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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/010,093	01/31/2008	6264560	0504-002	6839

22442 7590 02/29/2008

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DENVER, CO 80202

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/29/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/010,093	Patent Under Reexamination 6264560	
	Examiner Jeffrey R. Jastrzab	Art Unit 3993	

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

The request for *ex parte* reexamination filed 31 January 2008 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: PTO-1449

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.

2. The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a) by Treasury check or,
b) by credit to Deposit Account No. _____, or
c) by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

Jeffrey R. Jastrzab
Central Reexamination Examiner
Art Unit: 3993

cc:Requester (if third party requester)

Decision Granting *Ex Parte* Reexamination

A substantial new question of patentability affecting Claims 1-3, 16, 18, 20 and 92 of United States Patent Number 6,264,560 is raised by the request for *ex parte* reexamination.

This action is directed only to the claims for which reexamination was requested. With respect to such claims, requester has alleged that a substantial new question of patentability (SNQ) exists, and upon review, it has been determined that the alleged SNQ in fact is present for claims 1-3, 16, 18, 20 and 92. No determination was made with respect to the existence or nonexistence of an SNQ with respect to any claim for which reexamination was not specifically requested.

Substantial New Question

The substantial new question of patentability (SNQP) is based on:

U.S. Patent No. 4,856,787 to Itkis, Concurrent Game Network, filed May 3, 1988
(continuation of Ser. No. 826,269, filed Feb. 5, 1986), issued Aug. 15, 1989

U.S. Patent No. 5,347,632 to Filepp et al., Reception System For An Interactive
Computer Network And Method Of Operation, filed Jul. 28, 1989, issued Sep. 13, 1994

Michael Maurer et al., Frequently Asked Questions About Poker, rec.gambling Usenet
Newsgroup (posted Feb. 28, 1995),

<http://groups.google.com/group/rec.answers/msg/9f0812cdfdd732e82>

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Manual "Manny" Raposa, BJ Tourney at the IP, rec.gambling Usenet Newsgroup
(posted Feb. 24, 1992),

<http://groups.google.com/group/rec.gambling/msg/eabdbc28789394b0>

Caren Eliezer, Navigating Main Street: a user's experience with interactive TV; GTE
Main Street, 9 The Seybold Report on Desktop Publishing No. 5, 3 (Jan. 15, 1995)

Netrek BRMH-1.7 Client Source Code,

<http://ftp.netrek.~rg/pub/netrek/mirr~rs/ftp.csua.berke~ey.edu.~~d/netrek/~~d/BR MH-1-7.tar.gz> (last modified Oct. 16, 1993)

Netrek Server2.5pl4 Server Source Code,

<http://ftp.netrek.~rg/pub/netrek/mirr~rs/ftp.solace.mh.se/netrek/servers/vani~~a/Server2.5pl4.tar.gz> (last modified Dec. 15, 1994)

Andy McFadden, The History of Netrek, through Jan 1 1994, rec.games.netrek Usenet
Newsgroup (posted May 1, 1994),

http://groups.google.com/group/rec.games.netrek/msg/66264d6b5_a4b_1470

Joseph Rumsey, Re: Beta testers for port of BRM 3.0 to Win 3.1/NT wanted,
rec.games.netrek Usenet Newsgroup (posted Feb. 12, 1994),

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http://groups.google.com/group/rec.games.netrek/browse_frm/thread/9400abb64

[afd9810/2ba31d76f61174d0](http://groups.google.com/group/rec.games.netrek/browse_frm/thread/9400abb64afd9810/2ba31d76f61174d0)

A discussion of the specifics now follows:

Issues Raised by the Requester

Issue A.

The Requester states that Claims 1-3 are anticipated Under 35 U.S.C. § 102(a) by Maurer et al.

Issue B.

The Requester states that Claim 1 is anticipated Under 35 U.S.C. § 102(b) by Raposa.

Issue C.

The Requester states that Claim 1 is obvious Under 35 U.S.C. § 103(a) Over Raposa.

Issue D.

The Requester states that Claims 2 & 3 Are Obvious Under 35 U.S.C. § 103(a) Over Raposa in view of Itkis.

Issue E.

The Requester states that Claims 16 and 18 are obvious Under 35 U.S.C. § 103(a) Over Maurer and/or Raposa in view of Filepp et al.

Issue F.

The Requester states that Claims 20 and 92 are anticipated Under 35 U.S.C. § 102(b) by Eliezer.

Issue G.

The Requester states that Claim 20 Is Anticipated Under 35 U.S.C. § 102(b) by Itkis.

Issue H.

The Requester states that Claim 92 Is Rendered Obvious Under 35 U.S.C. § 103(a) Over the combination of two Components of Netrek: The BRM-Hadley Client Software Source Code and the Vanilla Server Software Source Code.

Issue I.

The Requester states that Claim 92 Is Obvious Under 35 U.S.C. § 103(a) Over the combination of McFadden and Rumsey

Prosecution History of the '560 Patent

In the prosecution of the application which became the '560 patent, the examiner initially allowed the application in the First Office action. The applicant subsequently filed two continuation applications to add claims and to have Information Disclosure documents considered. The only substantive rejection was an obviousness-type double patenting rejection, which was subsequently withdrawn due to the cancellation of the offending claims in the parent application 09/105,401.

Analysis of the Prior Art Provided in the Request

Maurer

It is agreed that the consideration of Maurer et al. raises a SNQP as to Claims 1-3 of the '560 Patent.

As pointed out in the request on pages 7-12 and 30-55, Maurer teaches how to conduct poker tournaments, both in person and on the Internet. Maurer discloses plural instances of a game, or round, and grouping winners of previous rounds at the same table during later rounds and increasing the betting limits during later rounds in order to raise the stakes. This teaching was not present in the prosecution of the '560 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, Maurer et al. raises a substantial new question of patentability as to Claims 1-3, which question has not been decided in a previous examination of the '560 Patent.

It follows that the consideration of Maurer et al. in view of Filepp et al. also raises a SNQP for Claims 16 and 18.

Raposa

It is agreed that the consideration of Raposa raises a SNQP as to Claim 1 of the '560 Patent.

As pointed out in the request on pages 12-55, Raposa teaches a method for conducting a blackjack tournament, wherein interested players are identified by receiving an R.S.V.P card. Plural rounds take place with a defined round duration. Players are grouped based on the highest two money winners at each table after a round. A modified version of the game exists for each round such as minimum bet or total chip money to start the round. This teaching was not present in the prosecution of the '560 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, Raposa raises a substantial new question of patentability as to Claim 1, which question has not been decided in a previous examination of the '560 Patent.

It follows that the consideration of Raposa in view of Itkis or Filepp et al. also raises a SNQP for Claims 2, 3, 16 and 18.

Eliezer

It is agreed that the consideration of Eliezer raises a SNQP as to Claims 20 and 92 of the '560 Patent.

As pointed out in the request on pages 55-60, Eliezer teaches an interactive cable television network on which the users can play simultaneous and independent games, including blackjack, against a computer opponent. Eliezer further discloses a multiplayer game on an interactive cable television network in which a game playing node transmits to each user the rankings of each other user and then updates the rankings as they change during play. In Eliezer, the ranking takes the form of the other user's "cumulative score," which score is indicative of that user's proficiency in playing the game. This teaching was not present in the prosecution of the '560 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, Eliezer raises a substantial new question of patentability as to Claims 20 and 92 which question has not been decided in a previous examination of the '560 Patent.

Itkis

It is agreed that the consideration of Itkis raises a SNQP as to Claim 20 of the '560 Patent.

As pointed out in the request on pages 60-66, Itkis teaches two users playing two independent yet simultaneous card games against a single computer system. Itkis also discloses the ability for the users to provide identification information (e.g., a smart game card) before game play begins and using that information to identify additional information for use during game play (e.g., a current account balance). It is further discussed that a variation can include clustering slave devices for allowing play of several players in a common game against the dealer or casino. This teaching was not present in the prosecution of the '560 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, Itkis raises a substantial new question of patentability as to Claim 20 which question has not been decided in a previous examination of the '560 Patent.

Netrek: The BRM-Hadley Client Software Source Code and the Vanilla Server Software Source Code

Based on the Declaration of David Ahn, the Netrek source and client code are required to play the Netrek game. The Ahn Declaration states that both codes were available on the Internet for download by interested parties and adds dated supporting documents from Internet chat rooms involving Netrek.

For the issue of whether or not an Internet posting qualifies as a printed publication, MPEP provides that "[a]n electronic publication, including an on-line database or Internet publication, is considered to be a "printed publication" within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 227, 210 USPQ 790, 795 (CCPA 1981) ("Accordingly, whether information is printed, handwritten, or on microfilm or a magnetic disc or tape, etc., the one who wishes to characterize the information, in whatever form it may be, as a 'printed publication' * * * should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents." (citations omitted).).

In this instance, it seems apparent that in order for interested parties to partake in the group online game, they would need to download the client code minimally, and if they wanted to set up their own server and gaming network, they would need to download both client and server source code. Ahn's Declaration is sufficient proof that both the client and server code had been available and accessible to persons concerned with the Netrek gaming community and hence the client and source code amount to printed publications within the meaning of 35 U.S.C. 102(a) and (b).

It is agreed that the consideration of the Netrek documents raises a SNQP as to Claim 92 of the '560 Patent.

As pointed out in the request on pages 66-76, the Netrek documents teach a multi-user battle simulation game played over a communications network. Netrek

comprises a server that functions as a game playing node and communicates with the players' client software via the network. Among other features, the server communicates to each player the rankings of all current players, which then can be displayed on each player's screen. This teaching was not present in the prosecution of the '560 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, the above Netrek client and server source code documents, taken in combination, raise a substantial new question of patentability as to Claim 92 which question has not been decided in a previous examination of the '560 Patent.

McFadden and Rumsey

It is agreed that the consideration of the combination of McFadden and Rumsey raises a SNQP as to Claim 92 of the '560 Patent.

As pointed out in the request on pages 76-80, McFadden discloses a multi-player game played over a communications network in which kills are used as an indicator of proficiency. Rumsey discloses that the number of opponent kills is displayed on the game screen and are updated during game play. This teaching was not present in the prosecution of the '560 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, consideration of McFadden and Rumsey raises a substantial new question of patentability as to Claim 92 which question has not been decided in a previous examination of the '560 Patent.

Service of Papers

After the filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 CFR 1.248. See 37 CFR 1.550(f).

Waiver of Right to File Patent Owner Statement

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester, see 37 C.F.R. 1.550(f). The Patent Owner may consider using the following statement in a document waiving the right to file a Patent Owner Statement:

WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT

Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement.

Extensions of Time

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).

Amendment in Reexamination Proceedings

Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c). See MPEP § 2250(IV) for examples to assist in the preparation of proper proposed amendments in reexamination proceedings.

Submissions

In order to insure full consideration of any amendments, affidavits or declarations or other documents as evidence of patentability, such documents must be submitted in response to the first Office action on the merits (which does not result in a close of prosecution). Submissions after the second Office action on the merits, which is

intended to be a final action, will be governed by the requirements of 37 CFR 1.116, after final rejection and by 37 CFR 41.33 after appeal, which will be strictly enforced.

Notification of Concurrent Proceedings

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. 6,264,560 throughout the course of this reexamination proceeding. Likewise, if present, 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.

NOTICE RE PATENT OWNER'S CORRESPONDENCE ADDRESS

Effective May 16, 2007, 37 CFR 1.33(c) has been revised to provide that:

The patent owner's correspondence address for all communications in an *ex parte* reexamination or an *inter partes* reexamination is designated as the correspondence address of the patent.

Revisions and Technical Corrections Affecting Requirements for Ex Parte and Inter Partes Reexamination, 72 FR 18892 (April 16, 2007)(Final Rule)

The correspondence address for any pending reexamination proceeding not having the same correspondence address as that of the patent is, by way of this revision to 37 CFR 1.33(c), automatically changed to that of the patent file as of the effective date.

This change is effective for any reexamination proceeding which is pending before the Office as of May 16, 2007, including the present reexamination proceeding, and to any reexamination proceeding which is filed after that date.

Parties are to take this change into account when filing papers, and direct communications accordingly.

In the event the patent owner's correspondence address listed in the papers (record) for the present proceeding is different from the correspondence address of the patent, it is strongly encouraged that the patent owner affirmatively file a Notification of Change of Correspondence Address in the reexamination proceeding and/or the patent (depending on which address patent owner desires), to conform the address of the proceeding with that of the patent and to clarify the record as to which address should be used for correspondence.

Telephone Numbers for reexamination inquiries:

Reexamination and Amendment Practice	(571) 272-7703
Central Reexam Unit (CRU)	(571) 272-7705
Reexamination Facsimile Transmission No.	(571) 273-9900

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

By U.S. Postal Service Mail to:

Mail Stop *Ex Parte* Reexam
ATTN: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand to: Customer Service Window
Randolph Building
401 Dulany St.
Alexandria, VA 22314

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.

/Jeffrey R. Jastrzab/
Jeffrey R. Jastrzab
Primary Examiner
Central Reexamination Unit
(571) 272-4947

Conferee _____/BMF/_____

Conferee __________

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(Not for submission under 37 CFR 1.99)

Application Number	Not yet assigned
Filing Date	Not yet assigned
First Named Inventor	Sheldon F. Goldberg
Art Unit	Not yet assigned
Examiner Name	Not yet assigned
Attorney Docket Number	0504-002

U.S. PATENTS

Examiner Initial*	Cite No	Patent Number	Kind Code ¹	Issue Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
JG	1	4856787	B1	1989-08-15	Ikis	Abstract, Columns 1-6, Figure 4
J	2	5347632	B1	1994-09-13	Filepp, et al.	Columns 1-10, 23-28, 38, 75-78, 82-83, and 91-96; Figures 1, 2, 3a, 3b, 4a, 4b, 4c, and 4d

If you wish to add additional U.S. Patent citation information please click the Add button.

U.S. PATENT APPLICATION PUBLICATIONS

Examiner Initial*	Cite No	Publication Number	Kind Code ¹	Publication Date	Name of Patentee or Applicant of cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
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FOREIGN PATENT DOCUMENTS


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NON-PATENT LITERATURE DOCUMENTS


**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(Not for submission under 37 CFR 1.99)

Application Number	Not yet assigned
Filing Date	Not yet assigned
First Named Inventor	Sheldon F. Goldberg
Art Unit	Not yet assigned
Examiner Name	Not yet assigned
Attorney Docket Number	0504-002

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	TS
	1	Michael Maurer et al., Frequently Asked Questions About Poker, rec.gambling Usenet Newsgroup (posted Feb. 28, 1995), http://groups.google.com/group/rec.answers/msg/9f0812cdfd732e8	<input type="checkbox"/>
	2	Manual "Manny" Raposa, BJ Tourney at the IP, rec.gambling Usenet Newsgroup (posted Feb. 24, 1992), http://groups.google.com/group/rec.gambling/msg/eabdbc28789394b0	<input type="checkbox"/>
	3	Caren Eleazer, Navigating Main Street: a user's experience with Interactive TV; GTE Main Street, 9 The Seybold Report on Desktop Publishing No. 5, 3 (Jan. 15, 1995)	<input type="checkbox"/>
	4	Netrek BRMH-1.7 Client Source Code, http://ftp.netrek.org/pub/netrek/mirrors/ftp.csua.berkeley.edu.old/netrek/old/BRMH-1-7.tar.gz (last modified Oct. 16, 1993)	<input type="checkbox"/>
	5	Netrek Server2.5pl4 Server Source Code, http://ftp.netrek.org/pub/netrek/mirrors/ftp.solace.mh.se/netrek/servers/vanilla/Server2.5pl4.tar.gz (last modified Dec. 15, 1994)	<input type="checkbox"/>
	6	Andy McFadden, The History of Netrek, through Jan 1 1994, rec.games.netrek Usenet Newsgroup (posted May 1, 1994), http://groups.google.com/group/rec.games.netrek/msg/66264d6b5a4b1470	<input type="checkbox"/>
	7	Joseph Rumsey, Re: Beta testers for port of BRM 3.0 to Win 3.1 / NT wanted, rec.games.netrek Usenet Newsgroup (posted Feb. 12, 1994), http://groups.google.com/group/rec.games.netrek/browse_frm/thread/9400abb64afd9810/2ba31d76f61174d0	<input type="checkbox"/>

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EXAMINER SIGNATURE

Examiner Signature		Date Considered	2/26/08
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. ² Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). ³ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁴ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁵ Applicant is to place a check mark here if English language translation is attached.