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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
16/704,493	12/05/2019	Patrick J. Rooney	091212US06	5472
39310 7590 03/02/2020 TRADING TECHNOLOGIES INTERNATIONAL, INC.			EXAMINER	
Monika A. Dudek			NORMAN, SAMICA L	
222 South Riv	erside Plaza			
SUITE 1100			ART UNIT	PAPER NUMBER
CHICAGO, IL 60606			3697	
			NOTIFICATION DATE	DELIVERY MODE
			03/02/2020	ELECTRONIC

# 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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mbhb.com patentreporting@tradingtechnologies.com

	Application No.	Applicant(s	<u> </u>			
	16/704,493					
Office Action Summary	Examiner	Art Unit	AIA (FITF) Status			
	SAMICA L NORMAN	3697	Yes			
<ul> <li>The MAILING DATE of this communication appropriate the property of the property o</li></ul>	oears on the cover sheet with	the corresponder	nce address			
A SHORTENED STATUTORY PERIOD FOR REPL DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1. date of this communication.  - If NO period for reply is specified above, the maximum statutory period Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing adjustment. See 37 CFR 1.704(b).	— 136(a). In no event, however, may a reply will apply and will expire SIX (6) MONTH e, cause the application to become ABAN	be timely filed after SIX S from the mailing date IDONED (35 U.S.C. § 1:	( (6) MONTHS from the mailing of this communication.			
Status						
1) Responsive to communication(s) filed on 09	December 2019.					
☐ A declaration(s)/affidavit(s) under <b>37 CFR 1.130(b)</b> was/were filed on						
2a) ☐ This action is <b>FINAL</b> . 2b)	☑ This action is non-final.					
3) An election was made by the applicant in response to a restriction requirement set forth during the interview on; the restriction requirement and election have been incorporated into this action.						
4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims*						
5) 🖸 Claim(s) 2-12 is/are pending in the application.						
5a) Of the above claim(s) is/are withdrawn from consideration.						
6) Claim(s) is/are allowed.						
7) Claim(s) 2-12 is/are rejected.						
8) Claim(s) is/are objected to.						
9) Claim(s) are subject to restriction a						
* If any claims have been determined allowable, you may be eligible to benefit from the Patent Prosecution Highway program at a						
participating intellectual property office for the corresponding application. For more information, please see <a href="http://www.uspto.gov/patents/init_events/pph/index.jsp">http://www.uspto.gov/patents/init_events/pph/index.jsp</a> or send an inquiry to <a href="http://www.uspto.gov/patents/init_events/pph/index.jsp">PPHfeedback@uspto.gov.</a>						
	л ан інфину то <u>РЕпі<b>сеораск</b>ого</u>	ispto.gov.				
Application Papers						
10) The specification is objected to by the Examiner.						
11) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction						
	on is required in the drawing(s) is	objected to. Occ o	7 OF TE 1. 12 (a).			
Priority under 35 U.S.C. § 119 12) ☐ Acknowledgment is made of a claim for fore Certified copies:	ign priority under 35 U.S.C.	§ 119(a)-(d) or	(f).			
a) ☐ All b) ☐ Some** c) ☐ None of	the:					
<ol> <li>Certified copies of the priority docu</li> </ol>	ments have been received.					
2. Certified copies of the priority docu	ments have been received i	in Application No	o			
3. Copies of the certified copies of the application from the International B		een receiv <b>ed in</b> t	this National Stage			
** See the attached detailed Office action for a list of the certified copies not received.						
Attachment(s)						
1) V Notice of References Cited (PTO-892)	3) 🗍 Interview Sur	nmary (PTO-413)				
· —	Paner No(s)/I	Mail Date				
<ol> <li>Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SPAPER No(s)/Mail Date</li> </ol>	4) Other:					

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### Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim must be rejected under 35 U.S.C. 101 as covering non-statutory subject matter. A claim drawn to a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. 101 by adding the limitation "non-transitory" to the claim. Its not acceptable to just add "physical" or "tangible" - *Nuijten*'s ineligible signals were physical and tangible.

### **Double Patenting**

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process... may obtain a patent therefor..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the claims that are directed to the same invention so they are no longer

coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 2-12 is/are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 2-12 of prior U.S. Patent No. 10,540,718. This is a statutory double patenting rejection.

#### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMICA L NORMAN whose telephone number is (571)270-1371. The examiner can normally be reached on Mon-Thur 9:30am-8p EST, with Fri off.

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, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see https://ppair-my.uspto.gov/pair/PrivatePair. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (tollApplication/Control Number: 16/704,493 Page 4

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free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SAMICA L. NORMAN Primary Examiner Art Unit 3697

/SAMICA L NORMAN/ Primary Examiner, Art Unit 3697