

**BRIEF FOR APPELLEE**  
**DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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2007-1056  
(Serial No. 09/947,801)

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**IN RE JED MARGOLIN**

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Appeal from the United States Patent and Trademark Office,  
Board of Patent Appeals and Interferences.

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## Representative Claim

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.

A16 (emphasis added).

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RULE 47.5 STATEMENT OF RELATED CASES

(a) No other appeal from the Board of Patent Appeals and Interferences in connection with the patent application on appeal has previously been before this or any other court.

(b) There is no known related case pending in this or any other court.

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DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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2007-1056  
(Serial No. 09/947,801)

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IN RE JED MARGOLIN

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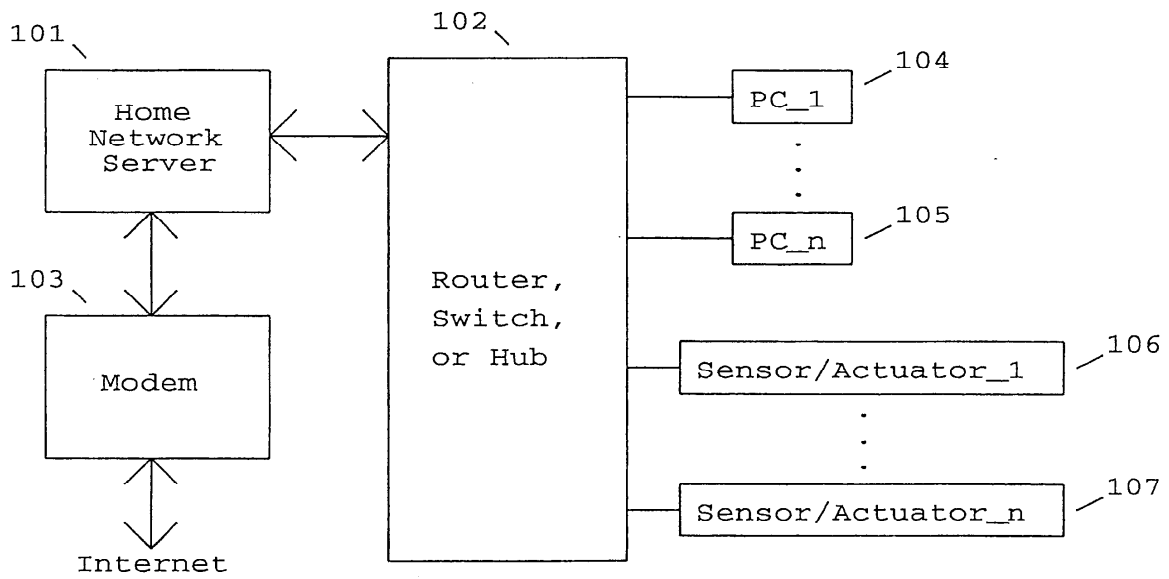
Appeal from the United States Patent and Trademark Office,  
Board of Patent Appeals and Interferences.

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**STATEMENT OF THE ISSUE**

Margolin, acting *pro se*, broadly claims (i) a distributed computing system comprising: (ii) a home server connected to (iii) another device and (iv) the Internet whereby (v) the home server's unused processing power is exchanged for something of value. However, the prior art patent (which issued in 2000), Ellis, discloses these same features, i.e., distributed computing, home-server, another device, Internet, and processing power exchanged. Thus, the sole question is whether the Board's finding that Ellis anticipates representative claim 1 is supported by substantial evidence.





Home Network System

Fig. 1

## STATEMENT OF THE CASE

In 2001, Margolin filed his subject application, serial number 09/947,801. The examiner rejected application claims 1-5 under 35 U.S.C. § 102 as anticipated by Ellis. A1-2.<sup>1</sup>

The Board affirmed the examiner's rejection. A1-7. Margolin then appealed the Board's finding of anticipation to this Court.

## STATEMENT OF FACTS

### A. Claimed Invention

Margolin's specification is very general. For example, his section entitled "Detailed Description" (*i.e.*, his written description) is only about two pages. A14-15. His terse description discloses a server using the Internet in combination with a modem and other devices. *Id.*; A19 (Figure 1).

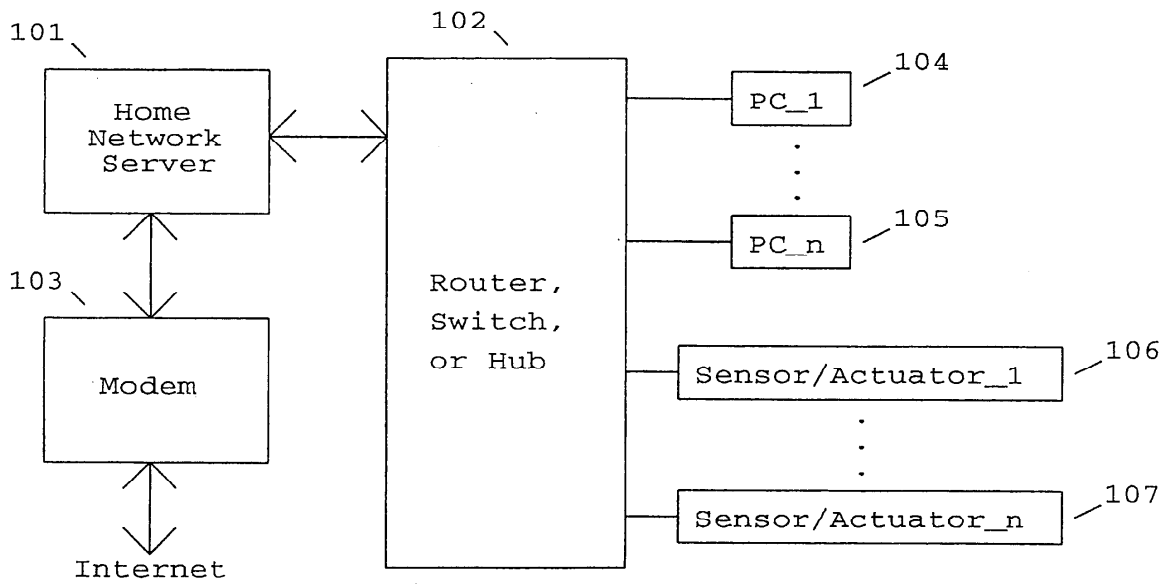
Referring to Figure 1's numbers (opposite), representative claim 1 reads:

A distributed computing system comprising:

- (a) a home network server [101] in a subscriber's home;
- (b) one or more home network client devices [104-07];

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<sup>1</sup> References to the Appendix are made by "A \_\_\_" and to Margolin's brief by "Br. at \_\_\_."



Home Network System

Fig. 1

(c) an Internet connection [103];

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

A16.

The specification discloses that server 101 is connected to the Internet through modem 103. A14, line 13. The specification also states that:

Home Network Server 101 is of conventional design and includes a CPU, memory, mass storage (typically a hard disk drive for operations and a CD-ROM or DVD-ROM Drive for software installation), video display capabilities, and a keyboard.

A14, lines 3-6. Thus, the server can be a PC.

As commonly employed, the Internet connection 103 can be “DSL, a cable modem, or equivalent . . . [or] a dial-up connection.” A14, lines 14-15. The other side of the server connects to router 102 (or switch or hub) which connects to other computer devices 104-07, including PCs, sensors and actuators. A14, lines 16-20.

As to Claim 1’s “whereby” clause, the specification states that “distributing computing” occurs, which means the server’s processing power is exchanged via

the Internet for something of value such as “free Internet service” (or some other benefit). A15, lines 9-17.

Given computer systems using PC’s were well known in 2001, Margolin’s alleged new contribution was exchanging processing power for something of value. However, as discussed below, Ellis addresses this precise claimed feature, as well as the remaining broad limitations of claim 1.

**B. § 102 Reference - Ellis**

Ellis is an extensive disclosure in the field of “Personal Computer Microprocessor Firewalls For Internet Distributed Processing.” A33, col. 1; A41, col. 1, lines 1-3 (emphasis added). This detailed reference relates to multiple computers in a computer network, such as the Internet, and how PC owners “provide microprocessor processing power” to Internet service providers (“ISPs”). A33, col. 2, Abstract lines 6-16. Ellis focuses on the idle-time PCs regularly experience and how, during such time, their processors can productively be used to support the Internet, World Wide Web and the MetaInternet. A42, col. 4, lines 38-48. Ellis is specifically directed to a personal computer for “internet distributed processing.” A41, col. 1, lines 1-3. As a major unused resource in the

field, Ellis noticed “the hugely excessive idleness problem of personal computers.”  
A42, col. 4, lines 39-40.

Ellis discloses that the PC user will provide computing/processing power to the ISP network for “a similar value” as the typical fee for “access to a network like the Internet.” A44, col. 7, lines 40-46. Even more specifically, Ellis teaches that the network of PCs will provide “shared processing” to the ISPs. A44, col. 7, lines 61-65. Specifically:

for most standard PC users . . . connection to the Internet . . . would be at no cost to PC users, since in exchange for such Internet access the PC users would generally make their PC, when idle, available to the network for shared processing.

A46, col. 11, lines 55-61.

Ellis further states:

The financial basis of the shared use between owners/lesers and providers would be whatever terms to which the parties agree . . . including payment from either party to the other based on periodic measurement of net use or provision of processing power.

A45, col. 10, lines 1-6 (emphasis added). Any agreement between the PC user and the ISP would include factors such as “the level of shared processing” at no additional cost to the PC user. A46, col. 11, lines 61-67.

Ellis broadly defines a PC as any digital, analog or neural computer, and includes a long list of such types of PCs falling within his disclosure, for example, workstations, network computers, handheld personal digital assistants etc. A44, col. 8, line 59 - A45, col. 9, line 16. Significantly, Ellis defines a PC user “in the broadest possible way as any individual or other entity using a personal computer [PC].” A44, col. 8, lines 59-61. Thus, according to Ellis, a PC is any type of computer (including workstations and networks), and its user includes any individual who may use such a PC.

### **C. Examiner And Board Decisions**

The examiner found that Ellis discloses a home network server in the form of a PC. A156; A161. Also, the examiner determined that Ellis discloses an additional client device connected to such a server. A156. The examiner additionally made a finding that Ellis’ servers/PCs are connected to the Internet. Id. Finally, the examiner found that Ellis similarly discloses that the server’s processing power, when otherwise idle, is shared with the ISP and the server-user would receive something of value in return, such as free Internet service. Id.

The Board agreed with the examiner and affirmed the rejection. A1-7.

Specifically, the Board found that Ellis discloses the *sharing* of PC processing power, when otherwise idle, with an ISP in return for the PC-subscriber obtaining Internet service at no cost. A3 (citing Ellis col. 11, line 55 - col. 12, line 4). In particular, the Board stated:

There can be no substantive dispute that Ellis discloses that a PC user (i.e., a subscriber to a service that provides Internet access) may receive something of value in return for access to the resources of the PC that would otherwise be unused.

A3.

In response to Margolin's argument, the Board found that the claimed "home network server" encompasses Ellis' PCs because when those PCs are lending computer processing power to an ISP, as taught multiple times throughout the reference, they are serving the ISP in a meaningful capacity and thereby functioning as "servers" within the broad scope of that particular claim term.

A3-6. The Board determined that no limiting definition of server appeared in Margolin's specification to preclude the reading of Margolin's claimed server on Ellis' PCs. A4. In fact, the Board noted that although Margolin chose to define certain terms at the beginning of his specification, he did not include "server" in



his definition-section. Id. Significantly, Margolin's specification states that his server "includes a CPU, memory, mass storage (typically a hard disk drive for operations and a CD-ROM or DVD-ROM Drive for software installation), video display capabilities, and a keyboard." A14, lines 3-6. Thus, the Board held the claim term must be given its ordinary meaning. A5.

Accordingly, the Board affirmed the examiner's anticipation finding. A7.

### **SUMMARY OF ARGUMENT**

Claim 1 broadly claims a computer system having a home network server, client device, Internet-connection, and receiving something of value in return for lending the ISP idle resources. Ellis discloses all of the foregoing (and much more) and therefore anticipates the sole representative claim.

Specifically, Ellis similarly discloses PCs with other client devices (e.g., within a workstation or network) connected to the Internet. Most importantly, Ellis discloses the ISP using the PC's resources when otherwise idle in return for something of value such as reduced, or no, cost for Internet-service.

The claim term "home network server" includes Ellis' PCs. Margolin's attempt to narrow the term by way of argument is unpersuasive and contradicted by the record.

## ARGUMENT

### A. Standard of Review

Margolin bears the burden of demonstrating reversible error by the Board with respect to either a legal conclusion (reviewed de novo) or a factual finding (reviewed for substantial evidence). In re Gartside, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000). Claim construction is a question of law reviewed by this Court de novo. Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1454 (Fed.Cir.1998) (in banc). However, the Board must give claims their “broadest reasonable” interpretation. In re Crish, 393 F.3d 1253, 1256 (Fed. Cir. 2004); In re Morris, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997).

Whether a claim is anticipated is a question of fact. In re Baxter Travenol Labs., 952 F.2d 388, 390 (Fed. Cir. 1991). Similarly, what the prior art discloses is also a factual inquiry. Para-Ordnance Mfg., Inc. v. SGS Imp. Int’l, Inc., 73 F.3d 1085, 1088 (Fed. Cir. 1995). This Court upholds Board factual findings supported by substantial evidence. 5 U.S.C. § 706(2)(E); Gartside, 203 F.3d at 1315.

“Substantial evidence is something less than the weight of the evidence but more than a mere scintilla of evidence,” In re Kotzab, 217 F.3d 1365, 1369 (Fed. Cir. 2000), and “means such relevant evidence as a reasonable mind might accept as

adequate to support a conclusion,” Consol. Edison Co. v. Nat’l Labor Relations Bd., 305 U.S. 197, 229 (1938). “[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” Consolo v. Federal Maritime Comm’n, 383 U.S. 607, 620 (1966). And “if the evidence in record will support several reasonable but contradictory conclusions,” this Court “will not find the Board’s decision unsupported by substantial evidence simply because the Board chose one conclusion over another plausible alternative.” In re Jolley, 308 F.3d 1317, 1320 (Fed. Cir. 2002).

**B. Claim 1 Is Anticipated By Ellis**

It is well-established that a claim is anticipated, and therefore unpatentable under 35 U.S.C. § 102, if all of its limitations are disclosed in a single prior art reference. See, e.g., Crish, 393 F.3d at 1256; In re Schreiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

Claim 1<sup>2</sup> covers (1) a distributed computer system having (2) a home server connected to (3) one or more client device and (4) the Internet, whereby (5) the

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<sup>2</sup> Since Margolin groups claims 1-5 together (Br. at 5-36), claim 1 is representative. See, e.g., In re McDaniel, 293 F.3d 1379, 1382-83 (Fed. Cir. 2002) (requiring an appellant to separately argue claims for multiple claims to be addressed); In re Dance, 160 F.3d 1339, 1340 n.2 (Fed. Cir. 1998) (same).

server's unused processing power is exchanged for something of value, such as free Internet service. Ellis discloses all of these features.

**1. Ellis Discloses Distributed Processing Which Would Otherwise Go Unused When Idle**

Claim 1's preamble recites a "distributing computing system." A16, line 2. Margolin's specification states "distributing computing" involves "the use of the otherwise unused capacity" of the home network server. A15, lines 13-14.

Ellis similarly discloses PCs that provide "shared processing" which would otherwise be "idle" or unused. A44, col. 7, lines 61-65; A46, col. 11, lines 55-61. See also A33, col. 2, Abstract lines 6-16; A42, col. 4, lines 38-48. Ellis further describes his system as "distributed [computer] processing." A33, col. 1, lines 1-3; A41, col. 1, lines 1-3. Thus, Ellis meets the claim 1 preamble.

Moreover, as to the claim 1 preamble, Margolin made no argument in his principal brief, and thus does not raise on appeal any alleged deficiency with respect to Ellis' disclosure. See, e.g., Smithkline Beecham Corp. v. Apotex Corp., 439 F.3d 1312, 1319 (Fed. Cir. 2006) ("Our law is well established that arguments not raised in the opening brief are waived"); Becton Dickinson & Co. v. C.R. Bard, Inc., 922 F.2d 792, 800 (Fed. Cir. 1990).

## 2. Ellis Discloses A Home-PC

The bulk of Margolin's arguments focus on his claimed "home network server in a subscriber's home." A16, line 3. His specification's primary example reads:

Home Network Server 101 . . . includes a CPU, memory, mass storage (typically a hard disk drive for operations and a CD-ROM or DVD-ROM Drive for software installation), video display capabilities, and a keyboard.

A14, lines 3-6 (emphasis added).

Accordingly, a CPU-memory-video-keyboard combination is an embodiment which falls within the above claimed-phrase. Margolin has not otherwise limited the phrase in his specification. Cf. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996) (a lexicographer must "clearly" define a term); Teleflex, Inc. v. Ficosa N. Am. Corp., 299 F.3d 1313, 1324 (Fed. Cir. 2002) (disavowing claim scope must be "clear").

It was reasonable for the Board to interpret Margolin's home network server as met by Ellis' PC, A4-6, because PCs generally include a CPU, memory, video display and keyboard, and thus fit Margolin's exemplary server. Significantly, Ellis defines a PC "as any computer digital or analog or neural,

particularly including microprocessor-based personal computers having one or more microprocessors.” A44, col. 8, lines 61-64.

Margolin spends much effort attempting to distinguish Ellis based on where those PCs are, arguing that claim 1 recites a “home” location. Br. at 11-13.

However, Ellis defines a PC user “in the broadest possible way as any individual or other entity using a personal computer.” A44, col. 8, lines 59-61 (emphasis added). Ellis also describes a PC “as any computer, [whether] digital or analog or neural” with a long list of examples following, “such as workstations, network computers . . . entertainment devices . . . other household electronic devices.”

A44, col. 8, line 61 - A45, col. 9, line 16 (emphasis added). Notwithstanding these teachings, Margolin argues that Ellis’ PC is not used in the “home,” citing as support the Fourth Amendment to the Constitution. Br. at 12. However, the breadth of PC-user and PC, as disclosed by Ellis (A44, col. 8, line 59 - A45, col. 9, line 16), clearly includes one in a home. Accord In re Alappat, 33 F.3d 1526, 1542 (Fed. Cir. 1994) (in banc) (the expansive modifying word any leaves no restriction beyond those specifically recited).

Beyond his home-location arguments, Margolin also asserts that Ellis does not meet the term “network server.” Br. at 16-23. To the contrary, Margolin’s primary specification-example of a network server is the very structure in Ellis (a PC) upon which the Board reads the network server limitation. Moreover, Ellis repeatedly discloses with lengthy details how his PCs serve the ISPs. A44, col. 7, lines 40-46; A44, col. 7, lines 61-65; A45, col. 10, lines 1-6; A46, col. 11, lines 55-61; A46, col. 11, lines 61-67. The Board appropriately explained why Ellis’ PCs fit within the broad scope of Margolin’s “home network server” limitation:

Ellis teaches that the PCs that provide processing power may reside on home network systems (e.g., col. 17, ll. 22-40) [A49]. Given the examiner’s broad but reasonable interpretation of instant claim 1, Ellis provides support for the examiner’s finding of anticipation.

Moreover, Ellis at column 8, line 59 through column 9, line 20 [A44-45] describes the types of computers that may be considered PCs in the context of the disclosure. The personal computers are described as including “network computers,” which would seem to include both of conventional server and client computers on the home network systems described elsewhere in Ellis. In this regard, we note that appellant’s disclosed Home Network Server 101 is “of conventional design.” (Spec. ¶ 23.) [A14].

A6.

Given the breadth of the claim term, with no limiting definition or disavowal of scope in the specification, the Board's decision to give the term its ordinary and broad meaning is reasonable. See In re Yamamoto, 740 F.2d 1569, 1571-72 (Fed. Cir. 1984) (noting the reasoning for refusing to read in limitations stems from the applicant's freedom to amend his claims during prosecution so their meaning will be clear); In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004) ("Giving claims their broadest reasonable construction 'serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified'" (citation omitted). Put differently, it is clear that if Margolin's claim issued in a patent, Ellis' PC-serving-the-ISP features would unquestionably infringe the broad term "home network server" and thus Ellis anticipates. See, e.g., Polaroid Corp. v. Eastman Kodak Co., 789 F.2d 1556, 1573 (Fed. Cir. 1986) ("that which infringes if later anticipates [or meets the claim] if earlier") (quoting Peters v. Active Mfg., 129 U.S. 530, 537 (1889)).

Margolin also argues that the claim-term "subscriber" is not met by Ellis. Br. at 13-15. Contrary to this argument, Ellis teaches that the person using the PC (which exchanges processing-power via the Internet) would normally have a subscriber-relationship with the ISP for Internet service, which satisfies



Margolin's "subscriber" term. See, e.g., A46, col. 11, lines 55-61:

for most standard PC users . . . connection to the Internet . . . would be at no cost to PC users, since in exchange for such Internet access the PC users would generally make their PC, when idle, available to the network for shared processing.

Additionally, the claim language "home network server in a subscriber's home . . .

whereby the subscriber receives something of value" makes it clear that the

"subscriber" and the owner of the "home network server" are one in the same.

See In re Hiniker Co., 150 F.3d 1362, 1369 (Fed. Cir. 1998) ("the name of the game is the claim") (citation and quotes omitted). Thus, as the claim has one user of both the PC and the Internet, so too does Ellis. A44, col. 7, lines 40-46; A44, col. 7, lines 61-65; A45, col. 10, lines 1-6; A46, col. 11, lines 55-67.

### **3. Ellis Discloses Other Computer Devices Connected To His PC**

Claim 1 further recites "one or more home network client devices." A16, line 4. Margolin's specification is not limiting, but sets forth the following examples: PCs, sensors, and actuators. A14, lines 18-19. However, these embodiment-examples in no way limit the scope of the claim. As a matter of fact, since they show a wide variety of possibilities, from PC to sensor/actuators

(e.g., switches etc.), the claim term “device” is significantly broad. See Hiniker Co., 150 F.3d at 1369.

Ellis describes a long list of applications for his PCs. A44, col. 8, line 59 - A45, col. 9, line 16. For example, in that list, Ellis discloses “workstations” and “network computers,” which commonly include other computer devices such as printers, monitors, speakers etc. Id.

As to this limitation, Margolin has made no argument in his principal brief, thereby waiving any argument on it. See Smithkline Beecham Corp., 439 F.3d at 1319; Becton Dickinson & Co., 922 F.2d at 800.

#### **4. Ellis Connects To The Internet**

Claim 1 further recites “an Internet connection.” A16, line 5. Margolin’s specification sets forth the following examples: “DSL, a cable modem, or equivalent . . . [or] a dial-up connection.” A14, lines 14-15. Again, the scope of the connection-limitation is broad, given the examples and breadth shown in Margolin’s specification.

Similarly, Ellis is directed to “Internet Distributed Processing.” A33, col. 1; A41, col. 1, lines 1-3 (emphasis added). PC owners provide microprocessor processing power to ISPs (A33, col. 2, Abstract lines 6-16), to support the

“Internet . . . World Wide Web [and] the MetaInternet.” A42, col. 4, lines 38-48.

Ellis is specifically directed to a personal computer for “internet distributed processing.” A41, col. 1, lines 1-3. Also:

for most standard PC users . . . connection to the Internet . . . would be at no cost to PC users, since in exchange for such Internet access the PC users would generally make their PC, when idle, available to the network for shared processing.

A46, col. 11, lines 55-61.

Margolin does not dispute that this limitation is met by Ellis, and has therefore waived any such argument concerning an alleged deficiency of Ellis.

See Smithkline Beecham Corp., 439 F.3d at 1319.

##### **5. Ellis Discloses Exchanging Internet Access For Computing Resources**

Claim 1 concludes by reciting:

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

A16, lines 6-7. As an example, Margolin’s specification states that “distributing computing” occurs, which means the server’s processing power is exchanged via the Internet for something of value such as “free Internet service” (or some other benefit). A15, lines 9-17. Ellis teaches precisely this.

Specifically, Ellis discloses that the PC user will provide computing/ processing power to the ISP for “a similar value” as the typical fee for “access to a network like the Internet.” A44, col. 7, lines 40-46. Ellis further discloses that the network of PCs will provide “shared processing” to the ISPs. A44, col. 7, lines 61-65. Additionally:

for most standard PC users . . . connection to the Internet . . . would be at no cost to PC users, since in exchange for such Internet access the PC users would generally make their PC, when idle, available to the network for shared processing.

A46, col. 11, lines 55-61. Ellis further states:

The financial basis of the shared use between owners/lesers and providers would be whatever terms to which the parties agree . . . including payment from either party to the other based on periodic measurement of net use or provision of processing power.

A45, col. 10, lines 1-6 (emphasis added). Finally, “shared processing” to the ISP is contemplated to be at no additional cost to the PC user . A46, col. 11, lines 61-67.

Margolin argues that the Board defined a subscriber as a person, while the examiner “asserted that the subscriber is a device.” Br. at 27-28. In making that

argument, Margolin seems to be referring to the claim language “whereby the subscriber receives something of value.” A16, line 6 (emphasis added). In that sense, the distinction between a person and a device is stretching semantics too far. If a subscriber’s home network server receives value, the subscriber receives value.

In short, the Board and examiner interpreted each of the limitations of claim 1 in a reasonable manner, and each is met by Ellis, as summarized in the chart that follows this paragraph. While Margolin further argues that the Board should have read specification language into his claim (Br. at 29-30), this Court has stated many times, when claim language is clear, “there is no reason to read into the claim the limitations of the specification.” In re Zletz, 893 F.2d 319, 321 (Fed. Cir. 1989). Cf. Vitronics Corp., 90 F.3d at 1582 (“a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history”); Teleflex, Inc., 299 F.3d at 1324 (an inventor may disavow claim breadth “by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope”).

<b>Margolin's Claim 1</b>	<b>Ellis</b>
<p>“distributed computing system”</p>	<p>“distributed [computer] processing”  - A33, col. 1, lines 1-3; A41, col. 1, lines 1-3  “shared processing” otherwise “idle”  - A33, col. 2, lines 6-16; A42, col. 4, lines 38-48; A44, col. 7, lines 61-65; A46, col. 11, lines 55-61</p>
<p>“home network server in a subscriber's home”</p>	<p>“personal computer [(PC)] . . . including microprocessor-based personal computers . . . and their . . . equivalents . . . such as workstations . . . entertainment devices . . . [and] other household electronic devices.”  - A44, col. 8, line 59 - col. 9, line 8;  “The PC . . . provides and uses services on the network, alternatively or potentially even virtually simultaneously, in a multitasking mode.”  -A44, col. 7, lines 45-48  “individual or other entity using a personal computer [PC]” - A44, col. 8, lines 59-61</p>
<p>“one or more home network client devices”</p>	<p>“workstations,” “network computers”  - A44, col. 8, line 59 - A45, col. 9, line 16</p>

<p>“Internet connection”</p>	<p>“Internet,” “ISP’s”  - A33, col. 1; A41, col. 1, lines 1-3;  A33, col. 2, Abstract lines 6-16; A42,  col. 4, lines 38-48; A41, col. 1, lines 1-  3; A44, col. 7, lines 40-46; A44, col. 7,  lines 61-65; A45, col. 10, lines 1-6;  A46, col. 11, lines 55-61; A46, col. 11,  lines 61-67</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>“similar value,” “shared/distributed processing” - A44, col. 7, lines 40-46;  A44, col. 7, lines 61-65; A45, col. 10,  lines 1-6; A46, col. 11, lines 55-61;  A46, col. 11, lines 61-67</p>

**C. Margolin’s Remaining Arguments Are Not Persuasive**

Margolin also argues that the Board failed to add to the examiner’s case. Br. at 24-27. However, the examiner set forth a *prima facie* case of anticipation based on Ellis and it was up to Margolin to show error in that examiner’s decision. See Baxter Travenol Labs., 952 F.2d at 391 (arguments made must be *specific* in order for them to be addressed). Given the arguments he made to the Board, which he essentially repeats to this Court, the Board performed its task when affirming the examiner’s decision, with express reliance on the relevant portions of Ellis to support its findings and a well-reasoned rejection of Margolin’s claim construction and other non-persuasive arguments, *supra*.

Finally, Margolin argues that the examiner and his supervisor showed bad faith. Br. at 31-36. However, the administrative record clearly shows that he received *numerous* telephonic interviews with USPTO personnel (see A108-36, 188-90), and was actually treated with extreme courtesy throughout the prosecution process. See, e.g., A136 (“After a lengthy discussion, SPE Dharia informed Mr. Margolin the USPTO has granted three (3) telephonic interviews to address his concerns, even though the request was after a final rejection”). Thus, not only did the USPTO perform its important task of reaching the correct result in this case, *supra*, it also showed good faith, professionalism and multiple courtesies to Margolin during the prosecution of his patent application.



## CONCLUSION

Since the Board's finding that Ellis anticipates Margolin's broad claim is supported by substantial evidence, and Margolin has shown no reversible error in this case, this Court should affirm the decision of the Board.

Respectfully submitted,

February 13, 2007



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## **CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2007, I caused two copies of the foregoing BRIEF FOR APPELLEE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE to be mailed by Federal Express, addressed as follows:

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