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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/328,678	01/10/2006	Robert M. Garceau	GCSD-1780 (51454)	6572
74701 7590 08/10/2009 ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST 255 S ORANGE AVENUE SUITE 1401 ORLANDO, FL 32801			EXAMINER JEN, MINGJEN	
			ART UNIT 3664	PAPER NUMBER
			NOTIFICATION DATE 08/10/2009	DELIVERY MODE 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):

creganoa@addmg.com

<b>Office Action Summary</b>	<b>Application No.</b> 11/328,678	<b>Applicant(s)</b> GARCEAU ET AL.	
	<b>Examiner</b> IAN JEN	<b>Art Unit</b> 3664	

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

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ 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 *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2006 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 is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/05/2007;03/13/2006</u> .                                   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. This office action is in response to the remark entered on April 8<sup>th</sup>, 2009
2. Claims 1 - 21 are pending in current application.
3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Double Patenting*

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1 - 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1- 22 of Graceau et al (U.S. Patent Pub

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2007/0162194 ) in view of Graceau et al (US Pat Pub 2007/0162193). Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 -5, 6, 8-16 of the present application is an obvious variation of claims 1-22 of U.S. Patent Pub No 2007/0162194 in view of U.S. Patent Pub No 2007/0162193.

The conclusion of obviousness-type double patenting rejection is made in light of the following determinations.

6. Claim 1-21 of U.S. Patent Pub No 2007/0162194 in view of U.S. Patent Pub No 2007/0162193 both shows

- Data base, image processor, image enhancer, change detector
- Collected geospatial image
- 3D scene model data; 2D image data
- Terrain data, building data and foliage data
- Collection field of view; Geospatial collection value.
- Weather Condition relates to image obscuration and surface reflectivity.
- Time of day and time of year.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**8.** Claims 1 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oldroyd (US Pat Pub No 2005/0220363) in view of Margolin (US Pat No 5974423).

As for claim 1, 10, 15, Oldroyd shows a image detecting system where a collected geospatial image from a geospatial image sensor carried by an airborne platform, image detecting system comprising: a database ( Fig 1, See Reference Image Data 28; Reference Dem Database 40 ); an image processor cooperating with database for generating a reference geospatial image corresponding to the collected geospatial image ( Para 0049; analysis 24; Para 0069-0070; Para –76,transform 56 ); a change detector cooperating with image processor for detecting a change between the collected geospatial image and the reference geospatial image ( Para 0099 – 0101; See Fig 1, Image match 60, match function 62 ); an image detector cooperating with change detector for detecting the at least one image associated with the collected geospatial image based upon the change between the collected geospatial image and the reference geospatial image ( Para 0013 – 0016; Par 0075, Perspective analysis 50, perspective parameters 52,reference orthoimage construction 44, transform to sensor perspective 56 ). Oldroyd is silent regarding the environmental condition associated with geospatial image is the weather condition.

Margolin shows the environmental condition associated with geospatial image is the weather condition ( Col 2, lines 47 - 65 ).

It would have been obvious for one of ordinary skill in the art, to provide enhance image based upon environmental condition, as taught by Margolin, to Oldroyd, in order to provide efficient method for converting database, as taught by Margolin.

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As for claim 2, 3, 11, 16, Oldroyd is silent regarding recited claim limitation.

Margolin shows at least one environmental condition comprises at least one weather condition (Col 2, lines 47 - 65) and at least one weather condition relates to at least one of image obscuration and surface reflectivity (Col 2, lines 47 - 65).

It would have been obvious for one of ordinary skill in the art, to provide enhance image based upon environmental condition, as taught by Margolin, to Oldroyd, in order to provide efficient method for converting database, as taught by Margolin.

As for claim 4, 5,6, 12, 17, 18, Oldroyd shows at least one environmental condition comprises at least one of a time of day and a time of year ( Para 0011 ); database comprises a geospatial scene model database ( Para 0031; Para 0048-0049 ); an environmental condition detecting system according to Claim 5 wherein geospatial scene model database comprises three-dimensional (3D) scene model data; and wherein each of the collected geospatial image and the reference geospatial image comprises respective two-dimensional (2D) image data ( Para 0106; Fig 1, See Reference Image Data 28; reference orthoimage construction 44 ).

As for claim 7, 19, Oldroyd shows geospatial scene model database comprises at least one of terrain data, building data, and foliage data (Para 0055- 0069).

As for claim 8, 13, 20, Oldroyd shows the collected geospatial image has at least one geospatial collection value associated therewith ( Para 0013- 0016; para 0075, Perspective analysis 50; perspective parameter 52 ); and wherein image processor generates the reference geospatial image based upon synthetically positioning a virtual geospatial image sensor within a

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geospatial scene model based upon the at least one geospatial collection value ( Para 0049, analysis 24; Para 0069-0070,transform 56 ).

As for claim 9, 14, 21, the at least one geospatial collection value comprises at least one of a geospatial collection position, a geospatial collection orientation, and a geospatial collection field-of-view (Para 0011, 0048).

### ***Response to Arguments***

9. In response to applicant's remark that the proposed combination fails to disclose each and every feature of the claimed invention; specifically, the proposed combination fails to disclose "an environmental condition detector cooperating with the change detector for detecting the environmental condition associated with the collected geospatial image based upon the change between the collected geospatial image and the reference geospatial image". Applicant's attention is directed to the recited claim limitation above, Oldroyd (US Pat Pub No 2005/0220363) in view of Margolin (US Pat No 597443); where Oldroyd shows a database on Fig 1, See Reference Image Data 28; Reference Dem Database 40 ; an image processor cooperating with database for generating a reference geospatial image corresponding to the collected geospatial image on Para 0049; analysis 24; Para 0069-0070; Para -76,transform 56 ; a change detector cooperating with image processor for detecting a change between the collected geospatial image and the reference geospatial image on Para 0099 – 0101; See Fig 1, Image match 60, match function 62 ; an image detector cooperating with change detector for detecting the at least one image associated with the collected geospatial image based upon the change

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between the collected geospatial image and the reference geospatial image on Para 0013 – 0016; Par 0075, Perspective analysis 50, perspective parameters 52, reference orthoimage construction 44, transform to sensor perspective 56; where Margolin shows the environmental condition associated with geospatial image is the weather condition on Col 2, lines 47 – 65, as each and every recited claim limitation has been addressed. Further, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this instant case, applicant argues that the weather condition, shown by Margolin, has not been shown by Oldroyd. It is Oldroyd in view of Margolin, that applicant ought to discuss with applicant's application. Further, it is Margolin provides weather data for the analysis purpose to the pilot system of Oldroyd. Further, applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In this instant case, applicant's merely statement has not provided discussion and analysis between the prior art references recited by one of ordinary skill in the art along with the applicant's application but merely offer an allegation states neither prior art references shows the recited claim limitation. Further, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5



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USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Further, in response to applicant's remark that Oldroyd in view of Margolin does not show the environmental condition detector cooperating with said change detector for detecting at least one environmental condition. Applicant's attention is directed to both Oldroyd, where Oldroyd shows the sensor image 12, which obtained by sensor 14, further the sensor image that obtained by sensor 14 is to be implemented as the detected environmental condition by Margolin. One of ordinary skill in the art further take an official notice that the sensor image 12 along with the sensor 14 of Oldroyd is to be obvious with the image sensor 340 along with image obtained as by applicant's application, recited in paragraph 0004.

### ***Conclusion***

**10.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Koeln et al ( US Pat No 5719949 ); cross correlating digital image

Rahmes et al (US Pat No 6654690/7142984); Topographical image; aircraft detected image correlation; DEM

Porikli (US Pat No 6904159); image detection; correlation.

Louis et al (US Pat No 5974170); DEM; image analysis.

Wadsworth et al (US Pat No 6118885); airborne image.

Lechner ( US Pat Pub 2003/0059743); airborne image analysis; DEM.

**11. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IAN JEN whose telephone number is (571)270-3274. The examiner can normally be reached on Monday - Friday 9:00-6:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi Tran can be reached on 571-272-6919. 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 <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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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.

/Ian Jen/

Examiner, Art Unit 3664

/KHOI TRAN/

Supervisory Patent Examiner, Art Unit 3664