-The MAILING OR NOTIFICATION DATE of this communication appears on the cover sheet with the correspondence address - THE SHORTEST PERIOD FOR REPLY IS SET TO EXPIRE ONE MONTH OR THIRTY (30) DAYS, WHICH 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. 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) X 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   3a) Of the above claim(s) _____ is/are withdrawn from consideration.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) X 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) X 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: ______.
<table>
<thead>
<tr>
<th>#</th>
<th>Claim(s)</th>
<th>Reference(s) (if applicable)</th>
<th>Rejection Statutory Basis</th>
<th>Brief Explanation of Rejection</th>
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<tbody>
<tr>
<td>1</td>
<td>1-8</td>
<td></td>
<td>101</td>
<td>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.</td>
</tr>
<tr>
<td>2</td>
<td>1-8</td>
<td></td>
<td>112, 1st</td>
<td>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)”</td>
</tr>
<tr>
<td>3</td>
<td>1-5, 7-8</td>
<td>U</td>
<td>102 (b)</td>
<td>Claim 1 (Figure 1, 1st para, 3rd para, Section “3.1 Components”; 4th &amp; 5th Paragraph-note the claimed “processor means” is interpreted as the CPU in fig. 1); 2 (Fig. 1); 3 (Section 3.1, 4th para); 4 (section 4.2, para 9 – note this) (see continuation below)</td>
</tr>
<tr>
<td>4</td>
<td>6</td>
<td>U,V</td>
<td>103 (a)</td>
<td>U does not disclose said native instruction processor as claimed. V discloses this at section 2.1, 2nd 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)</td>
</tr>
</tbody>
</table>

**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 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 5th para); Claim 7 (Section 3, Resourceable and Retargetable Binary Translation); 8 (Section 3.1, 4th para).  

4. has been obvious to include the native instruction processor in the system described in V.
**Notice of References Cited**

**Example 1**

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<th>Classification</th>
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**NON-PATENT DOCUMENTS**

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<th>Author, Title</th>
<th>Publisher, Edition or Volume, Pertinent Pages</th>
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</table>


*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.

U.S. Patent and Trademark Office
PTO-892 (Rev. 01-2001) Notice of References Cited Part of Paper No. 20080109