

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

2
3 **Telephone Interview Summary**

4
5 Application Serial No. 09/947,801

6 Filed: 09/06/2001

7 For: **DISTRIBUTED COMPUTING SYSTEM**

8 Examiner: Chirag R. Patel Art Unit: 2141

9 In re Application of Jed Margolin
10 3570 Pleasant Echo Dr.
11 San Jose, CA 95148-1916
12 Phone: 408-238-4564

13
14 Telephone Interview Date: 8/5/2005

15
16 Participants: Examiner Chirag R. Patel, pro se Applicant Jed Margolin

17
18
19 Mail Stop AF
20 Commissioner for Patents
21 P.O. Box 1450
22 Alexandria, VA 22313-1450

23
24 Sir,

25
26 The following Interview Summary is submitted as required by Rule 713.04 **Substance of**
27 **Interview Must Be Made of Record [R-2] - 700 Examination of Applications** paragraph (b)

28
29
30 **Background**

31
32 Application 09/947,801 **Distributed Computing System** filed September 6, 2001.

33
34 The application was docketed to five Examiners. The last one (Examiner Chirag R. Patel) issued
35 the First Office Action on January 26, 2005.

36
37 The Examiner rejected all the claims solely under 35 U.S.C. §102(e) as being anticipated by
38 Ellis (US 6,167,428). It was clear that the Examiner did not understand my invention and had
39 misinterpreted Ellis.

40
41 I filed a response on April 21, 2005 where I respectfully pointed out the Examiner's errors.

42
43 The Second Office Action was issued June 15, 2005.

44
45 The Examiner mistakenly insisted (again) that Ellis's **Network Server 2** is a **Home Network**
46 **Server** as defined in my application and rejected all the claims again.

1 He made the rejection Final.

2

3 The Examiner stated, " Applicant's arguments filed for claims 1-5 have been fully considered but
4 they are not persuasive."

5

6 While he may have considered them, he did not respond to them in his rejection.

7

8 Among other things, he came up with a new rejection that was not based on my having
9 amended the claims (I didn't amend the claims) and was not based on new prior art. The Patent
10 Rules say the Examiner is supposed to give the Applicant the opportunity to respond to new
11 rejections under these circumstances.

12

13 He also came up with a novel definition of the term **subscribing** that is not supported by the
14 way I used it in my application. I clearly used the common meaning of the term.

15

16 I called the Examiner on Monday, July 25, 2005. He refused to conduct or schedule a telephone
17 interview. He refused to withdraw making the Second Office Action final. He refused to discuss
18 the case at all. He said he did things only in writing. He said to file an After Final Response. I
19 pointed out that an After Final Responses costs \$395 and I would not do that since he had
20 improperly made the Second Office Action final. He said I could send him a fax and he gave me
21 what he said was his personal fax number (571-273-7963). He said that sending him the fax
22 would not trigger the \$395 fee for filing a submission after final rejection.

23

24 I said I would send him the fax he had requested and call him the next week to discuss it.

25

26 The next day (Tuesday, July 26, 2005) I called him to make sure he had gotten the fax. He said
27 he hadn't. It turned out he had given me the wrong fax number. His correct fax number is 571-
28 273-7966. (The last four digits are the same as his voice number.) He also, for the first time,
29 characterized the fax as "talking points."

30

31 I called him on Wednesday, August 3, 2005 to talk about it.

32

33 He refused to talk about it again. He said to file an After-Final Response. When I protested his
34 refusal to talk about it, especially after he had characterized the fax that he had asked for as
35 *Talking Points*, he terminated the conversation.

36

37 An After-Final Response costs \$395, which is the same as filing an RCE (Request for Continued
38 Examination). Given his blatant unfairness and his refusal to follow the Rules, this is
39 unacceptable especially in view of Rule 408 which strongly encourages Examiners hold
40 telephone interviews with Attorneys. I assume this applies to pro se Applicants as well. If I am
41 wrong, please correct me. I am sure other Independent Inventors will want to know.

42

43 Afterwards (also Wednesday, August 3) I called his supervisor, SPE Rupal Dharia (571-272-
44 3880), got his voicemail, and left a message. It has been my experience that SPE Dharia does
45 not answer his phone and does not return messages.

46

47 I called SPE Dharia's supervisor, Group Supervisor Jack B. Harvey (571-272-3896), with the
48 same result. I called Group Director Peter Wong's office (571-272-2100), and spoke to one of
49 his administrative assistants.

1 I explained that, among other things, Examiner Patel had issued a new rejection in the Second
2 Office Action that was not based on my having amended the claims and was not based on new
3 prior art. By making the Office Action Final he had unfairly deprived me of the opportunity to
4 respond to the new rejection. I also explained that he had come up with his own definition of a
5 term that was not supported by my application.

6
7 I told her that my attempts to contact his supervisor (SPE Dharia) had been unsuccessful
8 because SPE Dharia does not answer his phone and does not return phone calls.

9
10 She promised to have SPE Dharia return my phone call. He never called me.

11
12 The next day I called the usual suspects again. Again, neither SPE Dharia nor Group Supervisor
13 Harvey were answering their phones or returning their calls.

14
15 When I called Group Director's office I spoke to another administrative assistant (Janine), who
16 also promised to have SPE Dharia call me.

17
18 She did better than that. She had Examiner Patel call me.

19
20
21 The Telephone Interview with Examiner Chirag R. Patel Friday 8/5/2005

22
23 I started by discussing the points I had raised in my Informal Response to the Second Office
24 Action. Since Examiner Patel has refused to enter this material into the File Wrapper I am
25 including it in this summary for the following reasons:

- 26 1. This material is relevant to the advancement of the case.
- 27 2. It was discussed and referenced extensively in our telephone discussion, especially
28 regarding the Examiner's novel definition of the term **subscribing** and his having issued
29 a rejection not based on my having amended the claims or on new prior art and
30 improperly making the Second Office Action final.

31
32 After getting off to a somewhat rocky start, we had what seemed to be a productive
33 conversation.

34
35 I explained in simpler terms what my invention was and how it was different from Ellis. He asked
36 questions that suggested he finally understood my invention and in particular, that my Home
37 Network Server is distinctly different from Ellis's Network Server NS2.

38
39 We discussed how my invention is different from Ellis.

40
41 1. My Home Network Server is a server in a subscriber's home. The Home Network Server has
42 clients in the home such as sensors used in running the home (fire and burglar alarm functions,
43 furnace control, etc.) and PCs. The Home Network Server also acts as a Proxy Server for
44 access to the Internet.

45
46 Ellis's Server (NS 2) is part of the ISP's equipment. If you have Dial-up service you are
47 connected to the ISP's Dial-up server, so NS2 would be a Dial-up Server. If you have DSL, then
48 your DSL line would be the ISP's DSL Server, and NS2 would be a DSL Server. For those with

1 High Speed Internet over Cable, the subscriber's Cable Modem would be talking to a server
2 operated by the Cable TV system which would be the ISP.

3
4 2. In my invention, it is the otherwise unused resources (CPU cycles and storage) of the Home
5 Network Server that are traded for something of value in an arrangement with a contracting
6 company which may or may not also be the ISP. The subscriber is nominally the home owner
7 and owns the Home Network Server.

8
9 In Ellis, the distributed computing is done in the User's PC, not in the ISP's Server (NS2).

10
11
12 3. In my invention, the Home Network server is controlling the Home so it is essential that it use
13 a robust and reliable Operating System, which rules out the operating systems currently used by
14 most PCs. By using only the Home Network Server for distributing computing, the User's PCs
15 can continue to use the current operating systems thereby preserving his investment in the
16 software that requires those operating systems.

17
18 Ellis stresses the need for the system performing distributed computing to use the standard
19 operating systems used by most PCs.

20
21
22 4. My Home Network Server acts as a typical server as opposed to the method used in Peer-to-
23 Peer Networking where the PCs may, at times, swap the roles of Server and Client.

24
25
26 5. The otherwise unused computing resources of my Home Network Server that can be used
27 for distributed computing include CPU cycles and storage. Using the Home Network Server's
28 storage capabilities makes it possible to create Web sites whose pages are redundantly stored
29 on several Home Network Servers for increased reliability and which makes it unnecessary to
30 use the large Server Farms currently in use whose power demands pose a problem for electric
31 utilities.

32
33 As long as the Home Network Servers are uniformly distributed geographically the demand on
34 electric utilities will also be uniformly distributed.

35
36 Whether the Home Network Servers are uniformly distributed or not comes under the category
37 of the Statistics of Large Numbers.

38
39 Statistically, it is possible that all the Oxygen molecules in a room will end up in one corner of
40 the room and the room's occupants will suffocate. Although the chance of this happening is very
41 small, it is not zero. However, as far as I know, this has never happened because the number of
42 Oxygen molecules in a room is generally extremely large.

43
44 Similarly, for a large number of Home Network Servers, it is likely that they will be uniformly
45 distributed (unless Marketing screws up).

46
47 Ellis discusses only CPU cycles to be used for distributed computing and expresses a
48 preference for clusters of PCs located near each other.

1 6. Ellis's Specification is ridiculously broad. For example, Ellis wants to own Distributed
2 Computing using organic computers. The Human brain is frequently considered an organic
3 computer.
4

5 Consider the case where people form a team to work together on a task. Each person performs
6 a part of that task. They are paid for performing that task. The team must determine the identity
7 and reliability of the customer whose task they are performing. (Is it a lawful task? Will they get
8 paid?) If they have more than one customer they must make sure not to breach the
9 confidentiality of each customer. In other words, the team members must use a mental Firewall
10 {also known as good business judgment }.
11

12 Therefore, anyone forming such as team is infringing on the Ellis patent. {That includes the
13 Patent Office whose many departments perform different tasks in order to process each Patent
14 Application.}
15

16 My invention is limited to Home Network Servers. It does not apply to cell phones, TVs, video
17 games, or your own brain.
18
19

20 7. I proposed to amend the phrase in Claim 1, Claim 3, and Claim 5 "**something of value**" to
21 "**something of value from a contracting company**" if it would result in the application being
22 allowed. He seemed receptive to my offer to amend the claims but said he did not have the
23 authority to negotiate the deposition of the application.
24
25

26 8. I asked him if he had ever had a pro se Applicant before, and he said, "no." He also said that
27 he had never talked to an Applicant's attorney.
28
29

30 9. The Examiner thanked me for clarifying my invention and distinguishing it from Ellis, and
31 agreed to talk to his supervisor who has the authority to negotiate the disposition of the
32 application. The Examiner stated he would do an additional search to see if there is other Prior
33 Art relevant to my invention.
34

35 10. A conference telephone interview with SPE Dharia was subsequently arranged for
36 Tuesday, August 9, 2005 for 2:00 pm (Eastern).
37
38

39 As noted, my Informal Response of July 25, 2005, is to be incorporated in this Summary for the
40 reasons stated and follows the customary boiler plate.
41
42

43 Respectfully submitted,

44 Jed Margolin
45 pro se inventor
46 August 12, 2005
47
48

1
2 Jed Margolin
3 3570 Pleasant Echo Dr.
4 San Jose, CA 95148-1916
5 (408) 238-4564
6

7
8 I hereby certify that this correspondence is being faxed to the Central Fax Number
9 571-273-8300.

10
11
12 Date: August 12, 2005
13

14 Inventor's Signature: *Jed Margolin*
15
16
17

1

Duplicate
Fax: 571-273-7966

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

3570 Pleasant Echo Dr.

San Jose, CA 95148-1916

Phone: 408-238-4564

Serial No. 09/947,801 Confirmation No. 7358

Filed: 09/06/2001

For: DISTRIBUTED COMPUTING SYSTEM

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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 *subscribere*: *sub-*, *sub-* + *scribere*, 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 Systems are not robust, not reliable, and not secure.

Using Claim 1 as an example:

<u>Applicant</u>	<u>Ellis</u>
<p>1. A distributed computing system comprising:</p> <p>(a) a home network server in a subscriber's home;</p> <p>(b) one or more home network client devices;</p> <p>(c) an Internet connection;</p> <p>whereby the subscriber receives something of value in return for access to the resources of said home network server that would otherwise be unused.</p>	<p>No Home Network Server is Shown. The Network Servers that are shown belong to the Internet Service Provider.</p> <p>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.</p>

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 fail 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,

Jed Margolin
pro se inventor
July 25, 2005

Jed Margolin
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(408) 238-4564

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