

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reexam of U.S. Patent No. 7,378,992

FALLON, James J.

Control No. 95/000,478

Filed: May 21, 2009

For: **Content Independent Data
Compression Method and System**

Confirmation No.: 7980

Art Unit: 3992

Examiner: LEUNG, Christina Y.

Atty. Docket: 2855.002REX5

**Patent Owner's Rebuttal Brief Under 37 C.F.R. § 41.71 Retracting the Arguments Made to
Overcome the Claim Rejections and Thereby Eliminating the Issues on Appeal**

Mail Stop "*Inter Partes* Reexam"

Attn: Central Reexamination Unit

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed September 28, 2011 ("Examiner's Answer"), Patent Owner hereby timely files this Rebuttal Brief ("Rebuttal Brief") together with the required fee set forth in 37 C.F.R. § 41.20(b)(2). This Rebuttal Brief expressly retracts the arguments made in the Patent Owner's Responses to rebut the claim rejections made by the Examiner. By retracting the arguments made to rebut the Examiner's rejections, the issues in this Appeal are eliminated. If any other fees are necessary to prevent abandonment of this application, then such fees are hereby petitioned and hereby authorized to be charged to our Deposit Account No. 19 0036.

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I. Real Party in Interest

The real party in interest in this rebuttal brief is the patent owner Realtime Data LLC., (“Patent Owner”). The Patent Owner is the assignee of record for the patent under reexamination, U.S. Patent No. 7,378,992 (“the ‘992 patent”). The original assignment for the priority filing for the ‘992 patent was recorded with the United States Patent & Trademark Office on August 10, 2010 at reel 024812, frame 0268.

II. Related Appeals and Interferences

All prior and pending appeals, interferences or judicial proceedings known to Patent Owner, Patent Owner’s legal representatives, or assignee that may be related to, directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal are listed below. In addition, a summary of related Appeal Briefs for Reexam control numbers 95/000,464 and 95/000,479 is also presented below.

Reexaminations

Reexam #	Patent #	Title	Status
90/009,428	6,601,104	System and Methods for Accelerated Data Storage and Retrieval	Decision for rehearing denied 10/7/2011.
95/000,464	6,624,761	Content Independent Data Compression Method and System	Examiner’s answer mailed 9/28/2011.
95/000,466	7,321,937	System and Methods for Accelerated Data Storage and Retrieval	Examiner’s answer mailed 7/18/2011.
95/000,479	7,161,506	System and Methods for Data Compression Such as Content Dependent Data Compression	Examiner’s answer mailed 9/28/2011.
95/000,486	6,604,158	System and Methods for Accelerated Data Storage and Retrieval	Response to ACP filed 5/9/2011.
95/001,517	7,714,747	Data Compression Systems and Methods	ACP issued confirming all claims on 9/21/2011.

Reexam #	Patent #	Title	Status
95/001,533	7,417,568	System And Method For Data Feed Acceleration And Encryption	Response to non-final office action filed 7/18/2011. Supplemental response filed 10/26/2011.
95/001,544	7,400,274	System And Method For Data Feed Acceleration And Encryption	Response to non-final office action filed 7/20/2011. Supplemental response filed 10/26/2011.
95/001,581	7,777,651	System And Method For Data Feed Acceleration And Encryption	Response to non-final office action filed 9/25/2011. Supplemental response filed 10/26/2011.

Litigation

No.	Case	Status
1	<i>Realtime Data LLC v. CME Group Inc., et al.</i> , Civil Action No. 6:09-cv-327 (E.D. Texas)	Ordered to be transferred to the Southern District of New York
2	<i>Realtime Data LLC v. Thomson Reuters, et al.</i> , 6:09-cv-333 (E.D. Texas)	Ordered to be transferred to the Southern District of New York
3	<i>Realtime Data LLC v. Morgan Stanley, et al.</i> (I), Civil Action No. 6:09-cv-326 (E.D. Texas)	Ordered to be transferred to the Southern District of New York
4	<i>Realtime Data LLC v. CME Group Inc., et al.</i> , Civil Action No. 1:11-cv-6697 (S.D.N.Y.)	Pending
5	<i>Realtime Data LLC v. CME Group Inc., et al.</i> , Civil Action No. 1:11-cv-6699 (S.D.N.Y.)	Pending
6	<i>Realtime Data LLC v. CME Group Inc., et al.</i> , Civil Action No. 1:11-cv-6702 (S.D.N.Y.)	Pending

Appeal Brief Summary

The following related three cases are currently on appeal to the Board.

Reference/ /Claims	Reexam # 95/000,464 Pat. No. 6,624,761 2855.002REX2	Reexam # 95/000,479 Pat. No. 7,161,506 2855.002REX3	Reexam # 95/000,478 Pat. No. 7,378,992 2855.002REX5
Confirmed Claims		6, 7, 16, 41, 42	2, 4, 8
Franaszek	1-3 and 7 (RAN ¶ 7)	69, 70, 72, 73, 79, 81, 82, 84 and 85 (RAN ¶ 7)	1, 3, 7, 9, 11-13, 18, 20, 21, 26, 28 and 32 (RAN ¶ 7)
Sebastian	1-3 and 7 (RAN ¶ 8)	1-5, 8, 9, 11, 17, 21- 23, 43, 69, 72, 73, 79 and 81 (RAN ¶ 6)	12-15, 18, 20, 21 and 26 (RAN ¶ 8)
Kari	17 and 21 (RAN ¶ 9)		
Park in view of Whiting	17 and 21 (RAN ¶ 10)		
Seroussi in view of Whiting	17 and 21 (RAN ¶ 11)		
Sebastian in view of Franaszek or Reynar		20 (RAN ¶ 8)	
Sebastian in view of CCITT V.42 or Reynar		27 and 39 (RAN ¶ 9)	
Sebastian in view of MacLean		82 (RAN ¶ 10)	
Sebastian in view of Kawashima		70, 71, 84-90, 96 and 98 (RAN ¶ 11)	33 and 36 (RAN ¶ 12)
French			33 and 36 (RAN ¶ 9)

Reference/ /Claims	Reexam # 95/000,464 Pat. No. 6,624,761 2855.002REX2	Reexam # 95/000,479 Pat. No. 7,161,506 2855.002REX3	Reexam # 95/000,478 Pat. No. 7,378,992 2855.002REX5
Franaszek in view of Montville or Rao			10, 19, 27 and 29 (RAN ¶10)
Sebastian in view of Montville or Rao			27 (RAN ¶11)

III. Reply to Examiner's Answer

Claims 1-4, 7-15, 18-21, 26-29, 32, 33 and 36 of the '992 patent are currently pending and subject to reexamination. (Examiner's Answer, p. 4.) The Examiner found claims 2, 4 and 8 to be patentable.¹ *Id.* Claims 1, 3, 7, 9-15, 18-21, 26-29, 32, 33 and 36 currently stand rejected. *Id.* Patent Owner hereby retracts any rebuttal of the Examiner's rejection of claims 1, 3, 7, 9-15, 18-21, 26-29, 32, 33 and 36 of the '992 patent as contained in the Reply to Office Action filed March 15, 2010, Patent Owner's Reply to Action Closing Prosecution filed September 23, 2010, and the Patent Owner Appeal Brief filed April 21, 2011 (hereinafter collectively referred to as "Responses").

Patent Owner, as set forth in detail below, is retracting arguments made in its Responses to rebut the Examiner's rejection of claims 1, 3, 7, 9-15, 18-21, 26-29, 32, 33 and 36, which rejections were based on the Examiner's broadest reasonable interpretation of specific claim terms. Such retraction of Patent Owner's rebuttal arguments regarding the Examiner's interpretation of specific claim terms, as discussed below, will remove any challenge to the

¹ Page 4 of the Examiner's Answer does not specifically state that claim 2 is confirmed. However, the Action Closing Prosecution mailed on August 23, 2010, and the Right of Appeal Notice mailed on January 6, 2011 do not contain any specific rejection of claim 2. Therefore, Patent Owner assumes claim 2 is confirmed.

claims rejected by the Examiner (*i.e.*, claims 1, 3, 7, 9-15, 18-21, 26-29, 32, 33 and 36) and thereby eliminate all issues on appeal.

Patent Owner hereby retracts its rebuttal arguments to the Examiner's rejections, because such rebuttal arguments were based on the Patent Owner's interpretations of the specific claim terms that differed from the Examiner's interpretations. Patent Owner hereby retracts such rebuttal arguments because of a recently-issued decision of the Court of Appeals for the Federal Circuit in the matter of Marine Polymer Tech., Inc. v. HemCon, Inc., Fed. Cir. No. 2010-1548, slip op. (Sept. 26, 2011), 2011 U.S. App. LEXIS 19602, as discussed below.

a. Patent Owner Retracts Its Rebuttal Arguments Regarding the Examiner's Interpretation of Certain Claim Terms

Patent Owner hereby retracts the arguments made to rebut the Examiner's claim rejections (the Examiner rejected claims 1, 3, 7, 9-15, 18-21, 26-29, 32, 33 and 36 of the '992 patent, as noted above) because such arguments were based on the Patent Owner's interpretations of certain claim terms that differed from the Examiner's. Specifically, by retracting its rebuttal arguments, Patent Owner can no longer contest the Examiner's rejection of those claims, which were necessarily based on the Examiner's interpretations of the following claim terms:

- “data stream,” “input data stream,” “input stream of data,” or “receiving a data block” (claims 1, 11, 12, 20, 21, 28 and 33)
- “identifying,” “determining,” “identifying a first data type,” or “determining a data type” (claims 12, 20 and 21)

* “analyze” or “analyzing”²

The inventors and Patent Owner hereby retract the rebuttal arguments to the Examiner’s interpretations of the above terms to avoid any potential allegation that such arguments, whether accepted by the Examiner or not, trigger the application of either absolute or equitable intervening rights upon the issuance of a reexamination certificate in this patent (or in the reexamination proceedings of related patents).

As discussed above, the retraction of the specific arguments originally made to rebut the Examiner’s rejections is driven by the recent decision in *Marine Polymer*. Until that very recent ruling, Patent Owner believed that intervening rights (by statute, 35 U.S.C. §§ 307(b) and 316(b)) could only be triggered in a reexamination proceeding upon amendment of the claims or by adding new claims, which amendment or addition narrows the scope of the claims. *See* dissent by Judge Lourie in *Marine Polymer, id.* The majority ruling in the *Marine Polymer* case suggests, however, at least in *dicta*, that intervening rights may be triggered by argument made in a reexamination proceeding even without any such amendment to existing claims or addition of new claims. The inventors and Patent Owner never intended or expected that the arguments that have been retracted by this submission (as to the broadest reasonable interpretation of the claim terms) would trigger intervening rights, but hereby retract those arguments to avoid even the suggestion that such arguments do so.

In a recent letter to the Court, in *Realtime Data LLC. v. CME Group, et al.*, Civil Action No. 09-cv-327, one of the defendants has alleged that the Patent Owner’s arguments made in one or more of the reexamination proceedings for the patents asserted in those actions may trigger

² The use of the terms “analyze” and “analyzing” are not directly used in claims 1, 11, 12, 20, 21 or 28, but were used in the arguments in the Responses to support the meaning of “identifying” and “determining.”

intervening rights in some or all of the patents asserted in that case, citing *Marine Polymer*.³ Although the inventors and Patent Owner do not believe the allegations made in that letter are correct, out of an abundance of caution and to avoid even the suggestion that intervening rights have or will be triggered here, any such arguments are hereby retracted as specifically described above.

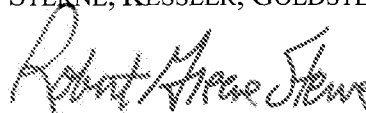
³ This action was recently transferred to the Southern District of New York and assigned a new Civil Action number, 1:11-cv-6697.

IV. Conclusion

Given that Patent Owner has retracted all rebuttal arguments regarding the Examiner's rejection of claims 1, 3, 7, 9-15, 18-21, 26-29, 32, 33 and 36, all issues appealed by Patent Owner have been eliminated. Therefore, Patent Owner respectfully requests prompt consideration of this submission.

Respectfully submitted,

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V. Certificate of Service

Reexamination Control No.: 95/000,478

Examiner: Leung, Christina Y.

Art Unit: 3992

Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
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Sir:

Certification Of Service Of


Patent Owner's Rebuttal Brief Under 37 C.F.R. § 41.71 Retracting the Arguments Made to Overcome the Claim Rejections and Thereby Eliminating the Issues on Appeal

In compliance with 37 C.F.R. § 1.903, the undersigned, on behalf of the Patent Owner, hereby certifies that a copy of the above along with its exhibits has been served on the Third Party Requester by first class mail on October 28, 2011. The name and address of the attorney representing the Third Party Requester served is as follows:

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Respectfully submitted,

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