

<b>First Action Interview Pilot Program Pre-Interview Communication</b>	<b>Application No.</b> XXXXXXX	<b>Applicant(s)</b> XXXXXXX	
	<b>Examiner</b> XXXXXXX	<b>Art Unit</b> XXXX	Page 1 of 2

**-The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address - THE SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ONE MONTH OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING OR NOTIFICATION DATE OF THIS COMMUNICATION.**

**This time period for reply is extendable under 37 CFR 1.136(a) for only ONE additional MONTH. This communication constitutes notice under 37 CFR 1.136(a)(1)(i).**

Applicant must, within the time period for reply, file: (1) A letter requesting not to have a first action interview; (2) A reply under 37 CFR 1.111 waiving the first action interview and First Action Interview Office Action; or (3) An Applicant Initiated Interview Request Form (PTOL-413A) electronically via EFS-Web, accompanied by a proposed amendment or arguments, and schedule the interview within 2 months from the filing of the request. A failure to respond to this communication will be treated as a request not to have an interview. If applicant waives the First Action Interview Office Action, the instant Pre-Interview Communication is deemed the first Office Action on the Merits. The next subsequent Office action may be made final if appropriate. See MPEP 706.07(a).

**Disposition of Claims**

- 3)  Claim(s) 1-8 is/are pending in the application.
  - 3a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 4)  Claim(s) \_\_\_\_\_ is/are allowed.
- 5)  Claim(s) 1-8 is/are rejected.
- 6)  Claim(s) \_\_\_\_\_ is/are objected to.
- 7)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 8)  The specification is objected to by the Examiner.
- 9)  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 is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 10)  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**

- 11)  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.

**Contact Information -**

Examiner's Telephone Number: (571) 272-XXXX  
 Examiner's Typical Work Schedule: Monday-Friday: 8 a.m. – 4:30 p.m.  
 Supervisor's Name: Supervisor XXXX  
 Supervisor's Telephone Number: (571) 272-XXXX

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

<b>First Action Interview Pilot Program Pre-Interview Communication</b>	<b>Application No.</b> XXXXXXX	<b>Applicant(s)</b> XXXXXX	
	<b>Examiner</b> XXXXXX	<b>Art Unit</b> XXXX	Page 2 of 2

**Notification of Rejection(s) and/or Objection(s)**

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Rejection
1	1-8		101	Claim 1 recites a binary translator with various components. The binary translator as claimed is software per se and software is not considered patentable subject matter. Claims 2-8 depend on 1 and do not include hardware so as to overcome the rejection.
2	1-8		112, 1st	Claim 1 recites the limitation of "replace disabled legacy binary instructions with native instructions". However, according to the specification, on page 6, lines 1-3, "...used to disable...insert new instruction without (see continuation below)
3	1-5, 7-8	U	102 (b)	Claim 1 (Figure 1, 1 <sup>st</sup> para, 3 <sup>rd</sup> para, Section "3.1 Components", 4 <sup>th</sup> & 5 <sup>th</sup> Paragraph-note the claimed "processor means" is interpreted as the CPU in fig. 1); 2 (Fig. 1); 3 (Section 3.1, 4 <sup>th</sup> para); 4 (section 4.2, para 9 – note this) (see continuation below)
4	6	U,V	103 (a)	U does not disclose said native instruction processor as claimed. V discloses this at section 2.1, 2 <sup>nd</sup> paragraph. As one would want to have better code for hot spots in order to improve performance (see V, Section 2.1), it would have (see continuation below)

**Expanded Discussion/Commentary**

2		altering the original legacy instructions." Thus, the specification does not disclose replacing disabled legacy binary instructions. On the contrary, the specification specifically discloses not altering the original legacy binary instructions. The claim limitation of claim 1 contradicts with what the disclosure describes. Thus, this subject matter was not described in the specification in such a way to enable one skilled in the art to make and use the invention without undue experimentation.		
3		section states that "any kind of memory can be used"; 5 (Section 3.1 5 <sup>th</sup> para); Claim 7 (Section 3, Resourceable and Retargetable Binary Translation); 8 (Section 3.1, 4 <sup>th</sup> para).		
4		been obvious to include the native instruction processor in the system described in V.		

<b>DATE:</b>	<b>Examiner Signature:</b>	<b>Primary Examiner Signature:</b>
--------------	----------------------------	------------------------------------

<b>Notice of References Cited</b> Example 1	Application/Control No. XXXXXX	Applicant(s)/Patent Under Reexamination XXXXX	
	Examiner XXXXX	Art Unit XXXX	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A US-			
	B US-			
	C US-			
	D US-			
	E US-			
	F US-			
	G US-			
	H US-			
	I US-			
	J US-			
	K US-			
	L US-			
	M US-			

**FOREIGN PATENT DOCUMENTS**

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N				
	O				
	P				
	Q				
	R				
	S				
	T				

**NON-PATENT DOCUMENTS**

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
U	Smith, A Universal Compiler. IEEE. 2001. pp. 100-150.
V	Brown, Code management. IEEE. 2000. pp. 30-50.
W	
X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.