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09/947,801	09/06/2001	Jed Margolin		7358

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JED MARGOLIN
1981 EMPIRE ROAD
RENO, NV 89521-7430

EXAMINER

PATEL, CHIRAG R

ART UNIT PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/947,801
Filing Date: September 06, 2001
Appellant(s): MARGOLIN, JED

Jed Margolin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 17, 2005 appealing from the Office action mailed June 13, 2005.

(1) *Real Party in Interest*

Examiner agrees with the statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

Examiner agrees with the statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

Examiner agrees with the statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

Examiner agrees with the appellant's statement of the status of amendments contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

Examiner agrees with the summary of invention contained in the brief is correct.

(6) *Grounds of Rejections to be Reviewed on appeal*

Examiner agrees with the appellant's statement of the grounds of objection to be reviewed on appeal in the brief is correct.

(7) *Grouping of Claims*

Examiner agrees with the appellant's grouping of the claims.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

<u>Reference</u>	<u>Author</u>	<u>Filing Date</u>
US 6,167,428	Ellis	May 27, 1999

(10) *Grounds of Rejection*

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis (US 6,167,428).

As per claims 1 and 3, Ellis discloses a distributed computing system comprising:

(a) a home network server in a subscriber's home; (Col 7 lines 66-67, Col 8 lines 1-14 and 23-28)

(b) one or more home network client devices; (Col 13 lines 8-29, Figure 9)

(c) an Internet connection; (Col 8 lines 7-10, Col 13 lines 4-7, Figure 1 item 3)

whereby the subscriber receives something of value in return for access to the resources of said home network server that would otherwise be unused. (Col 7 lines 38-48, Col 10 lines 1-6)

As per claims 2 and 4, Ellis discloses a distributed computing system further comprising:

(a) a first firewall between said Internet connection and said home network server; Ellis teaches the concept of supporting the structure of inserting a firewall between the internet and home network server to provide security for the host PC against instruction by outside hackers. (Col 19 lines 25-32)

(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. (Col 16 lines 33-42, Col 19 lines 19-25)

As per claim 5, Ellis discloses A method for providing a distributed computing system comprising the steps of:

(a) providing a home network server in a subscriber's home; (Col 7 lines 66-67, Col 8 lines 1-14 and 23-28)

(b) providing one or more home network client devices; (Col 13 lines 8-29, Figure 9)

(c) providing an Internet connection; (Col 8 lines 7-10, Col 13 lines 4-7, Figure 1 item 3)

(d) providing access to the resources of said home network server that would otherwise be unused; (Col 11 lines 55-61, Col 12 lines 17-26, Figure 5)

(e) providing a first firewall between said Internet connection and said home network Server; Ellis teaches the concept of supporting the structure of inserting a firewall between the internet and home network server to provide security for the host PC against instruction by outside hackers. (Col 19 lines 25-32)

(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; (Col 16 lines 33-42, Col 19 lines 19-25)

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. (Col 7 lines 38-48, Col 10 lines 1-6)

(11) Response to Argument

A) Applicant argues "The Examiner erroneously asserts that the Network Server (2) shown in Ellis is the same as the Home Network Server (1 01) used by Applicant and performs the same function."

Response to A) The examiner has taken the word server in light of the specification, using the common meaning of server. "Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)." In accordance with Microsoft Computer Dictionary 3rd edition definition, page 430, Microsoft Press – copyrighted @1997 by Microsoft Corporation. It defines a server as "On the internet or other network, a computer or program that responds to commands from a client. For example, a file server may contain an archive of data or program files, when a client submits a request for a file, the server transfer a copy of the file to the client" PC(1) and NS(2) can be a server or client depending on its functions according to its definition described above. That definition of server was valid at the time of invention and it was still valid in the Microsoft Computer Dictionary 5th edition copyrighted @2002, page 474. This proves that definition of server that was interpreted by the examiner was reasonable at the time of invention. A review of the disclosure and

the claimed language failed to show the applicant had a specific meaning of server that was different from the common definition as discussed above.

i. Applicant argues 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."

Response to i. A description of Figure 1 does show a meter measuring the flow between the PC user and the network provider. The examiner interpretation that the PC user was acting as a server was in accordance with the definition above because it was providing a resource to the network provider, (i.e. access to the user's PC for parallel computing use.) Ellis disclosed per col 7 lines 38-48, "Unlike existing one way functional relationships between network providers such as internet service providers (often currently utilizing telecommunications networks for connectivity) and PC users, wherein the network provider provides access to a network like the Internet for a fee (much like cable TV services), this new relationship would recognize that the PC user is also providing the network access to the user's PC for parallel computing use, which has a similar value. The PC thus both provides and uses services on the network, alternatively or potentially even virtually simultaneously, in a multitasking mode."

Ellis disclosed per Col 10 lines 1-6 states, "The financial basis of the shared use between owners/leasers 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."

ii. Applicant argues "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."

Response to ii. The examiner interpretation that the PC user was acting as a server was in accordance with the definition above because it was providing a resource to the network provider, (i.e. access to the user's PC for parallel computing use.)

Table 1 listed below clearly shows that Ellis's home network server is the same as applicant's invention.

Table 1

<p>Applicant discloses:</p>	<p>Ellis (US 6,167,428)</p>
<p>a home network server in a subscriber's home, providing one or more home network client devices, providing an Internet connection</p> <p>Applicant defines a home network server in his application in the disclosure per [0014],</p> <p>"A Home Network Server is used in a home to network various clients such as PCs, sensors, actuators, and other devices. It also provides the Internet connection to the various client devices in the Home Network. The Home Network Server also provides a firewall to prevent unauthorized access to the Home Network from the Internet. The use of a Home Network Server, as opposed to the use of peer-to-peer networking, allows a robust operating system to be used. It also allows the users on the Home Network to add additional applications to their Pcs without fear of jeopardizing the proper mentioning of their Internet security program (firewall) or the distributed computing software. (Although a firewall is not strictly necessary, prudence dictates its use.)"</p>	<p>Ellis does show a Home network server, home network client devices, and an internet connection, (Figure 2) As stated above, the PC1 and NS2 can interchangeably change roles.</p> <p>Ellis definition of a network provider, per Col 7 lines 65 - Col 8 line 14,</p> <p>"For this new network and its structural relationships, a network provider is defined in the broadest possible way as any entity (corporation or other business, government, not-for-profit, cooperative, consortium, committee, association, community, or other organization or <i>individual</i>) that provides personal computer users (very broadly defined below) with initial and continuing connection hardware and/or software and/or firmware and/or other components and/or services to any network, such as the Internet and Internet II or WWW or their present or future equivalents, coexistors or successors, like the MetalInternet, including any of the current types of Internet access providers (ISP's) including telecommunication companies, television cable or broadcast companies, electrical power companies, satellite communications companies, or their present or future equivalents, coexistors or successors."</p>

B) Applicant argues *“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.*

Response to B) When a device receives a service, it is mean "subscribing" to a service". The examiner interpreted the term "device" in light of the cited passage Ellis (US 6,167,428) Col 7 line 65 – Col 8 line 14 which listed below was cited to mean an entity can be defined as an individual. This was interpreted by the examiner in light of applicant's disclosure per [0016] pages 4-5 which describe the "subscriber (nominally the owner of the Home Network)" and examiner referred it as in individual per Ellis (Col 7 line 65 – Col 8 line 14) Per (Col 7 line 65 – Col 8 line 14) Ellis states "For this new network and its structural relationships, a network provider is defined in the broadest possible way as any entity (corporation or other business, government, not-for-profit, cooperative, consortium, committee, association, community, or other organization or individual) that provides personal computer users (very broadly defined below) with initial and continuing connection hardware and/or software and/or firmware and/or other components and/or services to any network, such as the Internet and Internet II or WWW or their present or future equivalents, coexistors or successors, like the MetaInternet, including any of the current types of Internet access providers (ISP's) including telecommunication companies, television cable or broadcast companies, electrical power companies, satellite communications companies, or their present or future equivalents, coexistors or successors."

C) Applicant argument #3: "The Examiner's supervisor erroneously denies the applicant the right act as his own lexicographer even if it is to use the ordinary meaning of the term "home"

Response to C) The examiner and the supervisor has read and interpreted "home" in light of the specifications that "home" can be very broadly defined and can be interpreted in many different contexts. A thorough review of the disclosure did not disclose any specific definition of "home".

D) Applicant argues "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. The Examiner's supervisor introduced a new argument in his Examiner's Interview Summary for the telephone interview held August 25, 2005. It was discussed that Ellis's definition of network provider included an individual and thus the definition of subscribe is the same as disclosure"

Response to D) It was discussed in the first and second office actions, because that paragraph was quoted in Ellis (US 6,167,428) as listed below in the ground of rejections under Col 7 line 66 – Col 8 line 14) was cited in both office actions under claim 1 that cited the portion that disclosed that the individual as the subscriber. This passage was presented by the examiner in the first, non-final office and final action and can be referenced under the ground of rejections under section 10.

(12) Conclusion

In conclusion, thus, the prior art, as applied, fully suggest and teaches the limitations disclosed and claimed by the Appellant and Appellant's arguments cannot be held persuasive regarding patentability with regard to these limitations. For at least the above reasons, it is believed that the rejections should be sustained.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Chirag Patel, Patent Examiner


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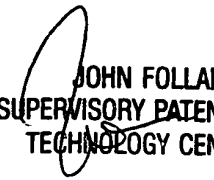
1/20/2006

Conferees:

Rupal Dharja

John Follansbee


RUPAL DHARIA
SUPERVISORY PATENT EXAMINER


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100