

PATROLL Winning Submission

U.S. Patent No. 6,396,599

U.S. Patent No.6,396,599 (“*Monument Peak*” or the “patent-at-issue”) was filed on December 21, 1998 and claims priority on the same date. Claim 1 of the patent-at-issue discloses a method for modifying images. A digital image file is analyzed to identify at least one colorimetric parameter and a portion of the said digital image file is modified based on a selected second predetermined colorimetric parameter. Finally, changes are applied to produce a modified digital image.

The primary reference, U.S. Patent No. 5,506,946 (“*Bar*”), was filed on October 14, 1994 and claims an earliest priority of October 1, 1991. The patent generally relates to data processing of images which comprises of a plurality of pixels. The method includes determining colorimetric values of a first (source) and second (target) plurality of pixels from an image. An automatic color transformation is calculated based on the colorimetric values which is then used to modify the first plurality of pixels based on the source to the target colors.

Patent Owner is now on notice that claims of this patent are invalid; as a result, any new or continued assertion of this patent may be considered meritless or brought in bad faith. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). Such considerations are relevant to whether a case is deemed “exceptional” for purposes of awarding attorneys’ fees. 35 U.S.C. § 285; *see, e.g., WPEM, LLC v. SOTI Inc.*, 2020 WL 555545, at *7 (E.D. Tex. Feb. 4, 2020), *aff’d*, 837 F. App’x 773 (Fed. Cir. 2020) (awarding fees for an exceptional case where plaintiff “failed to conduct an invalidity and enforceability pre-filing investigation”); *Energy Heating, LLC v. Heat On-The-Fly, LLC*, 15 F.4th 1378, 1383 (Fed. Cir. 2021) (affirming award of fees where, *inter alia*, the plaintiff knew “that its patent was invalid”).

A sample claim chart comparing claim 1 of *Monument Peak* to *Bar* is provided below.

US6396599 (“ <i>Monument Peak</i> ”)	A. US5506946 (“ <i>Bar</i> ”)
<p>1.pre. A method of modifying images, comprising the steps of:</p>	<p>A. US5506946 “The present invention provides an apparatus and method which is useful for modifying a color in an image displayed by a computer control display system.” <i>Bar</i> at col. 2:32-34</p> <p>1. A method for modifying a first plurality of pixels in an image, said image comprising a plurality of pixels, said method comprising: . . . <i>Bar</i> at claim 1</p>
<p>1.a. analyzing a digital image file of an image so as to identify at least one predetermined colorimetric parameter; and</p>	<p>A. US5506946 1. A method for modifying a first plurality of pixels in an image, said image comprising a plurality of pixels, said method comprising: displaying said image on a display device; interactively selecting at least one pixel of said image; determining the colorimetric values representative of said at least one pixel and determining a contiguous volume of a color space, said contiguous volume defined by said colorimetric values representative of said at least one pixel and by a predetermined range; . . . <i>Bar</i> at claim 1</p> <p>“The apparatus further includes means for determining the colorimetric values for at least one color and a means for selecting a second color which is referred to as a target color and a means for determining the colorimetric values for the second color. The invention also includes a means for modifying the colorimetric values of a plurality of pixels in the image such that for any given pixel of the plurality of pixels which has colorimetric values being matched to the colorimetric values of the at least one color originally selected, then the colorimetric values of the given pixel are modified to match the colorimetric values of the second color.” <i>Bar</i> at col. 2:41-52</p>
<p>1.b. modifying that portion of said image having said at least one predetermined colorimetric parameter to a selected second predetermined colorimetric parameter so as to produce a modified digital image.</p>	<p>A. US5506946 1. A method for modifying a first plurality of pixels in an image, said image comprising a plurality of pixels, said method comprising: displaying said image on a display device; interactively selecting at least one pixel of said image; determining the colorimetric values representative of said</p>

(cont.)

1.b. **modifying that portion of said image having said at least one predetermined colorimetric parameter to a selected second predetermined colorimetric parameter** so as **to produce a modified digital image.**

at least one pixel and determining a contiguous volume of a color space, said contiguous volume defined by said colorimetric values representative of said at least one pixel and by a predetermined range;
determining a source color representative of said contiguous volume;
determining said first plurality of pixels in said image, said first plurality of pixels consisting of all pixels in said image having colors in said contiguous volume, said first plurality of pixels having a shading and texture and having a predetermined relationship corresponding to said shading and texture;
selecting a second pixel and determining the colorimetric values representative of said second pixel wherein said second pixel represents a target color;
calculating an automatic color transformation for approximately transforming said source color to said target color;
modifying the colorimetric values of all pixels of said first plurality of pixels by applying said automatic color transformation to **create a modified plurality of pixels** such that pixels of said first plurality of pixels are changed to pixels of said modified plurality that have a relationship which is similar to said predetermined relationship such that said shading and texture are preserved. *Bar* at claim 1