Duplicate
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Chirag R. Patel Art Unit: 2141 Fax: 571-273-7963
In re Application of Jed Margolin
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Serial No. 09/947,801 Confirmation No. 7358
Filed: 09/06/2001
For: DISTRIBUTED COMPUTING SYSTEM

INFORMAL RESPONSE

Dear Sir:

In response to the Office Action mailed June 15, 2005, please consider the following remarks.

First, Applicant wishes to express his disappointment at the Examiner's refusal to conduct or schedule a telephone interview.

Rejection 1:

The Examiner restated that Ellis uses a Home Network Server and failed to respond to Applicant's argument that such an interpretation is not only incorrect but is impermissible because it would invalidate the Ellis patent.

The Examiner also makes the statement (page 2, Section 1 last line), "***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.

Aside from deciding exactly what constitutes a service (is it a digital packet?), what does is mean to subscribe to something?

A good, concise definition of Subscribe can be found at the Compact Oxford English Dictionary at http://www.askoxford.com/concise_oed/subscribe?view=uk

subscribe

• verb 1 (often subscribe to) arrange to receive something, especially a periodical regularly by paying in advance. 2 (subscribe to) contribute (a sum of money) to a project or cause. 3 apply to participate in. 4 (subscribe to) express agreement with (an idea or proposal).

— DERIVATIVES subscriber noun.
— ORIGIN Latin subscribere 'write below'.

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 subscrbere : sub-, sub- + scrbere, to write; see skrbh- in Indo-European roots.] sub· scriber n.

A recent extension of the term ***subscribe*** is where a person subscribes to an Internet mailing list or to a USENET newsgroup for which there is no charge.

From: http://foldoc.doc.ic.ac.uk/foldoc/foldoc.cgi?query=subscribe&action=Search

subscribe
<messaging> To request to receive messages posted to a mailing list or newsgroup. In contrast to the mundane use of the word this is often free of charge.
(1997-03-27)

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.

Devices do not subscribe to services (whatever they are) and are therefore, not subscribers.

The current Applicant is entitled to be his own lexicographer. The Examiner is not.

Rejection 2:

The Examiner continues to mischaracterize Ellis's ***NS2*** as a Home Network Server even to the point of calling it ***Home Network Server (2)***, a term which Ellis himself never uses.

In the Examiner's rejection he misquotes Applicant's claims as using the phrase "***something is value***" and not "***something of value***."

> The Home Network Server (2) provides the services to the client, which is interpreted as something of value. Per the claim, "***something is value***" in claims 1 and 3 is interpreted by the examiner as very broad and a variety of subject matter can read on this limitation. Applicant needs to be clear as claiming what the invention is.

The phrase ***"something is value"*** does not appear in Applicant's claims and not even in the Specification. This raises the possibility that the Examiner has not read the application closely enough to give it a fair examination.

In addition, the rejection "Applicant needs to be clear as claiming what the invention is" is, itself, not clear. Presumably, the Examiner is saying "Applicant needs to be clear in claiming what the invention is."

This is a new rejection and is not based on any new references. The Examiner should have raised this rejection in the First Office Action to give Applicant the opportunity to respond to it. In making this rejection final the Examiner has issued a hasty and ill-considered final rejection as described in MPEP 706.07 Final Rejection [R-2]. Indeed, MPEP 706.07(a) specifically says:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Applicant did not amend the claims or submit an additional IDS. The Examiner erred in making the second office action final.

Rejection 3:

If the Examiner is suggesting the claims would be allowed if modified to explicitly state the PC User and ISP are separate entities, Applicant is amenable to amending the phrase in Claim 1, Claim 3, and Claim 5 "***something of value***" to "***something of value from a contracting company***."

Rejection 4:

In rejecting Applicant's argument that:

> the PCs shown in Ellis Figure 9 are not home network client devices. They are networked PCs participating in parallel processing. Applicant's invention does not use the resources of the Home Network clients for its distributed computing agreement. It uses the resources of Home Network Server 101.

the Examined stated:

> ***The networked PC uses the services provided by the network, wherein network includes the Home Network Server (Col 8 lines 46-47, Figure 2 item 2)***

Col 8 lines 46-47 in Ellis are apparently contained in the paragraph Col 8 lines 45-50 which states:

> The principal defining characteristic of the network provided being communication connections (including hardware and/or software and/or firmware and/or other component) of any form, including electromagnetic (such as light and radio or microwaves) and electrochemical (and not excluding biochemical or biological),

> between PC users, optimally connecting (either directly or indirectly) the largest number of users possible, like the Internet (and Internet II) and WWW and equivalents and successors, like the MetaInternet. Multiple levels of such networks will likely coexist with different technical capabilities, like Internet and Internet II, but would have interconnection and therefore would communicate freely between levels, for such standard network functions as electronic mail.

Applicant requests the Examiner explain the relevance of this paragraph to the rejection. There is no mention of a Network Server in the paragraph, much less a Home Network Server.

In addition, Ellis Figure 2 item 2 clearly shows that ***NS(2)*** is part of the Network Provider. Otherwise, Meter ***M(7)*** would serve no useful purpose. According to Ellis Col 10 lines 36-40:

> In another embodiment, as shown in FIG. 2, there also would be a meter device 7 (comprised of hardware and/or software and/or firmware and/or other component) that measures the amount of network resources 6 that are being used by each individual PC 1 user and their associated cost.

Meter ***M(7)*** measures the amount of a Network Server ***NS(2)*** 's resources used by Ellis's PCs. Ellis clearly means to have these resources provided by the Network and not his own Server (if he had one).

On page 5 of the Second Office Action, the Examiner states:

> ***As per parts 1-5, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.***

37 CFR 1.111(b) states:

> (b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a *bona*

fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

1) Applicant replied to the Office Action.
2) Applicant's reply was reduced to writing and distinctly and specifically pointed out the Examiner's errors and replied to every ground of objection and rejection in the Office Action. (The Examiner's biggest error was in asserting that Ellis showed a Home Network Server.)
3) Applicant's reply pointed out the specific distinctions that rendered the claims patentable over Ellis. (Applicant uses a Home Network Server, Ellis does not.)
4) Applicant made a *bona fide* attempt to advance the application.

Summary of differences

Ellis teaches a distributed computing system where the Owner of a PC receives something of value from a Network Provider in return for providing the Network Provider access to the unused computing capacity of the Owner's PC. To that end, the task performed by the distributed computer must run under the Operating System used by the Owner's PC. (In Ellis's response to the First Office Action for his application 09/320,660 he made clear the importance of being able to run applications on his ***PC 1*** which were not available to the operating systems typically used by servers.)

Applicant teaches a distributed computing system where the Owner of a Home Network Server receives something of value from a contracting company in return for providing the Contracting Company access to the otherwise unused computing and storage capacity of the Owner's Home Network Server. The Owner's Home Network Server is used in a home to network various clients such as PCs, sensors, actuators, and other devices. To that end, the Operating System used by the Owner's Home Network Servers can use a robust operating system in order to allow the Owner to preserve his investment in the existing software currently used in most PCs whose Operating Sytems are not robust, not reliable, and not secure.

Using Claim 1 as an example:

Applicant	Ellis
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;	No Home Network Server is Shown. The Network Servers that are shown belong to the Internet Service Provider.
whereby the subscriber receives something of value in return for access to the resources of said home network server that would otherwise be unused.	The subscriber receives something of value in return for access to the computing resources of User's PC. The network clients (including PCs) of present Applicant's invention are not used for distributed computing by the Internet Service Provider.

Examiner's additional Blanket Rejection:

In replying to Applicant's observation that:

> As per part 8, applicant argues: Ellis's preference for a network architecture that physically clusters PCs together teaches away from Applicant's invention which teaches the value of having Home Network Servers located in widely different geographic areas in order to distribute the load on electric utility companies.

Examiner responded:

> *In response to applicant's argument that the references fall to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., distributing load on electric utility companies, different geographic regions) are not recited in the rejected claim(s). 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).*

Applicant does not believe Examiner's suggestion that Applicant's claims should include a limitation specifying the exact method by which Applicant's invention distributes the load on electric utility companies is a bona fide attempt to advance the application.

Respectfully submitted,

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pro se inventor
July 25, 2005

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I hereby certify that this correspondence is being faxed to the fax number (571-273-7963) provided by the Examiner in a telephone conversation on 7/25/05 on the date below.

Date: July 25, 2005

Inventor's Signature: Jed Margolin