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EXAMINER

HUGHES, DEANDRA M

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**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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Date: **MAILED**

**OCT 14 2011**

**CENTRAL REEXAMINATION UNIT**

**Transmittal of Communication to Third Party Requester  
Inter Partes Reexamination**

REEXAMINATION CONTROL NO. : 95001577  
PATENT NO. : 6778314  
TECHNOLOGY CENTER : 3999  
ART UNIT : 3992

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified Reexamination proceeding. 37 CFR 1.903.

Prior to the filing of a Notice of Appeal, each time the patent owner responds to this communication, the third party requester of the inter partes reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

If an ex parte reexamination has been merged with the inter partes reexamination, no responsive submission by any ex parte third party requester is permitted.

All correspondence relating to this inter partes reexamination proceeding should be directed to the Central Reexamination Unit at the mail, FAX, or hand-carry addresses given at the end of the communication enclosed with this transmittal.

<b>Transmittal of Communication to Third Party Requester Inter Partes Reexamination</b>	Control No.	Patent Under Reexamination
	95/001,577 Examiner	FREIBERGER ET AL. Art Unit
	DEANDRA HUGHES	3992

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

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<b>INTER PARTES REEXAMINATION COMMUNICATION</b>	Control No.	Patent Under Reexamination
	95/001,577	FREIBERGER ET AL.
	Examiner	Art Unit
	DEANDRA HUGHES	3992

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

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE  
 1 MONTH(S)  THIRTY DAYS FROM THE MAILING DATE OF THIS LETTER.  
EXTENSIONS OF TIME FOR PATENT OWNER ARE GOVERNED BY 37 CFR 1.956.

Each time the patent owner responds to this Office action, the third party requester of the *inter partes* reexamination may once file written comments within a period of 30 days from the date of service of the patent owner's response. This 30-day time period is statutory (35 U.S.C. 314(b)(2)), and, as such, it cannot be extended. See also 37 CFR 1.947.

**All correspondence** relating to this *inter partes* reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

<b>ACTION CLOSING PROSECUTION (37 CFR 1.949)</b>	Control No.	Patent Under Reexamination
	95/001,577	FREIBERGER ET AL.
	Examiner	Art Unit
	DEANDRA HUGHES	3992

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

**Responsive to the communication(s) filed by:**

Patent Owner on 26 July, 2011

Third Party(ies) on 25 August, 2011

Patent owner may once file a submission under 37 CFR 1.951(a) within 1 month(s) from the mailing date of this Office action. Where a submission is filed, third party requester may file responsive comments under 37 CFR 1.951(b) within 30-days (not extendable- 35 U.S.C. § 314(b)(2)) from the date of service of the initial submission on the requester. **Appeal cannot be taken from this action.** Appeal can only be taken from a Right of Appeal Notice under 37 CFR 1.953.

**All correspondence** relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

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

1.  Notice of References Cited by Examiner, PTO-892
2.  Information Disclosure Citation, PTO/SB/08
3.  Nine (9) IDSs dated 8/22/2011

**PART II. SUMMARY OF ACTION:**

- 1a.  Claims 1-31 are subject to reexamination.
- 1b.  Claims \_\_\_\_\_ are not subject to reexamination.
2.  Claims 5 and 6 have been canceled.
3.  Claims 1-4 and 7-15 are confirmed. [Unamended patent claims]
4.  Claims 16-31 are patentable. [Amended or new claims]
5.  Claims \_\_\_\_\_ are rejected.
6.  Claims \_\_\_\_\_ are objected to.
7.  The drawings filed on \_\_\_\_\_  are acceptable  are not acceptable.
8.  The drawing correction request filed on \_\_\_\_\_ is:  approved.  disapproved.
9.  Acknowledgment is made of the claim for priority under 35 U.S.C. 119 (a)-(d). The certified copy has:  been received.  not been received.  been filed in Application/Control No \_\_\_\_\_
10.  Other \_\_\_\_\_

**INTER PARTES REEXAMINATION ACTION CLOSING PROSECUTION**

1. This is an action closing prosecution in the *inter partes* reexamination of USP 6,778,314 ("**314 patent**").

- Patent Owner's ("PO") remarks filed July 26, 2011 ("Remarks") have been entered.
- Third Party Requester's ("3PR") comments filed August 25, 2011 ("Comments") have been entered.
- Original **claims 1-4 and 7-15** are under reexamination. **Claims 5-6** have been cancelled and new **claims 16-31** have been added via the amendment filed July 26, 2011.
- As such, **claims 1-4 and 7-31** are examined in this action.

***References Cited Proceeding***

2. USP 5,748,190 to Kjorsvik filed Sep. 5, 1995. ("**Kjorsvik**")
3. USP 5,913,040 to Rakavy filed Aug. 22, 1995. ("**Rakavy**")
4. Salm, Walter. "Buying a Real Computer Monitor". Popular Electronics. October 1984. pp. 102-103, 132, and 134. ("**Salm**")
5. Declaration of Mark E. Crovella executed Aug. 25<sup>th</sup>, 2011. ("**Crovella Declaration**")

***Proposed Rejections***

6. Third party requester ("3PR") has proposed the following rejections in the Request for inter partes reexamination filed Mar. 16, 2011. ("Request")

- (1) **Claims 1, 3, 5, 7, 9-10, 12-13, and 15** are anticipated by **Kjorsvik**.
- (2) **Claims 2, 4, 6, 8, 11, and 14** are obvious over **Kjorsvik** in view of **Salm**.
- (3) **Claims 1, 3, 5, 7, 9-10, 12-13, and 15** are anticipated by **Rakavy**.
- (4) **Claims 2, 4, 6, 8, 11, and 14** are obvious over **Rakavy** in view of **Salm**.
- (5) **Claims 1, 3, 5, 7, 9-10, 12-13, and 15** are obvious over **Rakavy** in view of **Kjorsvik**.

7. In response to the amendment filed July 16, 2011 adding new **claims 16-31**, 3PR has proposed the following rejections. (*Comments, pgs.30-31 and claim chart appendix*)

- (6) **Claims 16-31** are obvious over **Kjorsvik** in view of Patent Owner's allegedly 'admitted prior art'.
- (7) **Claims 16-31** are obvious over **Kjorsvik** in view of **Rakavy**.
- (8) **Claims 16-31** are anticipated by **Rakavy**.

***Summary of this Action***

8. **Claims 1-4 and 7-15** are confirmed as patentable.
9. **Claims 16-31** are allowed as patentable.
10. Proposed Rejections **(1)-(8)** are not adopted.
  - The reasons for not adopting proposed rejections **(1)-(5)** as set forth in the non-final action mailed May 19, 2011 (pgs. 34-39) are incorporated here.
  - Proposed rejections **(6)-(8)** of **claims 16-31** build on proposed rejections **(1)-(5)**, which were not adopted. For the reasons set forth for not adopting proposed rejections **(1)-(5)**, proposed rejections **(6)-(8)** are not adopted.



***Support for Claim Amendments***

11. It is agreed that support for new **claims 16, 18, 20, 22, and 24** is found at col.2:21-28, col.6:47-54, and col.:13:19-22. (*Remarks, pg. 8*)

12. It is agreed that support for new **claims 17, 19, 21, 23, and 25** is found at: col.2:21-28, col.3:34-39, col.:6:47-54, and col.:13:19-25. (*Remarks, pg.8*)

13. It is agreed that support for new **claims 26-31** is found at: col.22:47-48 and 57-58, col.23:19-23, and col.27:27-59. (*Remarks, pg. 8*) In addition, as to **claims 27, 29, and 31** the Examiner notes support is found at col.27-40-43.

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**Withdrawal of Rejections over Kjorsvik and/or Salm**

15. The threshold issue is whether the broadest reasonable interpretation of the claims includes the 'screensaver embodiment'.

PO argues the broadest reasonable interpretation of the claims excludes the 'screensaver embodiment' because the claim phrase "*in an unobtrusive manner*", when read in context of the claim(s) and in light of the specification, makes it plain that the term "*in an unobtrusive manner*" is associated with the "*unobtrusive*" (wallpaper) embodiment and is not associated with the 'screensaver embodiment'. (Remarks, pg. 20)

PO cites the following portions of the '**314 patent** specification as evidence to support the argument that the broadest reasonable interpretation of the claims excludes the 'screensaver embodiment': col.2:18-28, col.3:28-40, col.6:43-54, and col.13:12-25.

(Remarks, pgs. 19-20) For the reader's convenience, PO's annotated excerpts of the '**314 patent** specification are reproduced below.

difference between these two embodiments is disclosed in the '314 patent, e.g., at col. 2 lines 18-28:

"screensaver" embodiment	<p>For example, the information can be presented to the person while the apparatus (e.g., computer) is operating, but during inactive periods (i.e., when a user is not engaged in an intensive interaction with the apparatus). Or, the information can be presented to the person during active periods (i.e., when a user is engaged in an intensive interaction with the apparatus), but in an unobtrusive manner that does not distract the user from the primary interaction with the apparatus (e.g., the information is presented in areas of a display screen that are not used by displayed information associated with the primary interaction with the apparatus).</p>	"unobtrusive" embodiment
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at col. 3 lines 28-40:

"screensaver" embodiment

According to a further aspect of the invention, the selective display of the image or images begins automatically after detection of an idle period of predetermined duration (the "screen saver embodiment"). This aspect can be implemented, for example, using the screen saver API (application program interface) that is part of many operating systems. According to another further aspect of the invention, the selective display of an image or images occurs while the user is engaged in a primary interaction with the apparatus, which primary interaction can result in the display of an image or images in addition to the image or images generated from the set of content data (the "wallpaper embodiment").

"unobtrusive" embodiment

at col. 6 lines 43-54:

"screensaver" embodiment

In one embodiment of the invention, the information is presented by the attention manager while a primary interaction is ongoing, but during inactive periods (i.e., when the user is not engaged in an intensive interaction with the apparatus). In another embodiment of the invention, the information is presented by the attention manager during active periods (i.e., when the user is engaged in an intensive interaction with the apparatus), but in an unobtrusive manner that does not distract the user from the primary interaction (e.g., the information is presented in areas of a display screen that are not used by displayed information associated with the primary interaction).

"unobtrusive" embodiment

and at col. 13 lines 12-25:

"screensaver" embodiment

The method 100 (FIG. 1) described above is an embodiment of the invention in which the attention manager presents information to a person (which can be the user or another person) in the vicinity of the display device during inactive periods when a user is not engaged in an intensive interaction with the computer (as indicated by the step 102 which checks for the occurrence of an "idle period" before beginning operation of the attention manager). As indicated above, in other embodiments of the invention, the attention manager presents information to the person during active periods, but in an unobtrusive manner. In such embodiments, video content data could be presented, for example, as "wallpaper" on the display screen of a video display monitor.

"unobtrusive" embodiment

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3PR argues the broadest reasonable interpretation of the claims includes both the 'wallpaper embodiment' and the 'screensaver embodiment' as supported by the specification, claims, and prosecution history of the **'314 patent**. (*Comments, pg. 4, 3rd ¶*)

3PR provides the following evidence to support this argument. (*Comments, pgs. 5-6*)

- Specification: col.2:12-14, col.6:54-60, col.6:43-47, col.6:47-54, and col.6:43-54
- Claims: **claim 5** and 'original' **claims 19-20** of the **'314 patent**
- Prosecution History: the prosecution history of the parent USP 6,034,652

For the reader's convenience, col.2:12-14 of the **'314 patent** is reproduced below.

10	<p><b>SUMMARY OF THE INVENTION</b></p> <p>An attention manager according to the invention presents information to a person in the vicinity of a display device in a manner that engages the peripheral attention of the person.</p>
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For the reader's convenience, col.6:54-60, col.6:43-47, col.6:47-54, and col.6:43-54, which is collectively col.6:43-60 of the **'314 patent**, is reproduced below.

45	<p>the display device. In one embodiment of the invention, the information is presented by the attention manager while a</p>
50	<p>primary interaction is ongoing, but during inactive periods (i.e., when the user is not engaged in an intensive interaction with the apparatus). In another embodiment of the invention, the information is presented by the attention manager during active periods (i.e., when the user is engaged in an intensive</p>
55	<p>interaction with the apparatus), but in an unobtrusive manner that does not distract the user from the primary interaction (e.g., the information is presented in areas of a display screen that are not used by displayed information associated with the primary interaction). Generally, then, an attention</p>
60	<p>manager according to the invention makes use of "unused capacity" of a display device, "unused capacity" being defined broadly to include, for example, the embodiments mentioned above, i.e., both temporal (e.g., the first-described embodiment above) and spatial (e.g., the second-described embodiment above) dimensions.</p>

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First, it is agreed that the '314 patent specification makes it plain that the term "*in an unobtrusive manner*" is associated with the 'wallpaper embodiment' and is not associated with the 'screensaver embodiment'. The evidence (col.2:12-14, col.2:18-28, col.3:28-40, col.6:43-60, and col.13:12-25) discloses at least two embodiments because it uses language such as "in one embodiment of the invention" and "in another embodiment of the invention" to juxtapose the 'wallpaper embodiment' and the 'screensaver embodiment'. In addition, the evidence demonstrates the phrase "*in an unobtrusive manner*" is repeatedly and consistently linked with the 'wallpaper embodiment'. As such, it is agreed that the totality of the specification evidence supports an argument that the broadest reasonable interpretation of the claims, in light of the specification, excludes the 'screensaver embodiment'.

Second, it is agreed that the claim term "*in an unobtrusive manner*" excludes the 'screensaver embodiment'. The independent claims contain the claim phrase "*in an unobtrusive manner*", which is a phrase that the specification consistently and repeatedly links to the 'wallpaper embodiment' and not the 'screensaver embodiment'.

The context of this claim limitation is set forth below:

Claim 1:

enabling the content display system to selectively display, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

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Claim 3:

enabling the content display system to selectively display, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 7:

effects selective display on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 10:

selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 13:

selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

On the other hand, 3PR references claim 5 and 'original' claims 19-20 as support for the argument that the broadest reasonable interpretation of the claims includes both the 'wallpaper embodiment' and the 'screensaver embodiment'.

*(Comments, pgs. 5-6)* Claim 5 has been cancelled and claims 19-20 of the '314 patent are non-existent. As such, the evidence of cancelled claim 5 and non-existent claims 19-20 is given little weight.

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For the reason that all pending independent **claims 1, 3, 7, 10, and 13** recite the limitation "in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus" and the specification consistently and repeatedly links this claim language with the 'wallpaper embodiment' and excludes the 'screensaver embodiment', PO's argument is persuasive.

Third, 3PR cites the prosecution history of USP 6,034,652 as support for an interpretation of the claims that includes both the 'screensaver embodiment' and the 'wallpaper embodiment'. This evidence, however, is given very little weight because it is the prosecution history of a patent that is not at issue in this reexamination proceeding. Consequently, the prosecution history of USP 6,034,652 provides very little evidentiary support for the argument that the broadest reasonable interpretation of claims includes both the 'wallpaper embodiment' and the 'screensaver embodiment'. As such, this argument is not persuasive.

For the reasons set forth above, the totality of the evidence in the specification, claims, and prosecution history supports the argument that the broadest reasonable interpretation of the claims excludes the 'screensaver embodiment'. Consequently, the argument that the 'screensaver embodiment' is outside the scope of the claims is persuasive.

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16. The rejections of claims 1-4 and 7-15 over **Kjorsvik**, alone or in combination with **Salm**, are withdrawn for the following reasons.

As established above, the broadest reasonable interpretation of the claims exclude the 'screensaver embodiment' because of the following respective claim limitations.

Claim 1:

enabling the content display system to selectively display, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 3:

enabling the content display system to selectively display, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 7:

effects selective display on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 10:

selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus



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Claim 13:

selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

The independent claims of the **'314 patent** were rejected over **Kjorsvik** wherein the rejections rely on the screensavers of **Kjorsvik** to disclose the claimed 'content data'. As explained above, the broadest reasonable interpretation of the claims excludes the 'screensaver embodiment'. **Kjorsvik**, however, is limited to a screensaver because **Kjorsvik** states "presentations are initiated for each PC in the network following a selected amount of time during which each PC has been in an 'on' state but has not been in use." (*col.2:13-20*) Further, **Kjorsvik** states "[t]hese presentations in effect replace the conventional screen saver, but in addition, provide information in visual form which is intended to be beneficial to the user of the PC." (*col.2:15-20*)

As such, **Kjorsvik** is outside the scope of the claims because: (1) it is agreed that screensaver 'content data' is outside the scope of the claims and (2) the **Kjorsvik** disclosure is limited to screensavers. Consequently, the Examiner-Initiated rejections of **claims 1-4 and 7-15** over **Kjorsvik**, alone or in combination with **Salm**, are withdrawn.

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***Proposed Rejections (1)-(8)***

17. First, 3PR argues the Examiner erred because the refusal to adopt the anticipation rejections is based on a misunderstanding of '*content display system*' and '*scheduling*'. (*Comments, pg. 11, 3rd ¶*) This argument, however, is not persuasive because it does not comply with 37 C.F.R. §1.947 in that the Comments shall be limited to issues raised by the office action or PO's response.

As shown in the excerpts below, 3PR proposed rejections stating the *administration module* anticipated the claimed '*content display system*' in independent **claims 1, 3, 10, and 13**. In response to the Examiner's refusal to adopt the proposed anticipation rejection, 3PR argues a materially different anticipation rejection wherein the combination of the *administration module*, *system database*, and *messenger modules* of **Kjorsvik** allegedly anticipates the '*content display system*'. (*Comments, pg. 13, 2nd ¶*)

Further as to **claim 7**, 3PR proposed a rejection stating the *messenger module* anticipated the claimed '*content display system*' in independent **claim 7**. In response to the Examiner's refusal to adopt the proposed anticipation rejection, 3PR argues a materially different anticipation rejection wherein the combination of the *administration module*, *system database*, and *messenger modules* of **Kjorsvik** allegedly anticipates the '*content display system*'. (*Comments, pg. 13, 2nd ¶*)

For the reader's convenience, 3PR's proposed anticipation rejections of independent claims **claim 1, 3, 7, 10, and 10** addressing the '*content display system*' are reproduced below. (*Request, pgs. 56-57, 149, 134, 167, and 174*)

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3PR's proposed anticipation rejection of claim 1 that first addresses the claim limitation '*content display system*' is reproduced below. (*Request, pgs. 56-57*)

<p>providing one or more sets of content data to a content display system associated with the display device and located entirely in the same physical</p>	<p>"Each presentation or script consists of one or more individual slides or screens composed around a particular topic." (Kjorsvik, 3:33-35.)</p> <p>"One example is Powerpoint in WINDOWS software from Microsoft, Inc., of Redmond, Washington, which is now</p>
<p>location as the display device;</p>	<p>widely available." (Kjorsvik, 3:60-62.)</p> <p>"Administration module 26 also has the capability of communicating with external sources, including other network servers with databases having presentation information, as well as other outside sources of data and images." (Kjorsvik, 2:58-62)</p> <p>"The administration module 26 has the basic responsibility of composing, adding to, or deleting information from the database 24 on server 18." (Kjorsvik, 2:55-57.)</p> <p>"Lastly, presentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (Kjorsvik, 4:19-24)</p> <p>"In FIG. 10, control is provided over the importing and exporting of presentations (scripts) and over the options available for printing the text and the visual information." (Kjorsvik, 4:57-60)</p>

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3PR's proposed anticipation rejection of **claim 3** that first addresses the claim limitation 'content display system' is reproduced below. (*Request, pg. 134*)

Claim 3	Rakavy and Kjorsvik
<p>instructions for providing one or more sets of content data to a content display system associated with the display device and located entirely in the same physical location as the display device;</p>	<p><i>Kjorsvik</i></p> <p>"The system also includes an administration software module 26 which can be loaded into and executed from any PC in the network." (Kjorsvik, 2:50-52)</p> <p>"Administration module 26 also has the capability of communicating with external sources, including other network servers with databases having presentation information, as well as other outside sources of data and images." (Kjorsvik, 2:58-62)</p> <p>"Lastly, presentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (Kjorsvik, 4:19-24)</p> <p>"In FIG. 10, control is provided over the importing and exporting of presentations (scripts) and over the options available for printing the text and the visual information." (Kjorsvik, 4:57-60)</p>

[The remainder of this page is intentionally left blank.]

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3PR's proposed anticipation rejection of **claim 7**, addressing the claim limitation 'content display system' is reproduced below. (*Request, pg. 149*)

Claim 7	Rakavy and Kjorsvik
<p>A content display system for engaging the peripheral attention of a person in the vicinity of a display device located in the same physical location as the content display system, comprising:</p>	<p>"The presentation is displayed on the screens of the individual PCs in the network by the action of a messenger software module present in each PC, following passage of a selected amount of time during which the PC is on but is not used." (Kjorsvik, Abstract)</p> <p>"The messenger module maintains control over the presentation of the images in the particular presentation sequence following interruptions of actual use by the PC. A PC user has the capability of returning the PC to its conventional use, but also has the capability of controlling the presentation to an extent, or even changing to an entirely different presentation among the several which may be available to that specific user." (Kjorsvik, Abstract)</p>

[The remainder of this page is intentionally left blank.]

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3PR's proposed anticipation rejection of **claim 10** addressing the claim limitation

'content display system' is reproduced below. (*Request, pg. 167*)

Claim 10	Rakavy and Kjorsvik
<p>wherein the set of content data is selected from a plurality of sets of content data, each set being provided by an associated content provider, wherein each associated content provider is located in a different physical location than at least one other content provider and each content provider provides its content data to the content display system independently of each other content provider and without the content data being aggregated at a common physical location remote from the content display system prior to being provided to the content display system, and</p>	<p><i>Kjorsvik</i></p> <p>"Administration module 26 also has the capability of communicating with external sources, including other network servers with databases having presentation information, as well as other outside sources of data and images." (Kjorsvik, 2:58-62)</p> <p>"Lastly, presentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (Kjorsvik, 4:19-24)</p> <p>"In FIG. 10, control is provided over the importing and exporting of presentations (scripts) and over the options available for printing the text and the visual information." (Kjorsvik, 4:57-60)</p> <div data-bbox="613 1039 1230 1822" style="border: 1px solid black; padding: 10px;"> <p style="text-align: center;">FIG. 10</p> <pre> graph TD     Start(( )) --&gt; Wait[WAIT FOR ONCLICK EVENT]     Wait --&gt; ChooseView{CHOOSE VIEW}     ChooseView --&gt; Import{IMPORT SCRIPT}     ChooseView --&gt; Export{EXPORT SCRIPT}     ChooseView --&gt; Print{PRINT SCRIPT}     ChooseView --&gt; Printer{PRINTER SETUP}     ChooseView --&gt; Quit{QUIT}          Import -- YES --&gt; ImportScreen{{IMPORT SCREEN}}     Export -- YES --&gt; ExportScreen{{EXPORT SCREEN}}     Print -- YES --&gt; PrintScreen{{PRINT SCRIPT SCREEN}}     Printer -- YES --&gt; SetupScreen{{SETUP SCREEN}}     Quit -- YES --&gt; QuitScreen{{QUIT SCREEN}}          ImportScreen --&gt; ChooseSource[CHOOSE SOURCE &amp; DESTINATION]     ExportScreen --&gt; ChooseSource     PrintScreen --&gt; EnterPrint[ENTER PRINT OPTIONS &amp; SCRIPT]     SetupScreen --&gt; EnterPrinter[ENTER PRINTER OPTIONS]     QuitScreen --&gt; ChooseYesNo{CHOOSE YES OR NO}          ChooseSource --&gt; AddScript[ADD SCRIPT INFO DATABASE]     AddScript --&gt; SystemDB[SYSTEM DATABASE]     ChooseSource --&gt; ExportDest[EXPORT SCRIPT TO DESTINATION]     ExportDest --&gt; Disk[DISK]     EnterPrint --&gt; PrintScript[PRINT SELECTED SCRIPT]     PrintScript --&gt; Script[SCRIPT]     EnterPrinter --&gt; UpdatePrint[UPDATE PRINT SETUP]          ChooseYesNo -- YES --&gt; MainMenu((MAIN MENU))     ChooseYesNo -- NO --&gt; Terminate[TERMINATE]          MainMenu --&gt; Wait     Terminate --&gt; End(( ))     </pre> </div> <p><i>Rakavy</i></p> <p>"In an alternate embodiment of the present invention, the</p>

3PR's proposed anticipation rejection of **claim 10** addressing the claim limitation 'content display system' is reproduced below. (*Request, pg. 174*)

Claim 13	Rakavy and Kjorsvik
<p>wherein the set of content data is selected from a plurality of sets of content data, each set being provided by an associated content provider, wherein each associated content provider is located in a different physical location than at least one other content provider and each content provider provides its content data to the content display system independently of each other content provider and without the content data being aggregated at a common physical location remote from the content display system prior to being provided to the content display system, and</p>	<p><i>Kjorsvik</i></p> <p>"Administration module 26 also has the capability of communicating with external sources, including other network servers with databases having presentation information, as well as other outside sources of data and images." (Kjorsvik, 2:58-62)</p> <p>"Lastly, presentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (Kjorsvik, 4:19-24)</p> <p>"In FIG. 10, control is provided over the importing and exporting of presentations (scripts) and over the options available for printing the text and the visual information." (Kjorsvik, 4:57-60)</p> <div data-bbox="613 1035 1224 1814" data-label="Diagram"> <pre>     graph TD       Start((1)) --&gt; Wait[WAIT FOR ONCLICK EVENT]       Wait --&gt; ChooseView{CHOOSE VIEW}       ChooseView --&gt; Import{IMPORT SCRIPT}       ChooseView --&gt; Export{EXPORT SCRIPT}       ChooseView --&gt; Print{PRINT SCRIPT}       ChooseView --&gt; Setup{PRINTER SETUP}       ChooseView --&gt; Quit{QUIT}              Import -- YES --&gt; ImportScreen[IMPORT SCREEN]       ImportScreen --&gt; ChooseSource[CHOOSE SOURCE &amp; DESTINATION]       ChooseSource --&gt; AddDB[ADD SCRIPT INTO DATABASE]       AddDB --&gt; SysDB[SYSTEM DATABASE]              Export -- YES --&gt; ExportScreen[EXPORT SCREEN]       ExportScreen --&gt; ChooseDest[CHOOSE SOURCE &amp; DESTINATION]       ChooseDest --&gt; ExportDisk[EXPORT SCRIPT TO DESTINATION]       ExportDisk --&gt; Disk[DISK]              Print -- YES --&gt; PrintScreen[PRINT SCRIPT SCREEN]       PrintScreen --&gt; EnterOptions[ENTER PRINT OPTIONS &amp; SCRIPT]       EnterOptions --&gt; PrintScript[PRINT SELECTED SCRIPT]       PrintScript --&gt; Script[SCRIPT]              Setup -- YES --&gt; SetupScreen[SETUP SCREEN]       SetupScreen --&gt; EnterPrinter[ENTER PRINTER OPTIONS]       EnterPrinter --&gt; UpdateSetup[UPDATE PRINTER SETUP]              Quit -- YES --&gt; QuitScreen[QUIT SCREEN]       QuitScreen --&gt; ChooseYesNo[CHOOSE YES OR NO]       ChooseYesNo --&gt; Quit2{QUIT?}       Quit2 -- YES --&gt; Terminate[TERMINATE]       Quit2 -- NO --&gt; MainMenu((MAIN MENU))              MainMenu --&gt; Wait       Script --&gt; Wait       UpdateSetup --&gt; Wait       Terminate --&gt; End((2))   </pre> </div> <p><i>Rakavy</i></p> <p>"In an alternate embodiment of the present invention, the</p>

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In summary, 3PR argued in the Request that the *administration module* anticipated the claimed 'content display system' in **claims 1, 3, 10, and 13** and the *messenger module* anticipated the claimed 'content display system' in **claim 7**. The proposed rejections were not adopted for the reasons set forth in the non-final action mailed May 19, 2011. (*pgs. 34-35*)

In response to the Examiner's reasons for not adopting the proposed anticipation rejections, 3PR now argues materially different anticipation rejections wherein 3PR alleges the combination of *administration module*, *system database*, and *messenger modules* reads on the claimed 'content display system'. (*Comments, pg. 13, 2nd ¶*)

As such, this argument is not persuasive because it does not comply with 37 C.F.R. §1.947 in that the Comments are not limited to the issue raised by the office action, i.e. the reasons for not adopting the rejection proposed the Request, because the Comments argue a rejection that is materially different from that proposed in the Request. (*pgs. 56-57*) Consequently, 3PR presents a 'moving target' of rejections that the PO cannot adequately traverse. For at least the reason that 3PR's comments do not address the rejections, as they are proposed in the Request, these arguments are not persuasive.

In addition, for the reasons 3PR's argument as to the '*scheduling*' limitation stem from the materially different proposed anticipation rejection discussed above, this argument is not persuasive.



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Second, 3PR's proposed rejections (1)-(8) are not adopted because they are directed to the 'screensaver embodiment', which is outside the scope of the broadest reasonable interpretation of the claims.

Third, the proposed rejections over **Rakavy** were not adopted for the reasons set forth in the non-final action. (pgs.36-37) The **Crovella Declaration** (¶¶42-43) notes that **Rakavy** discloses the use of computer wallpaper to display advertisements. (col.3:30-34) 3PR, however, maintains that the broadest reasonable interpretation of the claims includes the 'screensaver embodiment' and presents rejections directed only to the 'screensaver embodiment', which has been established as being outside the scope of the claims due to the following claim limitations read in light of the '**314 patent** specification.

Claim 1:

enabling the content display system to selectively display, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 3:

enabling the content display system to selectively display, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 7:

effects selective display on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

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Claim 10:

selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

Claim 13:

selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the display device or an apparatus associated with the display device from a primary interaction with the display device or apparatus

As such, the teaching of **Rakavy** that the use of computer wallpaper to display advertisements (col.3:30-34) is not relied upon in the proposed rejections because the proposed rejections are directed to the 'screensaver embodiment'

For the reasons set forth above, 3PR's arguments are not persuasive and proposed rejections (1)-(8) are not adopted.

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***Priority Claim of the '314 Patent***

18. 3PR's argues the Examiner has not addressed 3PR's arguments pertaining to the **'314 patent's** priority claim, which impacts the proposed anticipation rejections presented by 3PR. (*Comments, pgs. 31-32*)

This argument, however, is not persuasive because the anticipation rejections were not adopted for the reason that the prior art failed to disclose each and every limitation of the claims. As such, the issue of whether **Kjorsvik** or **Rakavy** are available as prior art under 35 U.S.C. §102(b) is moot because neither **Kjorsvik** nor **Rakavy** meet the necessary condition of disclosing each and every limitation of the claims (*see non-final action mailed May 19, 2011, pgs. 34-39*) Consequently, the **'314 patent's** priority claim is not at issue because an intervening reference has not been applied in a rejection.

[The remainder of this page is intentionally left blank.]

***Information Disclosure Statements***

19. The nine (9) information disclosure statements (IDSs) filed on Aug. 22, 2011 have been considered by the examiner. Documents which fail to constitute patents or printed publications have been lined through on the Form PTO/SB/08 so as not to be published on the reexamination certificate, but have been considered by the examiner to the extent noted below.

Consideration by the examiner of the information submitted in an IDS means that the examiner will consider the documents in the same manner the party filing the information citation has explained the content and relevance of the information. Information which complies with information disclosure requirements of 37 C.F.R. §1.98 but which is in a non-English language will be considered in view of the concise explanation submitted (see MPEP §609.04(a), subsection III) and insofar as it is understood on its face, e.g. drawings, chemical formulas, in the same manner that non-English language information in Office search files is considered by examiners in conducting searches. The initials of the examiner placed adjacent to the citations on the form PTO/SB/08A and 08B or its equivalent, without any indication to the contrary in the record, means that the information has been considered by the examiner to the extent noted above. See MPEP §§609.05(b), 2256, and 2656.

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***Conclusion***

20. This is an **ACTION CLOSING PROSECUTION (ACP)**; see MPEP § 2671.02.

21. Pursuant to 37 CFR 1.951(a), the patent owner may once file written comments limited to the issues raised in the reexamination proceeding and/or present a proposed amendment to the claims which amendment will be subject to the criteria of 37 CFR 1.116 as to whether it shall be entered and considered. Such comments and/or proposed amendments must be filed within a time period of 30 days or one month (whichever is longer) from the mailing date of this action.

22. Where the patent owner files such comments and/or a proposed amendment, the third party requester may once file comments under 37 CFR 1.951(b) responding to the patent owner's submission within 30 days from the date of service of the patent owner's submission on the third party requester.

23. If the patent owner does not timely file comments and/or a proposed amendment pursuant to 37 CFR 1.951(a), then the third party requester is precluded from filing comments under 37 CFR 1.951(b).

24. Appeal cannot be taken from this action, since it is not a final Office action.

25. All correspondence relating to this *inter partes* reexamination proceeding should be directed:

By Mail to: Mail Stop *Inter Partes* Reexam  
Attn: Central Reexamination Unit  
Commissioner for Patents  
United States Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900

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Central Reexamination Unit

By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

26. Registered users of EFS-Web may alternatively submit such correspondence via the electronic filing system EFS-Web, at:

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

EFS-Web offers the benefit of quick submission to the particular area of the Office that needs to act on the correspondence. Also, EFS-Web submissions are "soft scanned" (i.e., electronically uploaded) directly into the official file for the reexamination proceeding, which offers parties the opportunity to review the content of their submissions after the "soft scanning" process is complete.

27. Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 314(c) requires that *inter partes* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.937). Patent Owner extensions of time in *inter partes* reexamination proceedings are provided for in 37 CFR 1.956. Extensions of time are not available for third party requester comments, because a comment period of 30 days from service of patent owner's response is set by statute. 35 U.S.C. 314(b)(3).

28. The patent owner is reminded of the continuing responsibility under 37 CFR 1.985(a) to apprise the Office of any litigation activity, or other concurrent proceeding, involving this patent throughout the course of this reexamination proceeding. The third

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party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §2686 and 2686.04.

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

Signed:

/Deandra M Hughes/  
Primary Examiner, Art Unit 3992

Conferees:

