system, the Examiner finds that Owner has not amended any of the Reexamined Claims in the ‘12400 Proceedings.

9. This Office action is assigned Paper No. 20131112. Paper No. is for reference purposes only.

## *II. Response to Arguments*

### **A. FIRST GROUND OF REJECTION: CLAIM 61 UNDER 35 U.S.C. § 103 IN VIEW OF CALABRESE AND STUDENT REGISTRATION.**

- 1) **Owner's argues the FOA does not properly account for the expert opinion evidence.**

10. Owner specifically argues,

The FOA asserts that the "Declaration provided by Dr. Brody does not provide any further evidence as to the possession of 'cue suppression' in the '739 patent in order to establish an earlier priority date (i.e. 16 May 1988)," and "does not provide evidentiary support to overcome the prima facie rejections of... Claim 61 ." (FOA at 36.) The Patent Owner respectfully disagrees. While Dr. Brody may cite some of the same passages from the '739 patent and the asserted references as the Patent Owner cites, the declaration provides new relevant evidence, in the form of expert opinions, regarding the understanding of a person of ordinary skill in the art at the time of the invention.

March 2013 PO Response, page 2.

11. The Examiner respectfully disagrees. As asserted by the Examiner in the 2013 Final Office Action, the March 2013 Brody Declaration did not provide any further evidence to establish an earlier priority data. (See 2013 Final Office Action, page 36). The March 2013 Brody Declaration along with the March 2013 PO Response is essentially incorporated into Owner's arguments and therefore was not separately addressed. As to the opinion evidence in the March 2013 Brody Declaration relied on by Owner, it lacks persuasive factual support because Brody does not cite to any corroborating evidence. See *In re Beattie* 974 F.2d 1309, 1313 (Fed. Cir. 1992).

12. Thus, the Examiner finds that the 2013 Final Office Action did sufficiently account for the expert opinion of Dr. Brody.

**2) Examiner finds that there is insufficient support in the '739 for the "utilizing" step.**

13. The Examiner finds that the '739 patent has insufficient disclosure that supports the "utilizing..." step as set forth in claim 61 of the '120 patent. As set forth in the Order, 2013 Non Final Office Action, and 2013 Final Office Action, the Examiner finds that,

*the concept of "utilizing, for qualified callers, the identification signals that indicate the telephone numbers to avoid prompting certain callers with a certain previously provided cue or cues" first appeared in U.S. Patent No. 5,128,984 which matured to a patent from CIP application 07/425,779, filed 23 October 1989. Therefore, 23 October 1989 is the earliest priority date afforded claim 61 of the '120 patent, due to its inherent dependency on claim 56.*

Order, page 3; 2013 Non Final Office Action, page 3; and 2013 Final Office Action, page 3.

14. In the merged proceedings of Reexamination control numbers 90/008,229; 90/010,130; and 90/010,044 ("Merged Proceedings"), the Examiner further finds that the previous examiner similarly found the limitation of "utilizing..." having 23 October 1989 as the earliest priority date. (Merged Proceedings; see Examiner's Answer mailed 16 December 2009, page 10). In the Merged Proceedings, Owner never challenged or argued the priority date determination as asserted by the Office in any of the responses.

15. The Examiner finds that both the '120 and '894 patents provide sufficient support for a cue being presented to a caller when a random number generator **38** generates a cue that a caller has already been queried based on a coincidence detector **42** the caller's record **44**, and in

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response, provides another cue. To support the Examiner's position, the Examiner finds that the '120 and '894 patents state,

The system of the disclosed embodiment selectively qualifies callers depending on their calling mode. Additionally, the system responds to caller identification to enhance contest equity. Generally, the interface processor **26** poses questions to calling contestants and stores the resulting answers in a result memory **36**. Questions given to contestants are selected from a memory **38** by a random number generator **40**. Essentially, the memory **38** contains an inventory of questions addressable by numbers provided by the random number generator **40**. The address numbers from the generator **40** are also supplied to a coincidence detector **42** that also receives the address numerals of questions previously presented to a specific caller from a record **44**. Thus, before a question is presented to a caller, the number of the calling terminal is checked to assure that the same question has not previously been posed to a caller at that terminal.

'120 patent, column 5, lines 21-36; '984 patent, column 4, line 56 – column 5, line 5

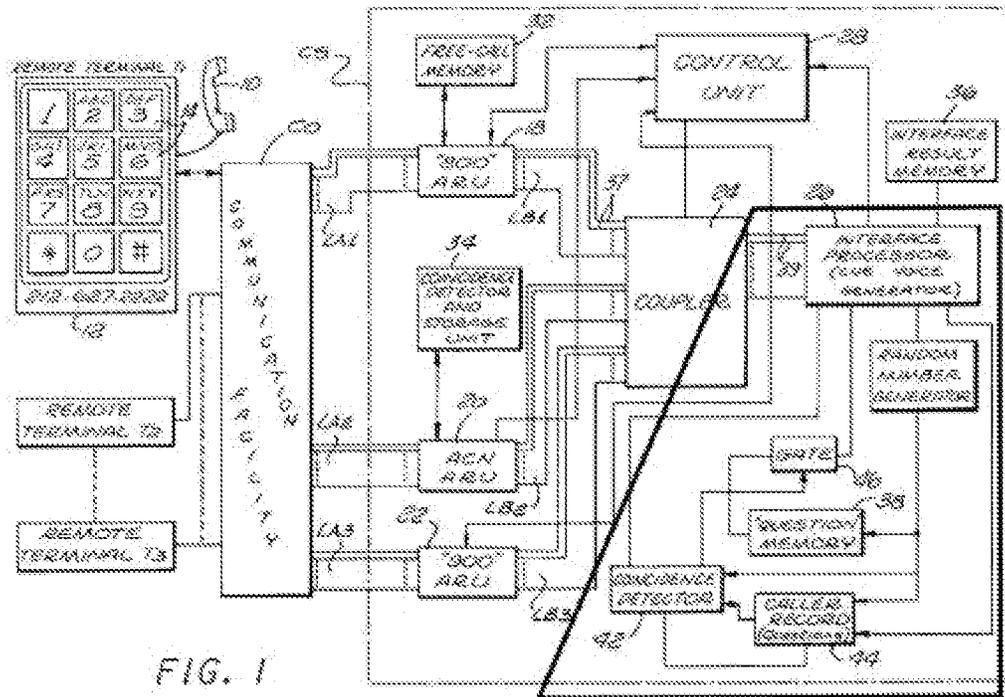
In the disclosed embodiment, concurrently with the operation of further informing the caller, the interface processor **26** actuates the random number generator **40** to provide a random address for the question memory **38**. The process step is illustrated in FIG. 2 by the block **66**.

The random number (identifying a question in the memory **38**) is also provided to the coincidence detector **42** to test for the previous use of the question to the calling terminal. In that regard, the interface processor **26** provides the caller telephone number (ANI) to the caller record **44** which may simply take the form of a look-up table addressed by calling numbers and revealing the identification of previous questions propounded. The addresses of questions previously recorded for a calling number are supplied to the coincidence detector **42** for comparison with the current tentative question identification number. The process step is illustrated by the query block **68** in FIG. 2. If the tentative question has been previously used for the calling terminal, a signal is provided from the coincidence detector **42** to the interface processor prompting a repeat operation by the random number generator **40** to select another question. Alternatively, if the tentative question is not a repeat, then the coincidence detector **42** qualifies the gate **46** and the tentative question is supplied to the interface processor **26** for actual use. Note that upon the occurrence of an approved question, the coincidence detector also supplies a signal to the call record **44** which records the identification number of the question. The process step is illustrated in FIG. 2 by the block **70**. With the provision of signals representing a question through the gate **46** to the interface processor **26**, the internal voice generator is actuated to propound the question to the caller.

'120 patent, column 9, lines 14-48; column 8, line 65 – column 9, line 15; see Figures 1, 2.

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16. The Examiner includes annotated Figures 1 and 2 of both the '120 and '894 patent illustrating the structure and process flow required to perform the "utilizing ..." step for comparison the '739 patent.



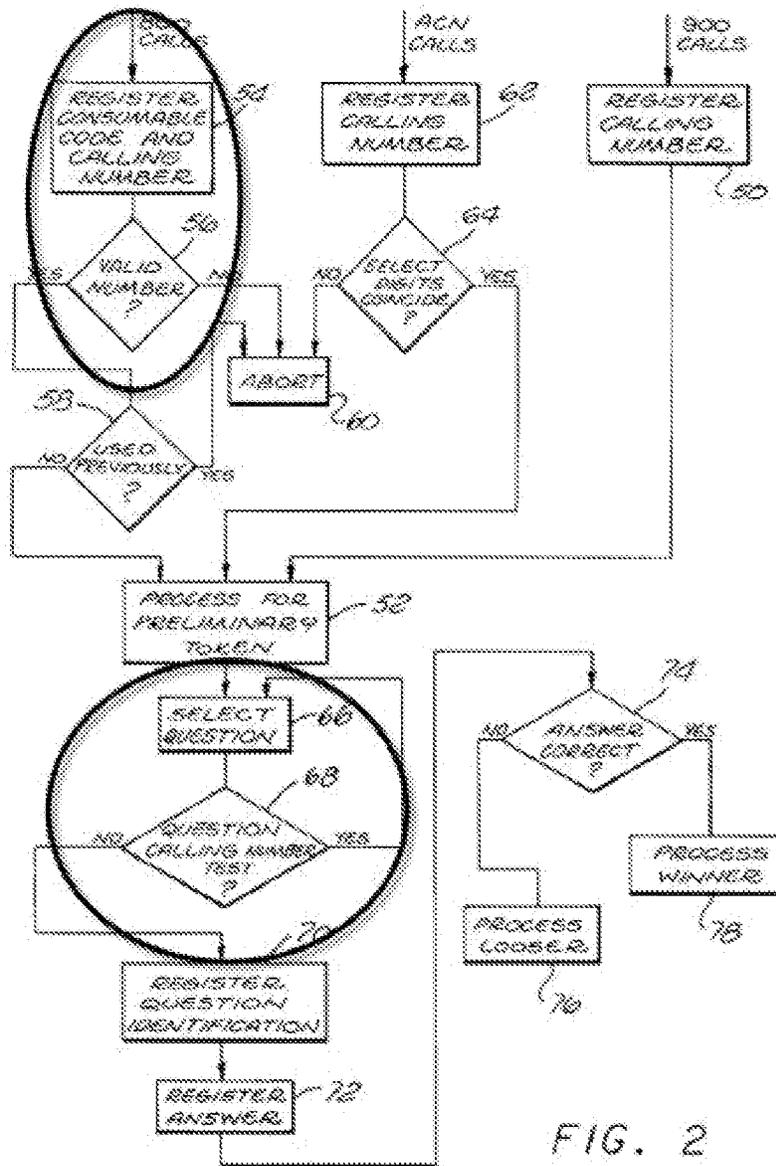


FIG. 2

17. In comparison of Figure 1 of the '739 patent (reproduced below) to Figure 1 of the '120 and '894 patents (above), one of ordinary skill in the art can easily distinguish the differences. Furthermore, the Examiner

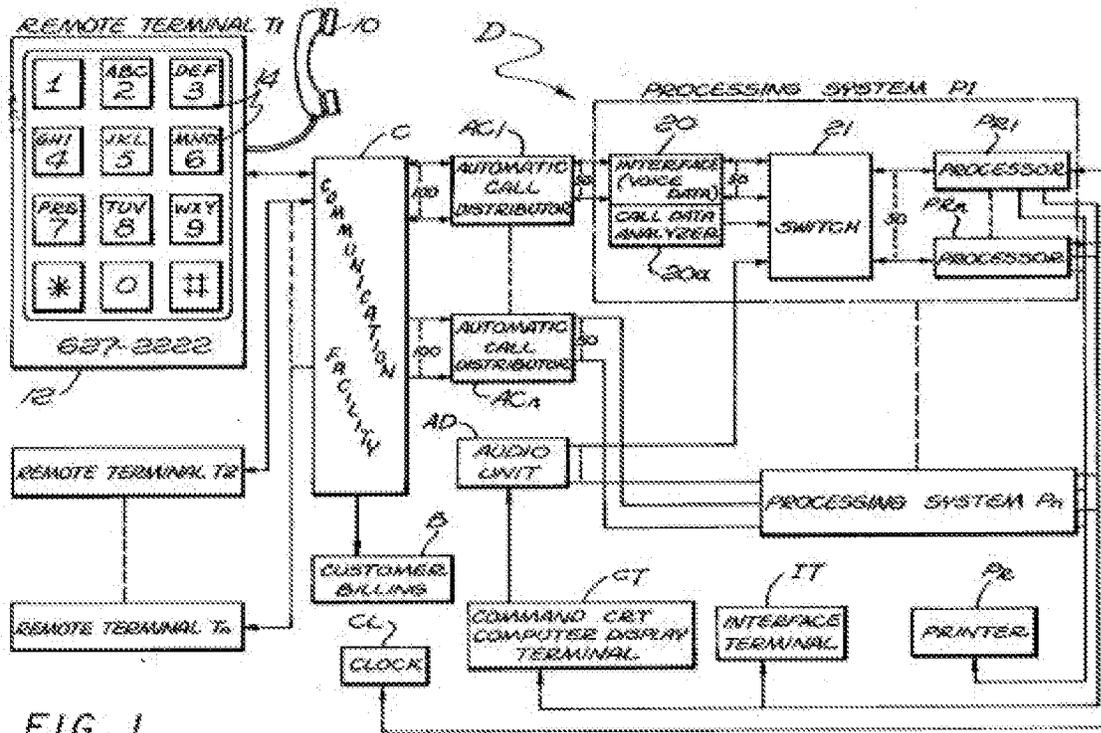


FIG. 1

cannot find sufficient support for the structure required to perform the “utilizing...” step in the '739 patent. Like the '120 and '894 patents, the '739 patent includes and uses random number generators; however, the random number generators are utilized for different reasons than that use in the '120 and '894 patents, such as for determining if a caller has won a competition or if the caller is located in a particular area. (See '739 patent, column 13, lines 27 column 14, line 12; see Figures 4, 6, 8).

18. Thus, the Examiner finds that the '739 patent does not disclose an equivalent or even similar use for the random number generator as that use disclosed in the '120 and '894 patents, said use including cue suppression by providing random numbers that correspond to a cue and then comparing that randomly generated number to see whether the cue has been provided and, if so, providing an alternative cue instead.

19. Thus, the Examiner finds the arguments misplaced and moot since the '739 patent does not sufficiently have support for the "*utilizing...*" step as previously determined.

**3) Owner's argues the '739 patent discloses the "utilizing" step in a "preregistration" or "prequalification" process.**

20. Owner specifically argues,

The FOA asserts that when the system avoids providing the previously provided cue or cues, the avoidance is only for "'non-qualified callers', since the caller's identification signals have not yet been tested." (FOA at 40.) That is incorrect. First, the FOA does not appreciate that the specification expressly describes that the "preregistration" process is performed to ensure that the caller is "qualified" for the subsequent event (e.g., telephonic auction)...

Thus, the system avoids the preregistration cues for qualified callers.

March 2013 PO Response, page 3.

21. The Examiner respectfully disagrees.

22. In addition to the Examiner's position in § II.A.2 above, the Examiner finds that the '739 patent fails to provide sufficient support for the "*utilizing ...*" step based on the "prequalification" or "preregistration" embodiment for the following reasons:

23. As previously asserted by the Examiner, the Examiner finds that claim 61's "testing..." step (i.e. '120 patent, claim 56) is utilized to determine whether a caller is qualified or not. (See 2013 Final Office Action, pages 38-41). Once qualification of a particular caller has been determined (i.e. "for qualified callers"; '120 patent, see claim, 56), the identification signals relating to the callers are then utilized to avoid prompting certain callers with certain previously provided cues and providing at least one other cue. The caller must first be qualified based on the

“testing of the identification signals”, not just be “prequalified” or “preregistered”, before any utilization of the identification signals can be used to avoid prompting.

24. Owner argues that support for cue suppression in the '739 patent exists in the embodiment in which prompts provided during a previous call made to prequalify a caller are avoided during a subsequent call. However, this is inconsistent with the claim language as set forth above because the claim requires the cue suppression to occur after testing has determined the caller is qualified. The Examiner finds that any hypothetical cue suppression that may be provided in the '739 patent occurs prior to testing and therefore applies to “non-qualified” callers because the testing step has yet to occur as required by claim 56 of the '120 patent.

25. In addition, the '739 patent has no description of what cues are provided, what cues are suppressed, and what “other” cue is provided in the alternative and therefore fails to meet the written description requirement for the steps in claim 56 of the '120 patent.

26. Still further, Owner appears to be conflating the '739 patent's “prequalified” or “preregistered” callers with the '120 patent claim's “qualified callers”; however, the claim's step of “utilizing, for **qualified** callers, ...” refers back to the previous step of “testing...to determine whether to **qualify** the callers **for access to at least a portion of the system**” --not back to the **prequalification** of callers during previous telephone calls, as in the '739 patent. In other words, the explicit language of the claims indicates that the qualification is to determine whether to give callers access to at least a portion of the system --not to determine if a caller was prequalified. As such, the example in the '739 patent specification on which Owner relies for support of the process does not appear to coincide with the explicit language of claim 56 of the '120 patent.

27. Thus, as set forth in the 2013 Final Office Action, the Examiner finds that the '739 patent has insufficient support for the claimed "utilizing" step in claim 56 of the '120 patent based on the "preregistration" or "prequalification" process embodiment of the '739 patent.

**4) Owner's argues the '739 patent discloses the "utilizing" step in avoiding repetition of cues in the game show embodiment.**

28. Owner specifically argues,

The FOA also addresses the game show embodiment, which is a separate and independent disclosure of the "cue suppression" limitations. The FOA asserts that "[t]here is no explicit disclosure in the '739 patent of the caller calling back to participate in the contest." (FOA at 42.) But the FOA overlooks the express description that the system checks "to determine whether or not an excessive number of calls have originated from the designated number." '739 col. 18:35-38 (emphasis added). As discussed in the Prior Response, this expressly discloses that some callers will call back multiple times to participate in the contest.

March 2013 PO Response, pages 3-4.

29. The Examiner respectfully disagrees.

30. In addition to the Examiner's position in § II.A.2 above, the Examiner finds that the '739 patent fails to provide sufficient support for the "utilizing ..." step based on the avoiding repetition of cues in the game show embodiment for the following reasons:

31. As set forth in the 2013 Final Office Action, the Examiner finds that even if a caller calls the system back to participate in the game show, the '739 patent has insufficient support for a certain cue not being provided and providing another instead. The Examiner specifically states,

Moreover, if one of ordinary skill in the art would assume that a caller would call back to participate again, there is no disclosure of any randomly generated previously presented cue or cues not being provided to the caller of the same geographical area, only to certain cues being generated for the particular geographical area and those particular cues being available to all callers in the same geographical area. While callers in a different

geographical area will get a different subset of a series of three distinct randomly generated different cues/questions, callers in same geographical area or a different geographical area will get the same cues/questions randomly generated for that geographical area with no avoidance of the previously presented cues/questions being provided.

2013 Final Office Action, pages 42-43

32. Thus, as set forth in the 2013 Final Office Action, the Examiner finds that the '739 patent has insufficient support for the "utilizing" step in the avoiding repetition of cues in the game show embodiment of the '739 patent.

**B. SECOND GROUND OF REJECTION: CLAIM 61 UNDER 35 U.S.C. § 103 IN VIEW OF MOOSEMILLER, STUDENT REGISTRATION, AND SZLAM.**

33. Owner specifically argues,

The FOA repeats the assertion that (1) Moosemiller and Student Registration would have been obvious to combine, and (2) that Szlam's asserted "utilization of ANI information to automatically provide account information" supports obviousness. (FOA at 47-48.) But the Patent Owner maintains that this piecemeal approach, separately proposing individual sub-combinations, does not demonstrate obviousness of the complete invention.

March 2013 PO Response, pages 4-5.

34. The Examiner respectfully disagrees. In response to Owner's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

35. Owner further argues,

With respect to Szlam and ANI in particular, the FOA does not address at all--much less substantially rebut--the Patent Owner's evidence and explanation as to why it would not

have been obvious to use ANI in the Student Registration context in the manner the Examiner has asserted.

March 2013 PO Response, page 5.

36. The Examiner respectfully disagrees. While using ANI from just any phone would be useless in providing information about the student, using ANI information from a student's home, cellular, business and/or user associated numbers would be beneficial to the student registration system. The Examiner finds that Student Registration's true advantage is providing any easy automated registration application in which information provided by the caller/student to register is limited. To support the Examiner's position, the Examiner finds that Student Registration states,

How it Works:

Callers are answered in a clear, pleasant, human voice that is stored and controlled by the VoicePac system. The system's voice prompts the caller through the input process by asking for appropriate information. The caller enters information via the push-buttons on the telephone keypad. After verifying the information and passing it error-free on to the processing cycle, the system can even assign a tracking or audit number (if desired). The system can even transfer telephone calls automatically to a human operator when the caller enters invalid information several times or requests help. The flow/logic of the transaction is controlled by your existing application software. A new interface program must be created on your Host computer to format messages to and from the VoicePac.

Student Registration, § 1-2.

3.1 Security

Systems implemented to date, assign students a unique four digit access code or "Personal Identification Number" ("PIN"), which is used in addition to their school ID# or Social Security #.

Student Registration, § 3.1.

37. The Examiner finds that Student Registration discloses the necessity to enter the school ID number and "Personal Identification Number" (PIN) to determine if the student can register. The Examiner further finds that Szlam et al. provides the advantage of providing this subscriber/account information automatically via ANI. Szlam et al. sufficiently teaches the utilization of "Automatic Number identification" (ANI) to obtain the number of the telephone that is calling and direct a certain message to play based the decoded ANI information. (Szlam et al.; column 11, lines 62-63; column 12, lines 14-22). Similarly, Szlam et al. sufficiently teaches the utilization of "Automatic Number identification" (ANI) to provide the telephone number to a system controller which in return provides account information/data to either establish a new account or conduct the necessary business with the client (Szlam et al.; column 2, lines 59-68; column 12, lines 29-66).

38. Thus, the Examiner finds that Moosemiller/Student Registration would clearly benefit from this information being provided automatically instead of having the user enter such information, as taught by Szlam et al., due to Student Registration being relatively concerned about providing any easy automated registration voce responsive system in which information provided by the caller/student to register is limited.

39. Furthermore the Federal Circuit affirmed the District Court's determination that Student Registration could implement "cue suppression on ANI data" of claim 67. NOTE: Claim 67 has very similar limitation to claim 61, as asserted in the 2013 Final Office Action. In that regard, the Federal Court explained,

Katz next argues that it would not have been obvious to combine Student Registration and Szlam to create the invention of claim 67 of the '120 patent, which bases cue suppression on ANI data. Katz contends that students' mobility and their tendency to share telephone numbers would cause "unpredictable and disastrous results" in a cue

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suppression system based solely on ANI data. The problem with Katz's argument is that claim 67 reads on any method to suppress cues by identifying callers based in part on ANI data. And Student Registration discloses multi-faceted identification techniques such as using a personal identification number or a birth date in addition to a registration number. Claim 67 is therefore an obvious combination of Student Registration's cue suppression with the ANI-based identification process of Szlam. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) ("[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.").

*In re Katz Interactive Call Processing Patent Litigation*, 2011 WL 607381, page 1752 (Fed. Cir. Feb. 18, 2011).

40. Thus, as set forth in the 2013 Final Office Action, the Examiner finds that it would have been obvious to one of ordinary skill in the art to combine Moosemiller et al., Student Registration and Szlam et al. to achieve the invention of claim 61.

### ***III. Conclusion***

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extension of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 5,974,120 throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

**All** correspondence relating to this *ex parte* reexamination proceeding should be directed:

By Mail to:        Mail Stop *Ex Parte* Reexam  
                          Central Reexamination Unit  
                          Commissioner for Patents  
                          United States Patent & Trademark Office  
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By FAX to:        (571) 273-9900  
                          Central Reexamination Unit

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Any inquiry concerning this communication or earlier communications from the Reexamination Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

/Stephen J Ralis/  
Primary Examiner, Art Unit 3992

Conferees:  
/Erik Kielin/  
Primary Examiner, Art Unit 3992

/Jennifer McNeil/  
SPRS, Art Unit 3992

<b>Ex Parte Reexamination Advisory Action Before the Filing of an Appeal Brief</b>	<b>Control No.</b> 90/012,400	<b>Patent Under Reexamination</b> 5974120	
	<b>Examiner</b> STEPHEN RALIS	<b>Art Unit</b> 3992	<b>AIA (First Inventor to File) Status</b> No

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

THE PROPOSED RESPONSE FILED 04 November 2013 FAILS TO OVERCOME ALL OF THE REJECTIONS IN THE FINAL REJECTION MAILED 04 September 2013.

1.  Unless a timely appeal is filed, or other appropriate action by the patent owner is taken to overcome all of the outstanding rejection(s), this prosecution of the present *ex parte* reexamination proceeding WILL BE TERMINATED and a Notice of Intent to Issue *Ex Parte* Reexamination Certificate will be mailed in due course. Any finally rejected claims, or claims objected to, will be CANCELLED.
- THE PERIOD FOR RESPONSE IS EXTENDED TO RUN 4 MONTHS FROM THE MAILING DATE OF THE FINAL REJECTION. Extensions of time are governed by 37 CFR 1.550(c).

**NOTICE OF APPEAL**

2.  An Appeal Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ to avoid dismissal of the appeal. See 37 CFR 41.37(a). Extensions of time are governed by 37 CFR 1.550(c). See 37 CFR 41.37(e).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final action, but prior to the date of filing a brief, will not be entered because:
- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the proceeding in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_ (See 37 CFR 1.116 and 41.33(a)).

4.  Patent owner's proposed response filed \_\_\_\_\_ has overcome the following rejection(s): \_\_\_\_\_
5.  The proposed new or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6.  For purposes of appeal, the proposed amendment(s) a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claim(s) would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:  
 Claim(s) patentable and/or confirmed: \_\_\_\_\_  
 Claim(s) objected to: \_\_\_\_\_  
 Claim(s) rejected: \_\_\_\_\_  
 Claim(s) not subject to reexamination: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

7.  A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on \_\_\_\_\_.
8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because patent owner failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence fails to overcome all rejections under appeal and/or appellant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12.  Note the attached Information Disclosure Statement(s), PTO/SB/08, Paper No(s) \_\_\_\_\_.
13.  Other: \_\_\_\_\_.

cc: Requester (if third party requester)

<b>Reexamination</b> 	<b>Application/Control No.</b> 90012400	<b>Applicant(s)/Patent Under Reexamination</b> 5974120
	<b>Certificate Date</b>	<b>Certificate Number</b>

<b>Requester Correspondence Address:</b>	<input type="checkbox"/> <b>Patent Owner</b>	<input checked="" type="checkbox"/> <b>Third Party</b>
NDQ SPECIAL REEXAM GROUP 1000 LOUISIANA STREET, FIFTY-THIRD FLOOR HOUSTON, TX 77002		

<b>LITIGATION REVIEW</b> <input checked="" type="checkbox"/>	SR (examiner initials)	08/27/2012 (date)
Case Name		Director Initials
See attached document "Appendix A - List of Related..."		/JM/ for IY

<b>COPENDING OFFICE PROCEEDINGS</b>	
<b>TYPE OF PROCEEDING</b>	<b>NUMBER</b>
1. EP Reexamination (Appealed to CAFC)	90/008,229; 90/010,044; and 90/010,130 (merged)

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