



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/015,301	09/22/2023	7058040	EMP0902-RE	4883
67050	7590	11/20/2023		
KASHA LAW LLC 14532 Dufief Mill Road North Potomac, MD 20878			EXAMINER HENEGHAN, MATTHEW E	
			ART UNIT	PAPER NUMBER
			3992	
			MAIL DATE	DELIVERY MODE
			11/20/2023	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.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**DO NOT USE IN PALM PRINTER**

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
901 NEW YORK AVENUE  
SUITE 900 EAST  
WASHINGTON, DC 20001

***EX PARTE* REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/015,301 .

PATENT UNDER REEXAMINATION 7058040 .

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)).

***Order Granting Request For  
Ex Parte Reexamination***

**Control No.**

90/015,301

**Patent Under Reexamination**

7058040

**Examiner**

MATTHEW E HENEGHAN

**Art Unit**

3992

**AIA (FITF) Status**

No

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

The request for *ex parte* reexamination filed 09/22/2023 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) ☐ PTO-892, b) ☒ PTO/SB/08, c) ☐ Other: \_\_\_\_\_

1. ☐ The request for *ex parte* reexamination is GRANTED.

**RESPONSE TIMES ARE SET AS FOLLOWS:**

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

/MATTHEW E HENEGHAN/  
Primary Examiner, Art Unit 3992

cc:Requester ( if third party requester )

## **ORDER GRANTING *EX PARTE* REEXAMINATION**

### ***Notice of Pre-AIA or AIA Status***

The present application is being examined under the pre-AIA first to invent provisions.

### ***Reexamination***

Ex parte reexamination has been requested by a third party, Unified Patents, LLC, for claims 1-6 and 16 of U.S. Patent No. 7,058,040, issued 6 June 2006.

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 7,058,040 throughout the course of this reexamination proceeding. The third 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 §§ 2207, 2282 and 2286.

A substantial new question of patentability affecting claims 1-6 and 16 of United States Patent Number 7,058,040 (hereinafter the '040 patent) is raised by the request for *ex parte* reexamination.

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

The term of the '040 patent is set to expire on or about 2 March 2024. Until that time, the claims of the '040 shall be construed using the broadest reasonable interpretation consistent with the patent's specification, see *In re Yamamoto*, 740 F.2d 1569 (Fed Cir. 1984). After expiration, claim construction shall be 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, see *Ex parte Papst-Motoren*, 1 USPQ2d 1655 (Bd. Pat. App. & Inter. 1986)). Should the term of the patent lapse during this proceeding, any amendments that have been made to the patent during this proceeding, if any, other than for the cancellation of claims, will be withdrawn, and no future amendments, other than for the cancellation of claims, will be allowed. See MPEP 2258(G) and 37 CFR 1.530(j).

A review of the post grant history for the underlying patent indicates that there have been no other Office post grant challenges made to the patent (Reexamination

Art Unit: 3992

Proceedings or *Inter Partes* Review, Post Grant Review, Covered Business Method trials). Accordingly, a discretionary denial of reexamination pursuant to 35 USC 325(d) is not applicable.

### ***References***

The following references have been supplied for this proceeding by the Third Part Requester:

U.S. Patent No.5,729,534 to Jokinen et al. (hereinafter Jokinen)

U.S. Patent No. 7,039,031 to Joerssen et al. (hereinafter Joerssen)

U.S. Patent No. 6,925,068 to Stanwood et al. (hereinafter Stanwood)

U.S. Patent No. 6,600,726 to Nevo et al. (hereinafter Nevo)

U.S. Patent No. 6,895,255 to Bridgelall (hereinafter Bridgelall)

None of these references has been used in a ground of rejection in a previous office proceeding or final court judgement.

### ***Proposed Grounds of Rejection***

The Third Party Requester has proposed the following grounds of rejection:

Claims 1-6 and 16 under U.S.C. 103 over Jokinen.

Claims 2 and 3 under U.S.C. 103 over Jokinen in view of either Nevo or Bridgelall.

Claims 1-6 and 16 under U.S.C. 103 over Joerssen.

Claims 1-6 and 16 under U.S.C. 103 over Joerssen in view of Stanwood.

Claims 2 and 3 under U.S.C. 103 over Joerssen in view of either Nevo or Bridgelall.

Claims 2 and 3 under U.S.C. 103 over Joerssen in view of Stanwood further in view of either Nevo or Bridgelall.

Claims 1-6 and 16 under U.S.C. 103 over Jokinen in view of Joerssen.

Claims 2 and 3 under U.S.C. 103 over Jokinen in view of Joerssen further in view of either Nevo or Bridgelall.

### ***Prosecution History***

The '040 patent was originally filed as U.S. Patent Application No. 09/962,718 on 21 September 2001, having claims 1-17.

In a non-final office action mailed by the Office on 4 May 2005, claims 1-4 and 8-15 were rejected under 35 U.S.C. 102 over U.S. Patent Application Publication No. 2001/0010689 to Awater et al. (hereinafter Awater). Claims 5-7 and 17 were indicated as allowable (albeit dependent on a rejected claim), with the examiner stating:

“The prior art of record fails to teach the step of dynamically adjusting a number of time slots assigned to the media during the transmission to remain within limits of the desired level of service as recited in claim 5.

“The prior art of record fails to teach the step of retrying the packet at next lower rate if the packet is not successfully acknowledged as recited in claim 17.”

In a response file on 5 August 2005, the Applicant amended claims 1-3, 5-7, 12-14, and 16; cancelled claims 4, 8-11, 15, and 17; and added claims 18-24. The amendments to claims 1 and 12 specifically incorporated the limitations of previous dependent claims 5 and 17, respectively, that had been indicated as allowable.

In a final office action mailed by the Office on 12 October 2005, claims 18-20 and 22 were rejected under 35 U.S.C. 102 over Awater. Claims 1-3, 5-7, 12-14, 16, 21, 23, and 24 were allowed or indicated as allowable.

The Applicant filed an after-final amendment on 5 December 2005, claim 18 was amended to incorporate the limitations of previous claim 23 and claim 23 was cancelled.

The Office mailed a Notice of Allowance on 13 January 2006, allowing claims 1-3, 5-7, 12-14, 16, 18-22, and 24, without further comment.

### ***Claims of the '040 Patent***

The following is the sole independent claim for which *ex parte* reexamination has been requested:

Claim 1: A method for data transmission over first and second media that overlap in frequency, comprising:

computing one or more time division multiple access (TDMA) time-slot channels to be shared between the first and second media for data transmission;

allocating one or more time-slot channels to the first medium for data transmission;



allocating one or more of the remaining time-slot channels to the second medium for  
data transmission; and

**dynamically adjusting a number of time-slot channels assigned to one of the first  
and second media during the data transmission to remain within limits of a  
desired level of service.**

***Substantial New Questions of Patentability (SNQ)***

**Jokinen**

Jokinen discloses a system and method for allocating radio capacity in a TDMA system (see abstract). Jokinen includes an embodiment in which the number of time-slots may be dynamically increased or decreased in response to the service level weakening due to high utilization (see column 5, line 60 to column 6, line 3). This was not taught by the previous art of record. It is AGREED that a reasonable examiner would find this teaching, either alone or view of any of Joersson, Stanwood, Nevo, and/or Bridgelall, important in determining patentability. It therefore establishes a SNQ for claims 1-6 and 16.

**Joerssen**

Joerssen discloses a terminal that may be in a TDMA network (see abstract and column 5, lines 26-28) in which, in a connection between the terminal and another

media device, the allocation pattern is variably assigned and may be dynamically adjusted (see column 6, lines 23-27). The slot length (and, consequently, the number of slots) may be adjusted when the terminal connects to additional media devices or networks, according to the communication requirements, which may constitute a level of service (see column 7, lines 12-15). This was not taught by the previous art of record. It is AGREED that a reasonable examiner would find this teaching, either alone or view of any of Stanwood, Nevo, and/or Bridgelall, important in determining patentability. It therefore establishes a SNQ for claims 1-6 and 16.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW E HENEGHAN whose telephone number is (571)272-3834. The examiner can normally be reached M-F 8-5.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Fuelling can be reached on (571)270-1367. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is

Art Unit: 3992

available to registered users. To file and manage patent submissions in Patent Center, visit: <https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MATTHEW E HENEGHAN/

Primary Examiner, Art Unit 3992

Conferees:

/Ovidio Escalante/

Primary Examiner, Art Unit 3992

/MICHAEL FUELLING/

Supervisory Patent Examiner, Art Unit 3992