

Office Action in Ex Parte Reexamination	Control No. 90/012,400	Patent Under Reexamination 5974120
	Examiner STEPHEN RALIS	Art Unit 3992

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

- a Responsive to the communication(s) filed on 18 March 2013. b This action is made FINAL.
c A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c)**. If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892. 3. Interview Summary, PTO-474.
2. Information Disclosure Statement, PTO/SB/08. 4. _____.

Part II SUMMARY OF ACTION

- 1a. Claims 61 are subject to reexamination.
1b. Claims 1-60 and 62-81 are not subject to reexamination.
2. Claims _____ have been canceled in the present reexamination proceeding.
3. Claims _____ are patentable and/or confirmed.
4. Claims 61 are rejected.
5. Claims _____ are objected to.
6. The drawings, filed on _____ are acceptable.
7. The proposed drawing correction, filed on _____ has been (7a) approved (7b) disapproved.
8. 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
1 been received.
2 not been received.
3 been filed in Application No. _____.
4 been filed in reexamination Control No. _____.
5 been received by the International Bureau in PCT application No. _____.
* See the attached detailed Office action for a list of the certified copies not received.
9. Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10. Other: _____

cc: Requester (if third party requester)



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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	09/04/2013	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
			09/04/2013	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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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

This Office action addresses claim 61 of United States Patent Number 5,974,120 (Katz; the '120 patent, hereafter) for which it has been determined in the Order Granting *Ex Partes* Reexamination (hereafter the "Order") that a substantial new question of patentability was raised in the Request for ex parte reexamination filed on 20 July 2012 (hereafter the "Request").

- The Office ordered a reexamination of claim 61 of the '120 patent on 05 September 2012.
- The Office issued a non-Final Office action on 01 January 2013 rejecting claim 61 of the '120 patent in view of Calabrese and Student Registration; and Moosemiller et al., Student Registration and Szlam et al..
- Owner filed a response on 18 March 2013 presenting arguments and Dr. Arthur Brody, PH.D. Declaration with respect to the aforementioned rejections.

This is a final Office action in response to the request for reconsideration filed 18 March 2013 (hereafter the "Response") to non-Final Office action mailed 16 January 2013 (hereafter the "NFR").

Since 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, such claims will not be reexamined. See *Sony Computer Entertainment America, Inc. v. Dudas*, 85 USPQ2d 1594, 1601-02 (E.D. Va. 2006) ("[T]he scope of the PTO's investigation extends only to those claims (i) for which reexamination has been

Art Unit: 3992

requested; and (ii) for which the PTO has determined there exists a substantial question of validity.”) (discussing *inter partes*, but equally applicable to *ex parte*). See also MPEP 2243.

Rejections Proposed by the Requester

A total of four references have been asserted in the Request as providing teachings relevant to the claims of the '120 patent. In view of the Order, four references raised a substantial new question of patentability. The following proposed rejections are the main issues to be discussed below:

- Issue 1: Claim 61 in view of “Advanced Function VRU Application,” Thomas E. Calabrese, discloses 12-14 September 1989 (hereinafter “**Calabrese**”) and "Automated Student Registration Using Touch-Tone Telephone/Voice Response," Publication No. 3230202A, 1986, Periphonics Corporation (hereinafter “**Student Registration**”)
- Issue 2: Claim 61 in view of Moosemiller et al., “AT&T’s Conversant™ I Voice System”, Speech Technology 88 (Mar./Apr. 1986) (herein after “**Moosemiller et al.**”), Student Registration and **Szlam et al.** (U.S. Patent No. 4,797,911)

Claim Interpretation

Interpretation of expired claims

The '120 patent is terminally disclaimed to U.S. Patent No. 5,128,984, (the '984 patent, hereafter) as indicated on the cover of the '120 patent. The '984 patent expired on 23 October 2009. In addition, 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.

With respect to the interpretation of claim terms of expired patents, MPEP 2258(G) states,

G. Claim Interpretation and Treatment Original patent claims will be examined only on the basis of prior art patents or printed publications applied under the appropriate parts of 35 U.S.C. 102 and 103. See MPEP § 2217. 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)). In a reexamination proceeding involving claims of an expired patent, claim construction pursuant to the principle set forth by the court in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (words of a claim "are generally given their ordinary and customary meaning" as understood by a person of ordinary skill in the art in question at the time of the invention) should be applied since the expired claims are not subject to amendment. The statutory presumption of validity, 35 U.S.C. 282, has no application in reexamination (*In re Etter*, 756 F.2d 852, 225 USPQ 1 (Fed. Cir. 1985)). (emphasis in original)

Accordingly, the claims herein will be interpreted in accordance with the decision in *Phillips*. During the *Markman* hearing in the case entitled, "*Ronald A. Katz, Technology*

Art Unit: 3992

Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp", the AT&T Court construed various claim terms similarly identical to those used in the present claims. Although not binding on the Office, the Courts interpret claim terms more narrowly and, as such, provide guidance as to what would be their "ordinary and customary meaning as understood by a person of ordinary skill in the art in question at the time of the invention." A discussion of the AT&T Court's constructions are presented below to show, ultimately, that the art applied to reject the claims teaches the claim features within the meaning of the '863 patent, at least as suggested by the AT&T Court, and therefore applied narrowly.

Interpretation of some claim terms

Communication facility

The '120 patent indicates that a "comprehensive public telephone system" is an example of a communication facility, stating,

In the disclosed embodiment, the remote terminals **T1** through **Tn** represent the multitude of conventional telephone terminals that are coupled to a **communication facility C** which may take the form of a **comprehensive public telephone system** for interconnecting any associated terminals **T1- Tn**. (The '309 patent, column 3, lines 12-17; emphasis added).

Similarly, the AT&T Court construed "communication facility" to mean,

...that part of the telephone network that enables a caller to connect to the Katz system. (*Ronald A. Katz, Technology Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp*, 63 F. Supp. 2d 583, 598)

Remote terminals

Art Unit: 3992

The AT&T Court construed the term "remote terminals" to mean,

... a device or instrument for connecting callers to the telephone network for voice and digital communication, including, but not limited to, conventional telephones. (*Ronald A. Katz, Technology Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp*, 63 F. Supp. 2d 583, 615)

DNIS and called number identification data

Claim 61 recites,

...the system having a receiving unit for receiving digital signals including **dialed-number identification signals** provided automatically from the telephone-communication facility;
utilizing the **dialed-number identification signals** to identify one from a plurality of **numbers dialed by the callers**;

The AT&T Court construed the term "**DNIS**" and "called number identification data" to be synonymous and mean,

...a signal or data that identifies a number called. (*Ronald A. Katz, Technology Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp*, 63 F. Supp. 2d 583, 618)

ANI and calling number identification data

Claim 61 recites,

wherein **the identification signals** relating to the callers **are calling number identification signals** automatically **provided by the telephone-communication facility**. (emphasis added)

The AT&T Court construed the term "**ANI**" and "calling number identification data" to be synonymous and mean,

Art Unit: 3992

...a signal or data that identifies the calling number, i.e. the number from which a call originated. (*Ronald A. Katz, Technology Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp.*, 63 F. Supp. 2d 583, 620)

Claim Rejection Paragraphs

The following quotations from the MPEP regarding the types of rejections to be utilized below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Issue 1 (Requester designated SNQ 1)

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese in view of Student Registration.

NOTE: 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 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. Accordingly, Calabrese, published 12-14

Art Unit: 3992

September 1989 qualifies as prior art under 35 USC 102(a), while Student Registration, published 29 April 1986, qualifies as prior art under 35 USC 102(b).

With respect to the limitations of claim 61, as set forth above, the BPAI (see BPAI Decisions on Appeal No. 2010-006100 included as Appendix B) has affirmed the rejections of claims 56 and 67 over Calabrese in view of Student Registration. In the decision, the BPAI summarized Calabrese stating,

Calabrese

5. Calabrese describes the use of automated voice response units (VRU's) to handle client calls at The Travelers Companies (p. 16, ¶ 4) using touch-tone entry (p. 16, ¶ 6). Add-on features and technologies for such VRU's (p. 19, ¶ 1) include Dialed Number Identification Service (DNIS) (p. 21, ¶ 3) and Automatic Number Identification (ANI) (p. 21, ¶ 2).
6. Figure 2, reproduced below, illustrates "VRU Applications At The Travelers" including "Annuities Inquiry", "Health Claim Status", "Flexible Benefits Enrollment" and "Pension Account Status." (P. 18.) From Figure 2, each of the "VRU Applications" includes multiple 800 lines and at least one function. (P. 18.) For example, the "Health Claim Status" application includes the following functions: "Inquiry for status of submitted claims"; "status of deductible"; and "Xfer to live operator." (P. 18.)

Art Unit: 3992

Figure 2: VRU Applications At The Traveler	
<u>Automated Inquiry</u>	
Area:	AMG - Agency Marketing Group
Callers:	Agents & Customers
Functions:	- Route calls to live operators - Inquiry on individual annuity accounts - Xfer to live operator
Voices:	(18) 800 lines, to Rockwell AGS, to VRU
Data:	9.6 kbps SNA Link
Call Volume/Duration:	1500 per day; 3 mins.
Voice Model:	Female (VRU vendor provided)
Justification:	Scheduled Customer Service
<u>Health Claim Status</u>	
Area:	ERS - Employee Benefits Division
Callers:	Employees of client companies
Functions:	- Inquiry for status of submitted claims; status of deductible - Xfer to live operator
Voices:	(18) 800 lines, to Centrex, to VRU
Data:	9.6 kbps SNA Link
Call Volume/Duration:	750 per day; 2 mins. (Travelers Employees)
Voice Model:	Male (own professional model)
Justification:	Reduce costs of answering questions
<u>Flexible Benefits Enrollment</u>	
Area:	ERS - Diversified Service Division
Callers:	Employees of companies who have purchased this service.
Functions:	- Inquiry of options available & current selections - Selection of options for the next year
Voices:	(24) 800 lines, to Centrex, to VRU
Data:	9.6 kbps SNA Link
Call Volume/Duration:	500 per day (during enrollment period); 4 mins.
Voice Model:	Female (VRU vendor provided)
Justification:	Reduce costs of processing enrollments; Better Employee Service
<u>Pension Account Status</u>	
Area:	AMPI - Asset Management & Pension Services
Callers:	Employees of client companies
Functions:	- Inquiry for status of individual's pension account.
Voices:	(12) 800 lines, to Centrex, to VRU
Data:	9.6 kbps SNA Link
Call Volume/Duration:	400 per day; 2 mins.
Voice Model:	Female
Justification:	Reduce costs of answering questions; Better Employee Service

7. For The Traveler's current VRU-based applications, "[o]ne of the most critical aspects . . . is the initial entry by the caller of the proper Account Number (Employee ID, Account #, Policy #, etc.)." (P. 21, ¶ 1.) The "highest percentage of calls that must be transferred over to live operators is a result of failure to get a valid account number

Art Unit: 3992

touch-toned in." (P. 21, ¶ 1.) As a result, the caller receives no positive feedback by using the VRU application. (P. 21, ¶ 1.) However, by using ANI to automatically capture the phone number of the caller, the VRU can cross-reference the caller's phone number with a host database to obtain the caller's ID number and latest claim status, for example. (P. 21, ¶ 2.)

8. DNIS services can be used with "a larger, more general VRU application . . . [with] a wider range of function provided in the same VRU. A good way to control this is to trigger application processing based on the number dialed into by the client (for example: 1-800-222-1234 is a claim status, while 1-800-222-5678 is a dependant change)." (P. 21, ¶ 3.) BPAI Decision, pages 11-13

Calabrese, as set forth by the Board, discloses

...the **large, general purpose voice response unit (VRU)** of Calabrese which uses **DNIS to access different functions** (e.g., "claim status" or "dependant change") by dialing **different 800 numbers** within **a more general VRU application** meets the two disputed claim limitations of a "first response unit means" and a "second response unit means." (Ans. 13-14, 48, 49; FF 6, 8.) (BPAI Decision, page 20; emphasis added)

...Calabrese teaches **four separate VRU applications**: "Annuities Inquiry"; "Health Claim Status"; "Flexible Benefits Enrollment"; and "Pension Account Status." (Ans. 13-14, 48, 49; FF 6.) Calabrese further teaches the use of **DNIS services** in a larger, more general VRU application (such as one of: "Annuities Inquiry", "Health Claim Status", "Flexible Benefits Enrollment" or "Pension Account Status" shown in Figure 2 (see FF 6)) with **a wide range of function, for example, dialing a specified 800 number for "claim status" and a different 800 number for "dependant change."** (FF 8.) Calabrese teaches that there are **twenty four (24) 800 lines** in the "Flexible Benefits Enrollment" VRU application. (FF 6.) Calabrese also teaches that the "Flexible Benefits Enrollment" VRU application has at least two functions, "Inquiry of options

Art Unit: 3992

available & current selections" and "Selection of options for the next year." (FF 6.) Thus, in the "Flexible Benefits Enrollment" VRU application Calabrese teaches or suggests that **a caller can dial a specified 800 number for "Inquiry of options available & current selections" using DNIS services and can dial a different 800 number for "Selection of options for the next year" using DNIS services.** (See FF 6, 8.) In other words, Calabrese teaches or suggests a "first response unit means for receiving calls in said toll free call mode wherein said called number identification signals (DNIS) indicative of **at least one of a plurality of distinct called numbers identifies said operating process format**" and a "second response unit means for receiving calls in said toll free call mode wherein called number identification signals (DNIS) indicative of **one other of said plurality of distinct called numbers identifies said operating process format.**"(BPAI Decision, pages 21-22; emphasis added).

Calabrese teaches that one "**critical aspect**" for VRU-based applications is the **initial identification of a caller** (e.g., employee ID, account number or policy number) and that **Automatic Number Identification (ANI) provides the capability of automatically capturing the caller's phone number and cross-referencing it with the caller's identification.** (FF 7.) In other words, Calabrese teaches that, regardless of the VRU application (e.g., "Annuities Inquiry," "Health Claim Status," "Flexible Benefits Enrollment" or "Pension Account Status"), the caller's phone number is captured by ANI and identified -- thus meeting the claimed "common operations" feature. Calabrese further teaches that each of the VRU applications **includes multiple 800 lines** (FF 6), suggesting that each VRU application can support **multiple calls concurrently**. In other words, Calabrese teaches or suggests "concurrent processing of data in accordance with common operations of said operating process format."... Calabrese teaches that one "critical aspect" for VRU-based applications is **the initial identification of a caller using ANI, regardless of the VRU application the caller dials.** (See FF 7.) (BPAI Decision, pages 23-24; emphasis added).

With respect to the specific limitations of claim 61,

wherein the identification signals relating to the callers are calling number identification signals automatically provided by the telephone-communication facility.

The BPAI states,

Calabrese teaches that one "**critical aspect**" for VRU-based applications is the **initial identification of a caller** (e.g., employee ID, account number or policy number) and that **Automatic Number Identification (ANI) provides the capability of automatically capturing the caller's phone number and cross-**

Art Unit: 3992

referencing it with the caller's identification. (FF 7.) In other words, Calabrese teaches that, regardless of the VRU application (e.g., "Annuities Inquiry," "Health Claim Status," "Flexible Benefits Enrollment" or "Pension Account Status"), the caller's phone number is captured by ANI and identified -- thus meeting the claimed "common operations" feature. Calabrese further teaches that each of the VRU applications **includes multiple 800 lines** (FF 6), suggesting that each VRU application can support **multiple calls concurrently**. In other words, Calabrese teaches or suggests "concurrent processing of data in accordance with common operations of said operating process format."... Calabrese teaches that one "critical aspect" for VRU-based applications is **the initial identification of a caller using ANI, regardless of the VRU application the caller dials.** (See FF 7.) (BPAI Decision, pages 23-24; emphasis added).

Therefore, Calabrese teaches the additional limitation of "*wherein the identification signals relating to the callers are calling number identification signals automatically provided by the telephone-communication facility*" of claim 61.

The BPAI further agreed that Calabrese does not teach "utilizing, for qualified callers, the identification signals relating to the callers, to avoid prompting certain callers with a certain previously provided cue or cues" and "providing to the qualified callers at least one other caller cue." (BPAI Decision, pages 25-26). The BPAI states,

The Examiner acknowledged that Calabrese **does not teach these limitations** (Ans. 21), and cited Periphonics for the disclosure of the claimed cuing features in an automated student registration system where a student enters a student ID number and a personal access code to register for classes. (Ans. 22-23; FF 10, 14.) (emphasis added)

In that regard, the BPAI summarizes Student Registration (NOTE: "Student Registration" is called "Periphonics" in the Appeal No. 2010-006100 case) in that,

Art Unit: 3992

10. Periphonics describes automated student registration at colleges and universities using a Touch-Tone telephone/voice response system. (P. 1-1, ¶¶ 1, 3.) “The use of Touch-Tone telephone/voice response for on-line transactions was pioneered by Periphonics during the early 1970’s in the banking industry. The technique has since spread to distribution, transportation, manufacturing and many other industries.” (P. 1-1, ¶ 3.)
11. In 1983, Periphonics Corporation visited many colleges and universities to suggest the use of voice response systems for student registration. (P. 1-1, ¶ 3.) As a result, trial systems were implemented at Georgia State University (GSU) and Brigham Young University. (P. 1-1, ¶ 3.) “The level of interest in Touch-Tone telephone registration was demonstrated by the large number of people who attended a conference on ‘Teaching Registration to Talk’ at GSU on December 2 and 3, 1985. About 250 people, representing more than 90 schools attended this Conference.” (P. 1-1, ¶ 4.)
12. In the “Reasons to Buy from Periphonics” section, Periphonics provides the following statements:
 - Periphonics will share with you our 15 years of voice response experience, and our expertise concerning telephone/PABX interfaces and computer interfaces. Our Systems Engineers will help you evaluate and plan the project.
 - Periphonics is committed to supporting our customers! We believe this commitment is particularly important in the educational marketplace.

Art Unit: 3992

(P. 5-1.)

13. Periphonics describes that “[d]esign of the dialogue is one of the most important factors for the successful introduction of voice response registration” (p. 4-5, ¶ 1) and that “[b]rief, but adequate, prompting messages make a dramatic improvement in the speed and capacity (# of completed registrations per hour) of the system” (p. 4-5, ¶ 3). Furthermore, “[i]t is important that the script include messages for all ‘go wrong’ possibilities in the registration process.” (P. 4-5, ¶ 4.) A sample dialogue is illustrated in “Attachment A.” (P. 4-5, ¶ 5.)
14. In the “Attachment A” example, Periphonics describes a sample dialogue using the telephone registration system at Metropolitan State College. (P. A-1.) The telephone registration system requests the student to enter a student ID number and a personal access code. (P. A-1.) The sample dialogue includes several possible responses. One possible response is: “Your student ID number or your personal access code is not on our file. Please verify both numbers and call again.” (P. A-1.) Another possible response is: “You are now registered for 12 credits” or “You are not registered for any classes. Please enter your request.” (P. A-1.) (BFAI Decision, pages 14-15)

Student Registration, as set forth by the Board, teaches,

... that **dialogue design** for the voice response system is important for the speed and capacity of the system, including **"all 'go wrong' possibilities in the registration process."** (FF 13.) As an example, Periphonics teaches that some possible responses include: "Your student ID number or your personal access code is not on our file", "You are now registered for 12 credits" or "You are not

Art Unit: 3992

registered for any classes." (FF 14.) In other words, if the student enters a correct student ID and a personal access code, the response "Your student ID number or your personal access code is not on our file" can be avoided and the student receives a response related to class registration status. (See FF 14.) Thus, Periphonics teaches "utilizing, for qualified callers, the identification signals relating to the callers, to avoid prompting certain callers with a certain previously provided cue or cues" and "providing to the qualified callers at least one other caller cue." (BPAI Decision, page 26; emphasis added).

With respect to the messages of Student Registration being "cues" as well as Student Registration providing an additional "cue", The BPAI states,

However, one example of **a response message** from Periphonics states: "Your student ID number or your personal access code is not on our file. Please verify both numbers and call again." (FF 14.) Thus, **this response message is not "merely informational" because it solicits the student to verify both the student ID number and the personal access code and to call again.** (See FF 14.) (BPAI Decision , page 27; emphasis added).

However, when the student enters a correct student ID number and a correct personal access code, Periphonics (sic) provides **another example of a response message** as follows: "You are not registered for any classes." (See FF 14.) **Again, this response message is not "merely informational," because it solicits the student to register for classes.** (See FF 14.)

Therefore, we **agree** with the Examiner that the **combination of Calabrese and Periphonics** teaches or suggests "utilizing, for qualified callers, the identification signals relating to the callers, to avoid prompting certain callers with a certain previously provided cue or cues" and "providing to the qualified callers at least one other caller cue." (BPAI Decision , pages 27-28; emphasis added).

The BPAI further concluded by stating,

A person of ordinary skill in the art would have recognized that incorporating the dialogue of Periphonics' voice response system including "all 'go wrong' possibilities" with Calabrese's voice response units would provide the advantage of enhancing the speed and capacity of the voice response units. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398,417 (2007). Thus, we agree with the Examiner (Ans. 23) that modifying Calabrese to include dialogue with "all 'go wrong' possibilities," as taught by Periphonics would have been obvious.

Therefore, since the examiner and the BPAI have set forth Calabrese teaching *the identification signals relating to the callers being calling number identification signals automatically provided by the telephone-communication facility*; and the BPAI has asserted that it would have been obvious to modify Calabrese to include dialogue with "all 'go wrong' possibilities," of Student Registration, claim 61 is rejected as being obvious over Calabrese and Student Registration, as set forth above.

Issue 2 (Requester designated SNQ 2)

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moosemiller et al. in view of Student Registration and Szlam et al.

NOTE: 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 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. Accordingly, Moosemiller et al., published 10 Jan 1989 and filed 16 June 1987, qualifies as prior art under 35 USC 102(a) and (e), while Student Registration, published 29 April 1986, and Moosemiller et al., published MAR/APR 1986, qualify as prior art under 35 USC 102(b).

With respect to the limitations of claim 61, Moosemiller et al. discloses

Art Unit: 3992

A process for interfacing, through a telephone-communication facility, (1) callers who are at a multitude of remote terminals for voice-digital communication with (2) a system for prompting the callers with caller cues, said process comprising the steps of:

With respect to the limitations of "a process for interfacing a caller with a system for prompting caller cues", Figure 1 of Moosemiller et al. discloses a voice system architecture within the meaning of the '120 patent. In addition, the '120 patent indicates that a "comprehensive public telephone system" is an example of a communication facility, stating,

a series of **remote terminals T1-TN** (telephone instruments) are represented (left). The terminals **T1-TN** may be functionally similar and accordingly only the terminal **T1** is shown in any detail. The indicated terminals **T1-TN** represent **the multitude of telephone terminals** existing in association with a **communication facility CO** which may **comprise a comprehensive public telephone network**. (column. 3, lines 28-36; emphasis added)

Also as stated above, the AT&T Court construed "communication facility" to mean,

...that part of the telephone network that enables a caller to connect to the Katz system. (*Ronald A. Katz, Technology Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp.*, 63 F. Supp. 2d 583, 598)

In that regard, Moosemiller et al. states,

Telephones, rotary or touch-tone, can become **instant terminals** eliminating the need for costly computer peripherals and providing easy availability. (Page 88, column 1)

Art Unit: 3992

Most voice response systems only provide line interfaces to the telephone network, whereas the CONVERSANT I system **adds many trunk interfaces**. (page 88, column 3)

Since the AT&T CONVERSANT I Voice System provides **conversational access** to computer information **from any telephone**, it is flexible and efficient in supporting a range of input and output modalities. (Page 93, emphasis added)

Moosemiller et al. discloses a telephonic system for many different applications and services by telephone (page 88, column 1; see Figures 1, 3) that includes a system controller in direct communication with caller telephones through a public telephone system or network. In that regard, Moosemiller et al. discloses:

Callers access **the system** through **touch-tone signals, speaking isolated words** and connected **digit strings**, or by using modems and data terminal equipment." (Page 88, column 1) (emphasis added)

For example, **a catalog service** user may **log in with tone or speech recognition**, download accumulated orders from a hand-held terminal to a system modem, **leave a voice message** for a supervisor via the real-time voice coder, and finally dial an attendant dispatcher, all within one use."

The **controller** (Fig. 1) executes system software under the UNIXTM operating environment

The **system controller** communicates to intelligent and relatively autonomous **speech subsystems**... (Page 88, column 2, emphasis added)

The trunk interfaces are configured to connect caller telephones with the system controller through a plurality of incoming telephone lines of the public telephone system so that the voice response unit may receive multiple customer calls (see Figures 1, 3). In general, the trunk interfaces configure the Moosemiller et al. system for use with a

Art Unit: 3992

communication facility including remote terminals for individual callers, as alluded to in the preamble of claim 61.

Furthermore, Moosemiller et al. provides callers with cues. On page 91, column 3, Moosemiller et al., states,

Instructions in the TSM script language were designed specifically for voice transactions. They include voice response instructions that speak phrases, numbers, and characters—in sensible ways with flexible intonation. Other instructions collect the user's speech or touch-tone signals or mediate data base transactions with a remote host computer. The following example illustrates logging into a service by voice entry of a numeric ID:

and provides an example below.

SCRIPT INSTRUCTION	COMMENTS/ANNOTATION
MAIN:	
tfile ("talk/script1")	/* talk phrase xref file */
LOGON ()	/* call LOGON subroutine */
SERVICE ()	
BYE ()	
LOGON:	
talk ("hello, welcome")	/* say greeting phrase */
talk ("please speak id")	/* prompt for verbal input */
getdig (DIG9, ch.LOGID,9)	/* collect 9-digit response */
dbase (0, VERIFY ch.RESP, RESPLEN, ch.LOGID, LOGLEN)	/* verify host 0 data base */
jmp (c0 <= im.0 no reply)	/* time out on host? jump */
talk ("account verified for")	
rchars (ch.RESP)	/* confirmation string */
rtr ()	/* subroutine return */
SERVICE:	
rtr ()	/* details not shown */
NO REPLY:	
talk ("sorry, service is unavailable, try later")	
BYE:	
talk ("thank you for calling")	
quit ()	

Art Unit: 3992

Clearly, as asserted above, the Moosemiller et al. system provides voice response instruction in order to collect user's information, via speech, touch tone signals, etc.

Thus, Moosemiller et al. disclosed, well before the effective filing date of the '120 patent, *a process for interfacing, through a telephone-communication facility, (1) callers who are at a multitude of remote terminals for voice-digital communication with (2) a system for prompting the callers with caller cues.*

establishing telephone communications between the callers and the system, the system having a receiving unit for receiving digital signals including dialed-number identification signals provided automatically from the telephone-communication facility;

As set forth above, Moosemiller et al. clearly "establish[es] telephone communication between the callers and the system" (see Figure 1 and discussion above). In addition, as noted in the section entitled "Claim Interpretation", the AT&T Court construed the term "**DNIS**" and "called number identification data" to be synonymous and mean,

...a signal or data that identifies a number called. (*Ronald A. Katz, Technology Licensing, LP and MCI Telecommunications Corp. v. AT&T Corp*, 63 F. Supp. 2d 583, 618).

In that regard, Moosemiller et al. states,

"The Dialed Number Identification Service (**DNIS**) has been used with **a Direct Inward Dialing (DID) trunk interface to receive dialed digits as part of the call setup protocol.**" (Page 88, right-most column, first full paragraph; emphasis added).

Art Unit: 3992

Furthermore, Moosemiller et al. teaches such a configuration

allows advance classification of incoming calls for different applications which are greeted by appropriate prompts...(and) is useful for service bureaus for multiple user applications. (Page 88, right-most column, first full paragraph).

The Moosemiller et al. system provides “a Direct Inward Dialing (DID) trunk interface” as part of the system that automatically receives Dialed Number Identification Service (**DNIS**) information in order to provide advance classification and appropriate greetings of incoming calls from callers for different applications.

Thus, Moosemiller et al. discloses *establishing telephone communications between the callers and the system, the system having a receiving unit for receiving digital signals including dialed-number identification signals provided automatically from the telephone-communication facility.*

utilizing the dialed-number identification signals to identify one from a plurality of numbers dialed by the callers;

As set forth above, Moosemiller et al. clearly utilizes the Dialed Number Identification Service (**DNIS**) information to properly route, provide advance classification and appropriate greetings of incoming calls from callers for different applications. In addition, Moosemiller et al. utilizes the Dialed Number Identification Service (**DNIS**) information to specifically classify a particular call from other calls and provide the appropriate dialog accordingly, On page 91, column 1, Moosemiller et al., explicitly states,

Art Unit: 3992

A simplified view of the CONVERSANT's software architecture emphasizing the customizable parts for applications, is shown in Fig. 2. Central to the architecture is the transaction state machine (TSM) which, through a single process, controls all active sessions. Although the TSM is generic, it interprets transaction scripts. Many different scripts may reside in the system and be executed concurrently. Which script to run is determined by the telephone number that was dialed, the physical telephone circuit on which the call was received, or further interaction with the user (scripts can transfer control to other scripts). The TSM controls all

Thus, Moosemiller et al. discloses *utilizing the dialed-number identification signals to identify one from a plurality of numbers dialed by the callers.*

also receiving at the receiving unit identification signals relating to the callers;

The '120 patent designates the usage of "900" numbers and "800" numbers. In addition, the '120 patent differentiates the means/mechanism for the caller identification signals relating to callers to be provided based on what number is being called (i.e. "900" or "800" number). With respect to the limitation of "identification signals" in relation to "900" numbers, the '120 patent states,

With the connection, the communication system **CO** also provides the audio (sic) response unit **22** with digital **identification signals representative** of the **designation for** remote terminal **T1** ("212 627 2222"). The identification signals are provided by the ANI equipment within the communication facility **CO** and are registered by the audio response unit **22**. (column 7, lines 5-11; emphasis added).

Art Unit: 3992

Moreover, with respect to the limitation of "identification signals" in relation to "800" numbers, the '120 patent states,

...[h]owever, as calls in all modes are processed similarly from that point, before proceeding with the explanation, the preliminary operations attendant other calling modes first will be explained.

As explained above, **certain accommodations are made** for participation in the "800" (caller free) mode. Accordingly, assume a **caller** at the terminal **T1** has been **given an identification number**: "34726313" for use in the "800" mode. Accordingly, the caller dials a number, e.g. "800 555 3478", actuating the terminal **T1** and the communication facility **CO** to provide a connection with the audio response unit **18**. With communication, the audio response unit actuates an internal voice generator **prompting the caller to key in his assigned number**, "34726313". As the **digits of the number are keyed in by the caller**, they are supplied from the audio response unit **18** to the control unit **28** and the free-call memory **32**. (column 7, lines 23-40; emphasis added).

Thus, either of these "identification signals" disclosed above are within the meaning and scope of the '120 patent.

In that regard, Moosemiller et al. discloses scripts (i.e. plurality/multiple) being executed by the system simultaneously. In addition, Moosemiller et al. discloses a certain script being designated for either based upon the Dialed Number Identification Service (**DNIS**) information, **the physical telephone circuit on which the call was received, or further interaction with the user** (page 91, column 1). Moosemiller et al. clearly discloses "the physical telephone circuit on which the call was received" as being information of the actual line from which the caller has called. This information is clearly a "designation signal" relating to or even representative of the caller. In addition, Moosemiller et al. further discloses a "LOGON()" function in which a 9-digit response is entered by the caller that provides entry into the designated "services" of applications

Art Unit: 3992

(see example on page 91). Similarly, this number information provided by the caller is an "identification signal(s)" that further defines and/or relates to the caller. Both of these identification signals, as set forth above, are within the meaning of the '120 patent.

Thus, Moosemiller et al. discloses *also receiving at the receiving unit identification signals relating to the caller* within the meaning and scope of the '120 patent.

testing said identification signals relating to the callers to determine whether to qualify the callers for access to at least a portion of operations of the system;

As set forth above, the '120 patent discloses separate means/mechanisms to provide identification numbers in each of the "900" number and "800" number modes ("900" number – column 7, lines 5-11; "800" number – column 7, lines 23-40). The "900" number mode utilizes an automatically identified number and the "800" number mode utilizes a user-entered identified number, both of which provide further processing based on the identified number.

Moosemiller et al. discloses "the physical telephone circuit on which the call was received" as being information of the actual line from which the caller has called. This information is clearly a "designation signal" relating to or even representative of the caller that must come with the call. Moosemiller et al. additionally qualifies/determines access (i.e. testing) to various applications based on the "physical telephone circuit" designation signal. In that regard, Moosemiller et al., states,

Art Unit: 3992

Which script to run is determined by the telephone number that was dialed (DNIS), **the physical telephone circuit on which the call was received**, or **further interaction with the user** (page 91, column 1; emphasis added)

Similarly, Moosemiller et al. also discloses that “further interaction with the user” can be used to provide access to certain applications. As set forth above, Moosemiller et al. lays out an example of a “LOGON()” functionality in which a user enters, via additional interaction provided by the system, an identification number. This number is further verified via the “dbase()” function (see example on page 91). Both the determination functionality and/or the verification functionality of Moosemiller et al., as set forth above, are within the meaning of the claimed testing step of the '120 patent.

Thus, Moosemiller et al. discloses *testing said identification signals relating to the callers to determine whether to qualify the callers for access to at least a portion of operations of the system.*

This is all of the features of claim 61 that Moosemiller et al. discloses.

Moosemiller et al. discloses all of the limitations of the claimed invention, as previously set forth, except for specifically calling for “*utilizing, for qualified callers, the identification signals relating to the callers, to avoid prompting certain callers with a certain previously provided cue or cues*”; “*providing to the qualified callers at least one other caller cue*”; and “*wherein the identification signals relating to the callers are calling number identification signals automatically provided by the telephone-communication facility.*”

Art Unit: 3992

However, utilizing identification signals relating to the callers to avoid prompting certain callers with a certain previously provided cue or cues; and providing qualified callers at least one other caller cue is known in the art. Student Registration, for example, teaches the features (1) of using identification signals to avoid prompting certain callers with a certain previously provided cue or cues, and (2) providing to the qualified callers at least one other caller cue. In this regard, Student Registration " Appendix A teaches a VRU application, specifically student registration for a semester and subsequent changes such as by adding or dropping a class. Appendix A states, in part,

Art Unit: 3992

APPENDIX A: SAMPLE DIALOGUE METROPOLITAN STATE COLLEGE
(INTERACTION SCENARIOS)

PRS	<u>Telephone Registration System</u>
7	

Welcome to the Metropolitan State College Touch-Tone Information System. Please enter a service code.

7#

You have selected telephone registration for Spring semester. Please enter your student ID number.

123456789#

Please enter your personal access code.

Input 1234#

Possible Responses:

10: You are now registered for 12 credits.
(or)
You are not registered for any classes.

Please enter your request.

11: Your student ID number or your personal access code is not on our file. Please verify both numbers and call again.

12: You may not register until January fifth at eleven A.M. You may register any time after your assigned date and time, but not before.

13: Your registration has been encumbered by the business office. Please call 556-0123 for assistance. 556-0123. You may not register until you have contacted the appropriate office and they have cleared the hold placed on your record.

14: You have not been accepted for admission. Students must not only apply, but be accepted to the college prior to registering. Please call 556-1234 for assistance. 556-1234.

15: You are not eligible to register. Please call 556-2345 for assistance. 556-2345.

Thank you for calling.

Art Unit: 3992

As can be seen from the excerpt, the possible responses numbered **11-14** are cues that may be previously provided to callers that are avoided based upon the caller's identification, once, of course, the problems are cleared. For example, response numbered, "**11**" is provided if the caller enters incorrect student ID and/or personal access numbers. When the caller follows the suggestion of the cue and makes a return call with correct, corresponding numbers, the cue numbered "**11**" is avoided, as required by claim 61. Then the caller can be correctly qualified for access to register for the semester and will receive the appropriate cues to so do, which includes *at least one additional cue provided to a qualified caller*. On pages A1-A2, Student Registration provides examples, numbered "**10**", "**22**" and "**23**", of the one additional cue provided to callers:

10: You are now registered for 12 credits.

(or)

You are not registered for any classes.

Please enter your request.

22: Call number 1234 ENG 101 3: credits is cancelled.

Call number 1432 is available and would fit your schedule.

Enter an A to add this class.

23: Call number 1234 ENG 101 3 credits is closed.

The number of students on the waiting list is 2.

Enter a W to place your name on the waiting list.

The "request" to which the cue refers in response option "**10**" is for the "service code", to carry out functions such as, adding a class (**#2**), dropping a class (**#3**), help (**#4**), list courses (**#5**), etc. (pages A-1 to A-5).

Art Unit: 3992

It would have been obvious for one of ordinary skill in the art, at the time of the invention to run Student Registration's registration application on Moosemiller et al.'s, AT&T Conversant system because Moosemiller expressly suggests using the Conversant system for college registration (Moosemiller et al., page 88, left-most column).

It would have further been obvious to run Student Registration's other student-related applications on Moosemiller et al.'s, AT&T Conversant system. First, Student Registration states that its voice response system can run multiple applications directed to the needs of the students at a college or university, stating,

The same system can easily be expanded for **many other applications** including: **admission status; financial aid status; graduation requirements status; course grade information; ordering supplies; job interview scheduling; storm closing announcement; and many other applications.** The only limit is availability of the appropriate data base. (page 2-1; emphasis added).

Second, Moosemiller et al.'s Conversant system can run multiple applications using DNIS to direct the calls, stating in this regard,

The Dialed Number Identification Service (DNIS) has been used with a Direct Inward Dialing (DID) trunk interface to receive dialed digits as part of the call setup protocol. This **allows advance classification of incoming calls** for different applications which are greeted by appropriate prompts. The **DNIS feature is useful for service bureaus for multiple user applications.**" (page 88, right-most col., first full paragraph; emphasis added).

Therefore, Moosemiller et al.'s Conversant system is not limited to the applications that can be run thereon.

Art Unit: 3992

Because Student Registration desires running multiple applications simultaneously, Student Registration's telephone call processing system would benefit from the DNIS feature of Moosemiller et al.'s Conversant system, in order to benefit from the automatic directing of calls for a particular application, which is "cost effective" (Moosemiller et al., page 88, right-most column, 1st full paragraph).

Furthermore, the BPAI asserts a person of ordinary skill in the art would have recognized that incorporating the dialogue of (Student Registration) voice response system including "all 'go wrong' possibilities" with voice response units would provide the advantage of enhancing the speed and capacity of the voice response units (*supra*). See *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398,417 (2007).

Similarly, the identification signals relating to the callers being calling number identification signals automatically provided by the telephone-communication facility is known in the art. Szlam et al., for example, teaches providing the ability for telephone companies to provide an automatic number identification (ANI) service as well as providing within the system an automatic number identification (ANI) decoder. In that regard, Szlam et al. states,

The present invention is not limited to application for outgoing calls but is also applicable to incoming calls, or both. The ability to handle incoming calls as well as outgoing calls is determined by the structure of composite trunk interface unit **10** and programming for system controller **11**. Turn now to FIG. 5 which is a block diagram of a typical trunk interface unit **10a1** constructed to handle both incoming and outgoing calls. The trunk interface unit **10a1** preferably contains a dialer **10a1**, a call progress monitor **10a5**, a message player **10a9**, an incoming call detector **10a20**, **an automatic number identification (ANI) decoder 10a24**, a dual tone multiple frequency (DTMF) decoder **10a28**, and a voice recognition

Art Unit: 3992

module **10a32** for each trunk **T1-T4**. (Column 11, line 53 – column 12, line 1; emphasis added).

Furthermore in some areas of the country, the local telephone office provides a service sometimes called **automatic number identification (ANI)**. In areas where ANI is available, the central office will provide, over the trunk, tone or other signals which can be decoded to yield the number from which the calling party is calling. In this case, a decoder, such as **ANI decoder 10a24** would **provide the calling party's telephone number** to trunk interface control unit **10a13**. Trunk interface control unit **10a13** would then provide **the calling party telephone number to system controller 11**. System controller **11** via data controller **15** requests mainframe **16** to provide the customer account information based upon the calling party telephone number. (Column 12, lines 29-43; emphasis added).

It would have been obvious for one of ordinary skill in the art, at the time of the invention, to incorporate the ANI features of Szlam into the registration application of Moosemiller et al./Student Registration in order to save operator time, as expressly taught by Szlam et al.

Applying the ANI functionality to the Moosemiller et al./Student Registration application, the student would not have to enter his student ID number because it would be provided automatically from the student's telephone number. Then all that the student would have to enter is the personal access code. This would speed up the transaction by eliminating the time and potential errors of the student entering the ID incorrectly. Therefore, Szlam provides a benefit for the ANI function. The strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. *In re Sernaker*, 702 F.2d 989, 994-95, 217 USPQ 1, 5-6 (Fed. Cir. 1983).

Art Unit: 3992

In addition, 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 above. 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 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).

Thus, since the BPAI has affirmed the Student Registration teaches "*utilizing, for qualified callers, the identification signals relating to the callers, to avoid prompting certain callers with a certain previously provided cue or cues*" and "*providing to the qualified callers at least one other caller cue*"; the BPAI has affirmed that it would have been obvious to one of ordinary skill in the art to include all 'go wrong' possibilities" with voice response units in order to provide the advantage of enhancing the speed and capacity of the voice response units. (BPAI Decision, pages 26-27), and since the Federal Court has deemed it obvious to combine ANI with voice response units utilizing

Art Unit: 3992

cue suppression, the examiner asserts that the combination of Moosemiller et al., Student Registration and Szlam teaches or suggests a process for interfacing callers with a system in which DNIS, ANI, and cue suppression are used together to route and provide information to the system in order to enhance the user's calling experience and save overall operational costs.

This is all of the features of claim 61.

To the degree it can be argued that Moosemiller et al." does not disclose "*also receiving at the receiving unit identification signals relating to the callers*", then this feature is at least obvious in view of Student Registration, as set forth below:

As set forth above, the '120 patent designates the usage of "900" numbers and "800" numbers. In addition, the '120 patent differentiates the means/mechanism for the caller identification signals relating to callers to be provided based on what number is being called (i.e. "900" or "800" number). With respect to the limitation of "identification signals" in relation to "900" numbers, the '120 patent states,

[t]he assumed call involves the caller actuating the buttons **14** as for example to input : "1 900 5558945". As a result, signals as provided to the communication facility **CO** resulting in a connection from the remote terminals **T1** to the audio response unit **22**. With the connection, the communication system **CO** also provides the audio (sic) response unit **22** with digital **identification signals representative of the designation for** remote terminal **T1** ("212 627 2222"). The identification signals are provided by the ANI equipment within the communication facility **CO** and are registered by the audio response unit **22**. (column 7, lines 1-11; emphasis added).

Art Unit: 3992

Moreover, with respect to the limitation of "identification signals" in relation to "800" numbers, the '120 patent states,

...[h]owever, as calls in all modes are processed similarly from that point, before proceeding with the explanation, the preliminary operations attendant other calling modes first will be explained.

As explained above, **certain accommodations are made** for participation in the "800" (caller free) mode. Accordingly, assume a **caller** at the terminal **T1** has been **given an identification number**: "34726313" for use in the "800" mode. Accordingly, the caller dials a number, e.g. "800 555 3478", actuating the terminal **T1** and the communication facility **CO** to provide a connection with the audio response unit **18**. With communication, the audio response unit actuates an internal voice generator **prompting the caller to key in his assigned number**, "34726313". As the **digits of the number are keyed in by the caller**, they are supplied from the audio response unit **18** to the control unit **28** and the free-call memory **32**. (column 7, lines 23-40; emphasis added).

Thus, either of these "identification signals" disclosed above are within the meaning and scope of the '120 patent.

In this regard, Student Registration does not provide a representation signal of the designation for the remote terminal (i.e. caller's telephone), however, Student Registration teaches the utilization of student identification numbers and personal access numbers by pressing corresponding buttons on a telephone (see Student Registration, pages A-1, C-1). Student Registration further states,

Art Unit: 3992

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 #. This security technique (a unique four digit PIN) is widely used in the banking industry for automated Touch-Tone telephone customer inquiry, funds transfer and/or bill payment. Some of the schools have chosen a less secure operating procedure by allowing the students to use their birth date (month/day) as a PIN.

Reports from schools using birth date as PIN indicate a tolerable level of pranks. Of course the level of such pranks would be reduced a great deal further by utilization of the system's capability for a unique PIN for each student.

Several registrars pointed out that current procedures at most schools, whether walk-in or by mail, offer equal opportunity for pranks and/or abuse.

It is worth noting that use of the Touch-Tone telephone as an input device limits the possible input characters and thereby blocks any attempt to gain access to unrelated and unauthorized areas of the computer program.

Student registration clearly provides "identification signals" as a security means to provide access to certain accounts and prevent access to unrelated and unauthorized areas.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Moosemiller et al. with the identification signals of Student Registration in order to provide a security means to provide access to certain accounts and prevent access to unrelated and unauthorized areas.

AFFIDAVIT OR OTHER EVIDENCE

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). Specifically, the citations and discussion of the '739 patent provided by Dr. Brody are the same as the citations provided by Owner in the Response. (See Response, pages 2-10; see Dr. Brody Declaration, paragraphs 9-38). Similarly, the Declaration does not provide evidentiary support to overcome the *prima facie* rejections of the Claim 61 of the non-Final Office action mailed 01 January 2013 (hereafter the "NFR") and are deemed the same as in the Response. (See Response, pages 10-18; see Dr. Brody Declaration, paragraphs 39-108). Thus, the "Response to Arguments" section below addresses both the Dr. Brody Declaration as well as Owner's remarks.

REMARKS

Response to Arguments

Owner states **The Claims Should be Construed Consistent with *Phillips***. (Response; see page 1). The examiner respectfully agrees.

As set forth in the NFR, the examiner asserts that the patent term of the '120 patent expired 23 October 2009. In the "Claim Interpretation" portion of the NFR, the examiner explicitly states,

Art Unit: 3992

[w]ith respect to the interpretation of claim terms of expired patents, MPEP 2258(G) states,

G. Claim Interpretation and Treatment Original patent claims will be examined only on the basis of prior art patents or printed publications applied under the appropriate parts of 35 U.S.C. 102 and 103. See MPEP § 2217. 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)). **In a reexamination proceeding involving claims of an expired patent, claim construction pursuant to the principle set forth by the court in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (words of a claim "are generally given their ordinary and customary meaning" as understood by a person of ordinary skill in the art in question at the time of the invention) **should be applied since the expired claims are not subject to amendment.** The statutory presumption of validity, 35 U.S.C. 282, has no application in reexamination (*In re Etter*, 756 F.2d 852, 225 USPQ 1 (Fed. Cir. 1985)). (Emphasis in original)**

Accordingly, the claims herein will be interpreted in accordance with the decision in *Phillips*. (NFR, see pages 3-6)

Thus, as previously set forth by the examiner, the claims were and will be interpreted in accordance with the decision in *Phillips*.

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

Owner states **Calabrese Is Not Prior Art Because Claim 61 Is Entitled to a Priority Date at Least as Early as May 16, 1988.** (Response; see pages 2-3). The examiner respectfully disagrees.

Art Unit: 3992

To support the statement, Owner states **The '739 patent discloses all the elements of claim 61 other than the "utilizing" step.** The examiner respectfully agrees. The examiner has only set forth that the "utilizing" step of claim 61 does not afford the priority date **May 16, 1988** of the '739 patent.

To further support the statement, Owner states **The '739 patent has at least two embodiments that disclose and support the "utilizing" step:** One being the "preregistration" or "prequalification" process (Response; see pages 4-7); and the other being "in avoiding repetition of cues in the game show" (Response; see pages 7-10). The examiner respectfully disagrees.

The '739 patent provides a "prequalification" and "preregistration" process for callers. The '739 patent states,

[f]rom the terminal **T1** (FIG. 1) the caller would actuate the push buttons **14** to establish contact with the processing system P1 coupling would be through the communication facility C, the automatic call distributor AC1, the interface **20** and the switch **21** as described in detail above. The initial operation then involves qualification of the caller to participate in the instant winner lottery. **Again, ANI or caller interface techniques may be employed.** If the caller is involved, the interface **20** is actuated by the qualification unit **93** during the operating interval **t1** to instruct the caller: "Please key in your telephone calling number". **As indicated above, an alternative involves the system simply registering the calling number on the basis of its provision by ANI equipment.**

In any event, **after the caller's telephone number is registered,** the instruction is given: "Participation in instant winner lottery is for persons over twenty-one years of age. Accordingly, please key in the year of your birth". A driver's license or credit card number may be similarly registered to confirm age. Alternatively, the combination of telephone number and date of birth could be used. **In any event, the caller's data is registered and the qualification unit 93 then functions to test the data as provided. Specifically, the caller's telephone number is checked in a look-up table 99 to determine whether or not it is a proper and currently valid number for use in the lottery.** Concurrently, the

Art Unit: 3992

number is checked by the use-rate calculator to determine the number of times it has been used in excess of a predetermined number of calls or dollar value to participate in the lottery during a current interval of monitoring.

If the data indicates a qualified caller, the system proceeds to the next phase of designating the transaction. ('739 patent column 12, line 54 – column 13, line 20).

The '739 patent discloses the ANI information along with prompted data in this step as being used to "**qualify**" the caller. As, further evidence to the fact of the data being used as a "qualification step", the '739 patent states,

[a]s another operating process format in accordance with the present invention, consider an auction sale. As disclosed herein, the auction format is associated with television as, for example, in the form of a cable channel for dedicated use during an interval of an auction sale. **Preliminarily, in accordance with the disclosed exemplary format, persons wishing to participate in the auction sale would make preliminary arrangements involving utilization of the system to establish authorization data for qualified bidders in cells C1-Cn of the memory 98 (FIG. 4).** In an alternative format, the bidders could simply be qualified immediately before bidding, as on the basis of a charge-card number or other identification.

Generally, it is contemplated that callers are coupled into the system only during the bidding on specific items of merchandise. Accordingly, **some prequalification may be desirable** to facilitate the rapid accumulation of a bidding group with the introduction of a unit of merchandise. ('739 patent column 12, line 54 – column 13, line 20).

Various games will involve different screening processes and clearances. For example, a child's television game format may require parental clearance and in that regard written communication may be required for approvals. **Such approval may require the assignment of a personal identification number to the child player as qualifying identification data.**

As explained above, clearances may be perfected through the look-up table 99 (FIG. 4) in association with the qualification unit 93 or approvals through a consumable key step may be extended to incorporate functions of the processing unit 92 in association with the memory 98. For example, **if qualification simply involves a check-off operation, the look-up table 99 will normally be employed.** However, **in the case of preregistration for a participant, as in the case of the auction sale, the memory 98 is involved with the**

Art Unit: 3992

qualification unit 93 through the processing unit 92 to establish a data cell C1-Cn for **each qualified participant**. Thus, each potential participant **to be qualified** interfaces with the processing unit 92 during a preliminary interval of operation to provide data in one of the cells C1-Cn **to facilitate qualification** for participation during a real-time game show.

At the time of the show, **callers are qualified simply by reference to their assigned memory cell data for a verification. Thereafter, the caller's exchange information to supplement their data as with respect to the play which follows.** ('739 patent; column 16, line 51 – column 17, line 11).

Even while a cue or prompt is not provided for a “prequalified” or “preregistered” caller due to information having already been entered, the caller is still not qualified when the cue or cues are avoided. The caller is in a “non-qualified” state. Claims 56 and 61 require,

testing said identification signals relating to the callers to determine whether **to qualify the callers** for access to at least a portion of operations of the system;

utilizing, for qualified callers, the identification signals relating to the callers, **to avoid prompting** certain callers with a certain previously provided cue or cues; and

providing to the qualified callers at least one other caller cue. ('120 patent; claims 56, 61)

The '739 patent clearly calls for “testing” the calling identification signals relating to callers (i.e. ANI information) and using that information “to qualify” the callers for access to the system. Once the caller is “qualified” (i.e. “**for qualified callers**”), then utilizing the calling identification signals relating to callers (i.e. ANI information) to further avoid a certain previously provided cue or cues. The '739 patent embodiment above does not disclose avoiding a previously provided cue or cues for “qualified callers”, only avoiding a previously provided cue or cues for “non-qualified callers”, since the caller's identification signals have not yet been tested.

Art Unit: 3992

Thus, the '739 patent does not disclose the "utilizing" step in a "preregistration" or "prequalification" process embodiment.

Similarly, the '739 patent provides an avoidance of cues in a game show embodiment. However, this avoidance is based on geographical area and does not relate to previously provided cues. The '739 patent specifically states,

[a]t this juncture, operating elements within the processing unit **92** will be considered in relation to **an explanation of the manner in which select questions are provided to a caller** and his answers received and recorded for subsequent processing to determine winners. ('739 patent; column 19, lines 6-10; emphasis added).

To accommodate the exemplary operating format, a dramatic program might be recorded preparatory to the television broadcast. **A substantial number of questions would then be formulated based on the dramatic program.** For example, "How many people were present when the will was read?" It is contemplated that **the dramatic program would be broadcast to different geographical segments of the country during different time intervals.** To accommodate the different time intervals, ***it is proposed to utilize different questions for each geographic segment.*** That is, the basic format can remain the same, ***only the questions change by time zone to avoid study and collaboration on questions as a result of time shifts. A question propounded to a Chicago caller should not be repeated to a Los Angeles caller: In any event, callers might be given three questions randomly drawn from a pool serving one geographic segment and three questions drawn from a different pool serving another geographic segment.*** (*Id.* column 19, lines 17-37).

The decoder **DE1** is responsive to **telephone calling numbers (provided by ANI equipment) indicative of a particular geographic area.** Note, for example, that area code numbers afford an effective geographic classification of callers which is very useful in many formats or 5 processes of statistical analysis in accordance herewith. **Note that geographic (or other) classification in accordance herewith is also accomplished by the called numbers provided.** Each of several television stations would solicit calls for different numbers as a result, either by 5 DNIS or call channeling. Select processors would be reached through the interface units, e.g. interface **20** FIG. 1. **In operation, the decoder DE1 determines a call is from a specific geographic area and accordingly**

Art Unit: 3992

provides a signal to actuate the random number generator NG1. As a consequence, **the random number generator NG1 provides a series of three random numbers in the form of addresses for the memory MS1.** That is, the addresses may simply comprise **three alphanumeric bits** supplied to the address input **AI1 to prompt the provision of three sets of voice generator signals for announcing the three questions *in sequence*.** For example, the first question might be as suggested above: "Push the button on your telephone for the number of persons present in the room when the will was read".

The voice generator signals are supplied from the memory **MS1** (within the processing unit **92**, FIG. 4) to the interface **20** (FIG. 1) which generates audio signals to actuate the caller's hand piece **10**. **Accordingly, the caller is instructed to answer three questions, the responses being recorded in a section 210 of the data block 200** (FIG. 7). Note that the clock **105** (FIG. 4) may be utilized to limit the response period allowed each caller.

As indicated above, to accommodate broadcast of the program in a different time slot for a different geographic area, the decoder DEn (FIG. 8) actuates the random number generator NGn to address the memory MSn to provide three different questions as a result of a random selection. (*Id.*; column 19, line 46 – column 20, line 17; emphasis added).

The '739 patent discloses providing a series of three distinct randomly generated different cues/questions to each different geographical, based on ANI caller information. In addition, the '739 patent discloses all of the cues/questions being asked in sequence during the one caller session. There is no explicit disclosure in the '739 patent of the caller calling back to participate in the contest. 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

Art Unit: 3992

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.

Thus, the '739 patent does not disclose the "utilizing" step in avoiding repetition of cues in the game show embodiment.

Therefore, Calabrese is prior art because Claim 61 is not entitled to a priority date of at least as early as May 16, 1988, as set forth above.

Owner states **The MDL Court determined there is at least triable specification support for the "utilizing" step in the May 16, 1988 parent application.** (Response; see page 10). The examiner respectfully disagrees.

As set forth above, 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*" is not entitled to a priority date of the '739 patent (i.e. 16 May 1988). 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.

Thus, **23 October 1989** is the earliest priority date afforded claim 61 of the '120 patent, due to its inherent dependency on claim 56, and Calabrese is deemed prior art under 35 U.S.C. 102(a).

Owner states **Student Registration Does Not Disclose Cue Suppression**.

(Response; see pages 10-13). The examiner respectfully disagrees.

As set forth in NFR, the Board has determined that Student Registration does teach “cues” and “cue suppression”, (see NFR; pages 12-16; see BPAI Decisions on Appeal No. 2010-006100, pages 25-26). Moreover, the MDL Court has also held that Student Registration teaches “cues” and/or “cue suppression”. (see Exhibit B filed 18 March 2013 by Owner, pages 9-12; see Exhibit C filed 18 March 2013 by Owner, page 7).

Thus, absent a decision on the appeal to the United States Court of Appeals for the Federal Circuit (hereafter CAFC) with respect Student Registration not teaching “cues” and “cue suppression”, the rejection is maintained.

Owner states **It Was Not Obvious To Combine Calabrese and Student Registration As Asserted**. (Response; see pages 13-14). The examiner respectfully disagrees.

In this regard, as set forth by the NFR, the Board has determined that it was obvious to combine Calabrese and Student Registration. In the merged reexaminations of control number 90/008,229; 90/010,044; and 90/010,130 (hereafter ‘10044 reexamination) the examiner asserted,

it would have been obvious for one of ordinary skill in the art, at the time of the invention to run the student registration application **and other college-related applications of the** Periphonics telephone call processing system on the Calabrese system. First, Calabrese provides “[a] large, **general purpose** VRU

Art Unit: 3992

accept[ing] calls for a **wide variety of applications** [that] sets up different logical paths through the menu structure depending on the number the customer dialed to gain access" (Calabrese, p. 23; emphasis added). Therefore, Calabrese's system is not limited to the applications that can be run thereon. Second, Periphonics states that the its voice response system can run **multiple applications** directed to the needs of the students at a college or university, stating,

The same system can easily be expanded for **many other applications including: admission status; financial aid status; graduation requirements status; course grade information; ordering supplies; job interview scheduling; storm closing announcement; and many other applications**. The only limit is availability of the appropriate data base. (Periphonics, p. 2-1).

Because Periphonics desires running multiple applications simultaneously, Periphonics' telephone call processing system would benefit from the DNIS feature of Calabrese's telephone call processing system, in order to benefit from the automatic directing of calls for a particular application that avoids the need to have a human operator direct the Calls, which saves money (Calabrese, p. 16, section entitled, "Introduction"). As per Calabrese, each of the Periphonics applications would employ a distinct 800 number which, when dialed by a student, would use the DNIS signals to connect the student to the correct application or format for processing. ('10044 reexamination Final Rejection mailed 20 March 2009, pages 21-23; and Examiner's Answer mailed 16 December 2009, pages 21-24; emphasis added).

The Board affirmed the examiner's rejection further stating,

[a] person of ordinary skill in the art would have recognized that incorporating the dialogue of Periphonics' voice response system including "all 'go wrong' possibilities" with Calabrese's voice response units would provide the advantage of enhancing the speed and capacity of the voice response units. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398,417 (2007). Thus, we agree with the Examiner (Ans. 23) that modifying Calabrese to include dialogue with "all 'go wrong' possibilities," as taught by Periphonics would have been obvious.

Moreover, in response to Owner's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

Art Unit: 3992

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Thus, the examiner deems a *prima facie* of obviousness has been set forth to combine Calabrese and Student Registration, as set forth above by the Office, the Board and the Court, absent a decision on the appeal to the CAFC.

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

Owner states **Student Registration Does Not Disclose Cue Suppression.**

(Response; see pages 10-13, 14-15). The examiner respectfully disagrees.

With respect to Owner's reply/argument that Student Registration does not disclose "cue suppression", this argument has already been addressed by the examiner directly above. See pages 43-44, which is hereby incorporated by reference.

Thus, absent a decision from the CAFC with respect Student Registration not teaching "cues" and "cue suppression", the rejection is maintained.

Owner states **It Was Not Obvious to Combine Moosemiller, Szlam, and Student Registration to Achieve the Claimed Invention.** (Response; see pages 16-18). The examiner respectfully disagrees.

Art Unit: 3992

In response to Owner's reply/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).

In response to Owner's reply/argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Moreover, Owner argues that the motivation to combine is not supported by the references at hand (i.e. Moosemiller et al., Student Registration and Szlam et al.) due to the Brody Declaration. (Response, page 17; see Brody Declaration, pages 76-108). The Brody Declaration focuses on speculative bodily incorporation of specific structures to perform the tasks of DNIS and ANI and the detriment thereof. However, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of

Art Unit: 3992

ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Moosemiller expressly suggests using the Conversant system for college registration (Moosemiller et al., page 88, left-most column). Student Registration clearly teaches a college registration. One of ordinary skill in the art would look to Student Registration and the use of "cues" and "cue suppression" and utilizing those features in a college registration system on Moosemiller et al. Moreover, one of ordinary skill in the art would look to the utilization of DNIS of Moosemiller to include the automatic directing of calls for a particular application and provide call setup protocols as necessary. Similarly, Szlam et al. teaches the utilization of ANI information to automatically provide account information. Clearly anything that is done automatically removes an operator or person from performing a task which inevitably saves time and money over a period of time. To suggest that automation in any way, shape, or form does not effectively reduce costs as well as increase the caller's/user's experience in telephone applications, as is evidenced by Moosemiller et al., Student Registration and Szlam et al., is to live in a vacuum.

Owner further argues,

[f]or the reasons set forth above regarding the first ground of rejection, which are hereby incorporated by reference, it would not have been obvious to incorporate the "go wrong" messages into voice response units of a different system, as they are simply messages specific to the student registration context. (Response; page 18).

With respect to Owner's response, this argument has already been addressed by the examiner above. See pages 44-46, which is hereby incorporated by reference.

Art Unit: 3992

The examiner asserts that motivation to combine is supported by the references at hand, and thus, the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL.

A shortened statutory period for response to this action is set to expire *TWO (2) MONTHS* from the mailing date of this action.

Extensions of time under 37 CFR 1.136(a) do not apply in reexamination proceedings. The provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Further, in 35 U.S.C. 305 and in 37 CFR 1.550(a), it is required that reexamination proceedings "will be conducted with special dispatch within the Office."

Extensions of time in reexamination proceedings are provided for in 37 CFR 1.550(c). A request for extension of time must be filed on or before the day on which a response to this action is due, and it must be accompanied by the petition fee set forth in 37 CFR 1.17(g). The mere filing of a request will not effect any extension of time. An extension of time will be granted only for sufficient cause, and for a reasonable time specified.

The filing of a timely first response to this final rejection will be construed as including a request to extend the shortened statutory period for an additional month, which will be granted even if previous extensions have been granted. In no event however, will the statutory period for response expire later than SIX MONTHS from the mailing date of the final action. See MPEP § 2265.

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

Art Unit: 3992

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
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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Art Unit: 3992

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.

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SJR
8/28/2013