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San Jose, CA 95148-1916
August 10, 2005

Mr. Peter Wong
Group Director 2100
USPTO
Fax: 571-272-0107

Dear Director Wong,

This is concerning Application 09/947,801 ***Distributed Computing System*** filed September 6, 2001.

Summary

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

My patent activities go back to 1977. I have 15 U.S. patents. I have successfully prosecuted my last several patents entirely pro se. I have never before been treated by an Examiner with such a disregard for the Patent Office's own rules, not to mention the discourtesy and duplicitous behavior exhibited by Mr. Patel.

I suspect Mr. Patel's behavior may be due to SPE Rupal Dharia's lack of supervision and help. Otherwise, why would Mr. Patel have to turn to Examiners in other groups for help? In addition to PE Frantz Jean, Mr. Patel asked Mr. Nabil El Hady for help in responding to the arguments I filed in my response to the First Office Action. (See FW Search Notes 6/15/2005 "**EL HADY NABIL - discussed how to respond to applican'ts arguments 6/9/2005.**")

I request that you withdraw making Examiner Patel's Second Office Action final and that you have my application docketed to a different Examiner (one who will treat me fairly) along with one SPE.

Details

This is concerning Application 09/947,801 ***Distributed Computing System*** filed September 6, 2001.

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

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

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

The Second Office Action was issued June 15, 2005.

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

He made the rejection Final.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When I called your office I spoke to another administrative assistant (Janine), who also promised to have SPE Dharia call me.

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

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

I explained in simpler terms what my invention was and how it was different from Ellis. He asked questions that suggested he was finally understanding my invention.

He seemed receptive to my offer to amend the claims to say that "something of value" was "something of value from a contracting company."

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

At the end of the conversation he said that he didn't have the authority to negotiate but would arrange a conference call with SPE Dharia and do another search for prior art. The conference call was scheduled for Tuesday at 2:00pm (Eastern). While he didn't promise me anything he certainly led me to believe that we would be able to resolve the matter.

I thought this thing might have a happy ending. Naturally, I was wrong.

On Tuesday, August 9, 2005, Mr. Patel called at approximately 1:00pm to tell me the interview had been moved to 3:00pm. (I wasn't expecting anyone to call me at that time and my phones were still turned off. I found Mr. Patel's messages on my answering machine.)

3:00pm (Eastern) came and went and they did not call. They finally called 3:30pm (Eastern). That's when I learned that this conference interview would not be with SPE Dharia. It was to be with Primary Examiner Frantz Jean, who was not a SPE. He was just a Primary Examiner in another group (Group 2151, Phone number 571-272-3937). He assured me that he had the authority to negotiate. I didn't ask when and why the switch was made or how much time PE Jean had spent reading the File Wrapper but my impression was that he was doing this interview cold, with no preparation.

That's when Examiner Patel turned into his Evil Twin. Perhaps he had talked to his friend, Examiner El Hady, again.

He said that he had only listened to me on Friday and had not changed his opinion about my invention. Basically, he had only pretended to have a serious interview.

He again advised me that he would consider my arguments when I filed a Formal After Final Response (\$395). He also refused to enter my Informal Response into the File Wrapper.

At one point PE Jean said that we were just going around in circles because he wanted to talk only about claims and I wanted to talk about Examiner Patel's insistence that my Home Network Server was identical to the Ellis Network Server NS2.

Examiner Patel kept insisting they were the same and I kept explaining how they were different and he steadfastly kept refusing to respond to my arguments.

He seems to think that saying, "No, they are the same," without giving any reasons is a valid response.

PE Jean was no help. It is clear that the only reason he was there was to agree with Mr. Patel on the technical matters that he had not read. He advised me to either file a Formal After Final Response (\$395) or an RCE (also \$395).

I explained that as long as Examiner Patel insisted that my Home Network Server and Ellis's Network Server NS2 were the same there was no point discussing the claims. PE Jean eventually agreed with my assessment.

He said he would work with Examiner Patel in writing the Examiner's Summary of the Interview. I said I would file my own Summary as required by 713.04(b).

I don't know how PE Jean was persuaded to be a party to this sham. He seems like a decent guy. If we had been able to get to the point of actually discussing the claims I would have pointed out that File Wrapper Estoppel had already made it unnecessary to put every little thing in the claims.

Examiner Patel and SPE Dharia have made a mockery of the Examination process and are a disgrace to all Examiners and their SPEs.

Mr. Wong, my patent activities go back to 1977. I have 15 U.S. patents. I have successfully prosecuted my last several patents entirely pro se. I have never before been treated by an

Examiner with such a disregard for the Patent Office's own rules, not to mention the discourtesy and duplicitous behavior exhibited by Mr. Patel.

I suspect Mr. Patel's behavior may be due to SPE Dharia's lack of supervision and help. Otherwise, why would Mr. Patel have to turn to Examiners in other groups for help? In addition to PE Jean, Mr. Patel asked Mr. Nabil El Hady for help in responding to the arguments I filed in my response to the First Office Action. (See FW Search Notes 6/15/2005 "**EL HADY NABIL - discussed how to respond to applican'ts arguments 6/9/2005.**")

Conclusion

I request that you withdraw making Examiner Patel's Second Office Action final and that you have my application docketed to a different Examiner (one who will treat me fairly) along with one SPE. Having additional Examiners gang up on a pro se Applicant makes the Patent Office look bad.

My 2-month statutory period for an After Final Amendment expires August 15. I will not be filing a Formal AF Amendment and pay \$395 for something Mr. Patel has already shown he will reject.

My 3-month statutory period for filing an RCE or an Appeal expires September 15. I will not file an RCE.

That leaves me with an Appeal. I do not see why I should have to pay \$500 and lose 2 years just to have the Appeal Board send the application back to Mr. Patel with the instruction to do it again and this time follow the rules.

If I am forced to follow this path I will raise a big stink about how I have been treated. I will do it in a public forum which will not be limited to my web site (www.jmargolin.com)

Please don't take this as a threat. This course of action is necessary only because Mr. Patel's behavior is so completely unacceptable.

Please feel free to call me at 408-238-4564. If I do not hear from you in a few days I will have to assume you condone Mr. Patel's behavior.

Sincerely yours,



Jed Margolin

Pro se Inventor

Search Notes



Application/Control No. 09/947,801		Applicant(s)/Patent under Reexamination MARGOLIN, JED	
Examiner Chirag R. Patel		Art Unit 2141	

SEARCHED			
Class	Subclass	Date	Examiner
709	217	1/19/2005	C.P.
709	201	1/21/2005	C.P.

SEARCH NOTES (INCLUDING SEARCH STRATEGY)		
	DATE	EXMR
East	1/19/2005 - 1/21/2005	C.P.
EL HADY NABIL - discussed how to respond to applican'ts arguments	6/9/2005	C.P.

INTERFERENCE SEARCHED			
Class	Subclass	Date	Examiner