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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/320,660	05/27/99	ELLIS III	PM-251017

EXAMINER

LM02/1014

PILLSBURY MADISON & SUTRO LLP
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ART UNIT	PAPER NUMBER
2757	3

DATE MAILED: 10/14/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on ____________

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-51 is/are pending in the application.

Of the above, claim(s) ____________ is/are withdrawn from consideration.

☒ Claim(s) 42-51 ____________

☒ Claim(s) 1-41 is/are allowed.

☐ Claim(s) ____________ is/are rejected.

☐ Claim(s) ____________ is/are objected to.

☐ Claims ____________ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on ____________ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on ____________ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) ____________.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: ____________.

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

* U.S. GPO: 1996-409-290/40

DETAILED ACTION

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-51 are provisionally rejected under the judicially created doctrine of double patenting over claims of copending Application No.08/980,058. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

Claim 1 of Application 08/980,058 recites:

Claim 1 of 08/877,082	Claim 1 of present application
A system for a network computers, comprising:	A system for a network of computer, including personal computers, comprising:
at least two personal computers	at least two of said personal computers;
means for providing network services including browsing …	means for network services including browsing…
means for … when idled	means for … when idle
a monitor constructed …	means for monitoring …

The same rationale for double patenting applies to independent claims 14, 27 of the present application.

Claims 32, 33 and 35 of application 08/980,058 recites essentially identical limitations as claim 42 of the present application.

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 –

*(a) the invention was **known** or used **by others** in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.*

Claims 1-9, 11-13, 14-19, 23-26 are rejected under 35 U.S.C. 102(a) as being anticipated by seti@home (Sept. 1996) as disclosed by Sullivan et al. "A new major SETI project based on Project Serendip data and 100,000 personal computers".

Seti@home is a massively parallel distributed computing project using personal computers to process SETI data during the computers idle time.

Seti@home has at least two personal computers (100,000);

means for providing network services including browsing functions [inherent in the personal computers];

means for at least one of the two personal computers, when idled by a personal user, to be made available temporarily to provide shared computer processing to said network [the seti@home screensaver software];

means for monitoring on a net basis a provision of said network services to each of the personal computers or to said personal user [the seti@home data server].

Hence seti@home anticipated the invention of claims 1, 14, and 27.

As per claim 2-5, it is apparent that the seti@home system is scalar.

As per claim 6, the seti@home system is connected to the Internet. Hence, it is apparent that there are million of computers that could be used as claimed.

As per claim 7, the seti@home system is connected to the Internet (i.e. WWW).

As per claim 8, the seti@home has a server participated in the shared computer processing [seti@home data server].

As per claim 9, the seti@home has metering device to measure the flow of computing power [see processing status at seti@home web site]

As per claim 11, it is inherent that seti@home has means for permit or deny access to the personal computer.

As per claim 12, seti@home system provides access to the personal computing power when it is idle.

As per claim 13, it is inherent that the Internet has backbone segment that has data transmission speed that is greater than a peak data processing of certain microprocessor.

As per claim 14-19 and 23-26, they are rejected under similar rationales as for claims 1-9, 11-13 above.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 10, 20-22, 27-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over seti@home.

As per claims 10, 20-22, seti@home does not provide nor charging for network access. The type of compensation provided to the user in exchange for the personal computer processing time would have been a matter of design choice. The charge is a matter of economic consideration or business practice and has no technological affect on the process of using personal computer idle time for parallel processing. Hence, the particular method of crediting for processing time and charging the user for network access would have clearly been a matter of business choice.

As per claims 27-38, 40-41, they are rejected under similar rationales as for claims 1-9, 11-13 above. The document does not specifically disclose that a user and direct a personal computer to be the master to control execution of the shared operation. seti@home server could be an UNIX or NT server [figure on page 2].

It is known that UNIX and NT server can be run on personal computers. Hence, the limitation would have been a obvious variation of seti@home. It would have been obvious for one of ordinary skill in the art to provide means for directing the personal computer to be a master because it would have enabled the user to experiment with their own parallel/shared processing.

Claims 42-51 are allowable over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

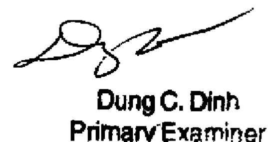
Commissioner of Patents and Trademarks
Washington, DC 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

(703) 305-9731 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA, Sixth Floor (Receptionist).



Dung C. Dinh
Primary Examiner