



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 09/947,801

Filed: 09/06/2001

For: DISTRIBUTED COMPUTING SYSTEM

Examiner: Chirag R. Patel                      Art Unit: 2141

In re Application of: Jed Margolin

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir,

**Appeal Brief**

As required under the new rules for the Pre-Appeal Conference, this brief is filed within one month of mailing of the decision of the Pre-Appeal Brief Conference Panel and is in furtherance of the Notice of Appeal filed in this case on September 6, 2005.

A check for the fees required under § 41.20(b)(2) for filing this brief as a small entity in the amount of \$250 is attached.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I	Real Party In Interest
II	Related Appeals and Interferences
III	Status of Claims
IV	Status of Amendments
V	Summary of Claimed Subject Matter
VI	Grounds of Rejection to be Reviewed on Appeal
VII	Argument
VIII	Claims
ix	Evidence
x	Related Proceedings
Appendix A	Claims

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Jed Margolin  
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San Jose, CA 95148-1916

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

The Application as filed included claims 1-5.

Claims 1-5 have been finally rejected in the Office Action of June 15, 2005. Claims 1-5 are being appealed.

IV. STATUS OF AMENDMENTS

In response to the Final Office Action of June 15, 2005, a Notice of Appeal was filed on September 6, 2005. No formal amendments were filed subsequent to the issuance of the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Applicant's invention performs distributed computing using the otherwise unused resources of a Home Network Server in a subscriber's home. The Home Network Server has Home Network client devices such as PCs as well as sensors and actuators used for Home Automation. An Internet connection allows

the otherwise unused resources of the Home Network Server to be used for distributed computing by a contracting company. In return, the subscriber receives something of value such as reduced cost of Internet service, free Internet service, or a net payment. The advantage of using the Home Network Server for distributed computing is that it allows the distributed computing to be performed in a computer with a stable, robust operating system while allowing Users to continue to use the existing operating systems and software in their PCs. The Home Network Server's clients are not used for distributed computing. As in claim 1 the present invention is for a distributed computing system where the otherwise unused resources of a home network server are used for distributed computing. The home network server is in a subscriber's home and has one or more home network client devices. Access to the resources of the home network server is provided by an Internet connection. The subscriber receives something of value for the use of the home network server for distributed computing. File Wrapper estoppel has already established that the arrangement by which the owner of the home network server receives something of value for the use of the home network server for distributed computing is with a contracting company. As in claim 3 the present invention is described as a method instead of an apparatus. As in Claim 5 the present invention described in claim 3 further includes two firewalls. One firewall prevents unwanted interactions between the Internet and the home network server. The other firewall prevents unwanted interactions between the resources of the home network server that are used for distributed computing and the resources of the home network server that are used by the home network clients. Claim 2 further limits claim 1 and claim 4 further limits claim 3.

#### VI. GROUNDS OF OBJECTION TO BE REVIEWED ON APPEAL

Whether the Examiner has established that claims 1-5 are obvious over U.S. Patent Number 6,167,428 to Ellis.

1. The Examiner erroneously asserts that the Network Server (2) shown in Ellis is the same as the Home Network Server (101) used by Applicant and performs the same function.

2. The Examiner erroneously defines the term *subscriber* in a way that is not consistent with Applicant's use of the term, denying Applicant the right to act as his own lexicographer even if it is to use the ordinary meaning of the term.
3. The Examiner's supervisor erroneously denies Applicant the right to act as his own lexicographer even if it is to use the ordinary meaning of the term *home*.
4. The Examiner's supervisor introduced a new argument in his Examiner's Interview Summary for the telephone interview held August 25, 2005. This argument appears only in the Interview Summary. It was not discussed during the Interview. It does not appear in either the First or Second Office Actions.

## VII. ARGUMENT

### ***1. The Examiner erroneously asserts that the Network Server (2) shown in Ellis is the same as the Home Network Server (101) used by Applicant and performs the same function.***

Applicant believes Applicant's Home Network Server has already been sufficiently characterized above in V. SUMMARY OF CLAIMED SUBJECT MATTER.

The Network Server NS2 shown by Ellis in numerous figures is part of the ISP's equipment. In the interests of brevity two will be discussed. From Ellis Column 6 BRIEF DESCRIPTION OF THE DRAWINGS:

FIG. 1 is a simplified diagram of a section of a computer network, such as the Internet, showing an embodiment of a meter means which measures flow of computing during a shared operation such as parallel processing between a typical PC user and a network provider.

FIG. 2 is a simplified diagram of a section of a computer network, such as the Internet, showing an embodiment of another meter means which measures the flow of network resources, including shared processing, being provided to a typical PC user and a network provider.

Ellis Figures 1 and 2 are reproduced on the following page.

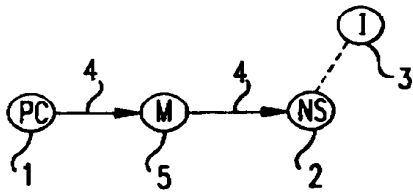


FIG. 1

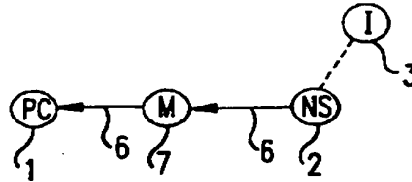


FIG. 2

In Ellis Figure 1, Meter M5 is located between PC1 and Network Server NS2 and in Ellis Figure 2 Meter M7 is located between PC1 and Network Server NS2. According to Ellis, it is the computing resources of PC1 that are used for distributed computing for which Ellis receives payment of one kind or another. Network Server NS2 is part of the ISP's equipment and is therefore not a Home Network Server 101 as taught by Applicant. If Ellis' Network Server NS2 were the same as Applicant's Home Network Server 101, then Ellis's financial arrangement would be with himself. This interpretation would render Ellis' patent invalid for lack of usefulness. Since issued patents are presumed valid such an interpretation is impermissible. However, it is clear that Ellis intends his financial arrangement to be with a separate party. From Column 10 lines 1-6:

The financial basis of the shared use between owners/lesors and providers would be whatever terms to which the parties agree, subject to governing laws, regulations, or rules, including payment from either party to the other based on periodic measurement of net use or provision of processing power

Also, since Ellis' Network Server NS2 is part of the ISP's equipment, if the resources of NS2 were used for distributed computing then Ellis' ISP would be paying him for using their own equipment.

The Examiner's insistence that Ellis shows a Home Network Server extends to erroneously referring to Ellis' Network Server (NS2) as *Home Network Server (2)*, a term that Ellis himself never uses. See Second Office Action of 6/15/2005 page 2, Rejection 2, and Examiner's Summary of Telephone Interview held 08/09/2005 where the Examiner states (page 3, top of page): *Examiner pointed out Ellis's home network server is the same as applicant's invention in that it provides a connection to the internet and one or more home network client devices that participates in the shared computer processing.* In addition to erroneously referring to Ellis' Network Server (2) as a home network server, the Examiner makes the statement that Applicant's home network server's client devices participate in the shared computer processing. Applicant has always asserted that his distributed computing arrangement is for the use of the Home Network Server's resources, and that one of the advantages of this arrangement is that the client devices are not used for

distributed computing. (Note: Applicant does not believe the Examiner actually made this statement during the interview as reported in Examiner's Summary.)

***2. The Examiner erroneously defines the term subscriber in a way that is not consistent with Applicant's use of the term, denying Applicant the right to act as his own lexicographer even if it is to use the ordinary meaning of the term.***

In the Second Office Action of 6/15/2005 (page 2, Section 1 last line), The Examiner states "*When a device receives a service, is interpreted by the examiner to mean "subscribing" to a service.*" This interpretation is not supported by Applicant's use of the term. Applicant used the common meaning of the term. From the online version of the American Heritage ® Dictionary of the English Language, Fourth Edition at <http://www.yourdictionary.com/ahd/s/s0850100.html> :

sub·scribe Listen: [ sb-skrb ]

v. sub·scribed, sub·scrib·ing, sub·scribes

v. tr.

1. To pledge or contribute (a sum of money).
2. To sign (one's name) at the end of a document.
3. To sign one's name to in attestation, testimony, or consent: subscribe a will.
4. To authorize (someone) to receive or access electronic texts or services, especially over the Internet.

v. intr.

1. a. To contract to receive and pay for a certain number of issues of a publication, for tickets to a series of events or performances, or for a utility service, for example. b. To receive or be allowed to access electronic texts or services by subscription.
2. To promise to pay or contribute money: subscribe to a charity.
3. To feel or express hearty approval: I subscribe to your opinion. See Synonyms at assent.
4. To sign one's name.
5. To affix one's signature to a document as a witness or to show consent.

[Middle English subscriben, to sign, from Latin subscribere : sub-, sub- + scribere, to write; see skrbh- in Indo-European roots.] sub·scriber n.

All of these definitions imply that the subscriber is a person. In all of the instances in the present application it is clear from the context that the subscriber is a person, nominally the owner of the Home Network. For example, from paragraph 0016 of the present Application:

[0016] In exchange for the use of the otherwise unused capacity of the Home Network Server for distributed computing, the contracting company provides the subscriber (*nominally the owner of the Home Network*) something of value such as reduced cost of Internet service, free Internet service, or a net payment.

The subscriber is a person. Applicant's devices are not persons and are therefore not subscribers.

***3. The Examiner's supervisor erroneously denies Applicant the right to act as his own lexicographer even if it is to use the ordinary meaning of the term home.***

During the Telephone Interview of August 25, 2005, in an attempt to discuss the everyday meaning of common terms, Applicant thought the word **home** would be good place to start. Applicant was wrong. The Examiner's supervisor asserted that he considers his office at the Patent Office his **home** even though he owns a house. Realizing that the Examiner's supervisor was being ironic, disingenuous, or was literally living in his office at the Patent Office, Applicant determined that the Examiner's supervisor was not serious about advancing the case.

***4. The Examiner's supervisor introduced a new argument in his Examiner's Interview Summary for the telephone interview held August 25, 2005.***

This new argument states:

***It was discussed that Ellis's definition of network provider included an individual and thus the definition of subscribe is the same as disclosure.***

This argument appears only in the Interview Summary. It was not discussed during the Interview. It does not appear in either the First or Second Office Actions. It was **not** discussed that Ellis's definition of network provider included an individual. If the issue had been brought up Applicant would have pointed out that the individual/network provider still had to be different from the individual/PC owner in order for Ellis to be useful. Otherwise, Ellis's financial arrangement would be with himself and would render Ellis' patent invalid for lack of usefulness.

Applicant also wishes to point out that Ellis' definition of **network provider** has nothing to do with the definition of **subscribe**. The Examiner's supervisor has used a non sequitur in an attempt to support an unsupportable argument.

Therefore, since Ellis does not teach a Home Network Server in a subscriber's home and since the otherwise unused resources of Ellis' Network Server 2 are not used for distributed computing in return for something of value from a contracting company, Applicant believes all rejections have been traversed and requests the Board direct the Examiner to withdraw all rejections and allow the present application as filed.

## VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

## IX. EVIDENCE

There has been no evidence pursuant to §§ 1.130, 1.131, or 1.132 or other evidence submitted in this application.

## X. RELATED PROCEEDINGS

There are no decisions rendered by a court or by BPAI in this application. There was a decision issued by the Pre-Appeal Conference Panel mailed 10/27/2005 in which the Panel ruled, without comment, that Applicant should proceed to BPAI. Applicant wishes to note that the Pre-Appeal Conference Panel consisted of Examiner Chirag Patel, SPE Rupal Dharia, and SPE John Follansbee. Examiner Patel and SPE Dharia had already made it very clear through the various Office Actions and Telephone Interviews that they are committed to their erroneous interpretation of Ellis. It should also be noted that SPE Follansbee is listed on a number of issued patents as the Primary Examiner along with Assistant Examiner Nabil EL Hady. Examiner El Hady is listed in the File Wrapper Search Notes 6/15/2005 "**EL HADY NABIL - discussed how to respond to applican'ts {sic} arguments 6/9/2005.**" As a result of being Examiner El-Hady's supervisor and mentor, SPE Follansbee's objectivity is open to question as he may have had knowledge of the case and formed an opinion of it before the Pre-Appeal Conference was held. Therefore, Applicant requests that BPAI give no weight to the Pre-Appeal Conference Panel's rejection.

Respectfully submitted,

*Jed Margolin*

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pro se inventor  
November 17, 2005  
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I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commission for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on the date shown below.

Date: November 17, 2005

Inventor's Signature: *Jed Margolin*



**Appendix A**

Claims involved in the Appeal of Application Serial Number 09/947,801

Claim 1. A distributed computing system comprising:

- (a) a home network server in a subscriber's home;
- (b) one or more home network client devices;
- (c) an Internet connection;

whereby the subscriber receives something of value in return for access to the resources of said home network server that would otherwise be unused.

Claim 2. The distributed computing system of claim 1 further comprising:

- (a) a first firewall between said Internet connection and said home network server;
- (b) a second firewall to prevent unwanted interactions between said access to the resources of said home network server that would otherwise be unused and said home network server.

Claim 3. A method for providing a distributed computing system comprising the steps of:

- (a) providing a home network server in a subscriber's home;
- (b) providing one or more home network client devices;
- (c) providing an Internet connection;

whereby the subscriber receives something of value in return for access to the resources of said home network server that would otherwise be unused.

Claim 4. The method of claim 3 further comprising the steps of:

- (a) providing a first firewall between said Internet connection and said home network server;
- (b) providing a second firewall to prevent unwanted interactions between said access to the resources of said home network server that would otherwise be unused and said home network server.

Claim 5. A method for providing a distributed computing system comprising the steps of:

- (a) providing a home network server in a subscriber's home;
- (b) providing one or more home network client devices;
- (c) providing an Internet connection;
- (d) providing access to the resources of said home network server that would otherwise be unused;
- (e) providing a first firewall between said Internet connection and said home network server;
- (f) providing a second firewall to prevent unwanted interactions between said access to the resources of said home network that would otherwise be unused and said home network server;

whereby the subscriber receives something of value in return for said access to the resources of said home network server that would otherwise be unused.