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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/016,597	10/26/2001	Curtis W. Heisey	3740.US.P

CONFIRMATION NO. 6523

POA ACCEPTANCE LETTER



22879
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528

Date Mailed: 05/18/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/06/2011.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/s/brahim/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/016,597	10/26/2001	Curtis W. Heisey	3740.US.P

CONFIRMATION NO. 6523

POWER OF ATTORNEY NOTICE



56436
Hewlett-Packard Company
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
Fort Collins, CO 80528

Date Mailed: 05/18/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/06/2011.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/s/brahim/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(b).

I hereby appoint:



Practitioners associated with the Customer Number:

022879

OR

Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used):

Name	Registration Number	Name	Registration Number

as attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent applications assigned only to the undersigned according to the USPTO assignment records or assignment documents attached to this form in accordance with 37 CFR 3.73(b).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(b) to:



The address associated with Customer Number:

022879

OR

<input type="checkbox"/> Firm or Individual Name			
Address			
City	State	Zip	
Country			
Telephone	Email		

Assignee Name and Address:

Hewlett-Packard Development Company, L.P.
11445 Compaq Center Drive West
Houston, Texas 77070**A copy of this form, together with a statement under 37 CFR 3.73(b) (Form PTO/SB/96 or equivalent) is required to be filed in each application in which this form is used. The statement under 37 CFR 3.73(b) may be completed by one of the practitioners appointed in this form if the appointed practitioner is authorized to act on behalf of the assignee, and must identify the application in which this Power of Attorney is to be filed.****SIGNATURE of Assignee of Record**

The individual whose signature and title is supplied below is authorized to act on behalf of the assignee

Signature	/Catherine M. Voisinet/	Date	May 5, 2011
Name	Catherine M. Voisinet	Telephone	(703) 742-1276
Title	Senior Patent Counsel - Hewlett-Packard Development Company, L.P.		

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Hewlett-Packard Company

Application No./Patent No.: 10/016,597 Filed/Issue Date: October 26, 2001

Titled: Intelligent Device Upgrade Engine

Hewlett-Packard Company, a Corporation
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

- 1. the assignee of the entire right, title, and interest in;
- 2. an assignee of less than the entire right, title, and interest in
(The extent (by percentage) of its ownership interest is _____ %); or
- 3. the assignee of an undivided interest in the entirety of (a complete assignment from one of the joint inventors was made)

the patent application/patent identified above, by virtue of either:

A. An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy therefore is attached.

OR

B. A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: Curtis W. Heisey et al. To: 3Com Corporation

The document was recorded in the United States Patent and Trademark Office at
Reel 012384, Frame 0906, or for which a copy thereof is attached.

2. From: 3Com Corporation To: Hewlett-Packard Company

The document was recorded in the United States Patent and Trademark Office at
Reel 025039, Frame 0844, or for which a copy thereof is attached.

3. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

Additional documents in the chain of title are listed on a supplemental sheet(s).

As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

/Catherine M. Voisinet/
Signature

May 4, 2011
Date

Catherine M. Voisinet
Printed or Typed Name

Senior Patent Counsel, HP
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Electronic Acknowledgement Receipt

EFS ID:	10041485
Application Number:	10016597
International Application Number:	
Confirmation Number:	6523
Title of Invention:	Intelligent device upgrade engine
First Named Inventor/Applicant Name:	Curtis W. Heisey
Customer Number:	56436
Filer:	Steven L. Webb/Angela Troussel
Filer Authorized By:	Steven L. Webb
Attorney Docket Number:	3740.US.P
Receipt Date:	06-MAY-2011
Filing Date:	26-OCT-2001
Time Stamp:	18:15:56
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Power of Attorney	201004417-2F.pdf	73135 <small>780fb2a019af20996b91261fdd8de2d5715ad4fe</small>	no	2

Warnings:

Information:

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,597	10/26/2001	Curtis W. Heisey	3740.US.P	6523
56436	7590	07/17/2009	EXAMINER	
3COM CORPORATION 350 CAMPUS DRIVE MARLBOROUGH, MA 01752-3064			KISS, ERIC B	
			ART UNIT	PAPER NUMBER
			2192	
			MAIL DATE	DELIVERY MODE
			07/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



United States Patent and Trademark Office

**Under Secretary for Intellectual Property and
Director of the United States Patent and Trademark Office**

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3COM CORPORATION

350 CAMPUS DRIVE

MARLBOROUGH, MA 01752-3064

Appeal No: 2009-012978

Application: 10/016,597

Appellant: Curtis W. Heisey et al.

**Board of Patent Appeals and Interferences
Docketing Notice**

Application 10/016,597 was received from the Technology Center at the Board on July 13, 2009 and has been assigned Appeal No: 2009-012978.

A review of the file indicates that the following documents have been filed by appellant:

Appeal Brief filed on: February 28, 2007

Reply Brief filed on: July 03, 2007

Request for Hearing filed on: NONE

In all future communications regarding this appeal, please include both the application number and the appeal number.

The mailing address for the Board is:

**BOARD OF PATENT APPEALS AND INTERFERENCES
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VIRGINIA 22313-1450**

The facsimile number of the Board is 571-273-0052. Because of the heightened security in the Washington D.C. area, facsimile communications are recommended. Telephone inquiries can be made by calling 571-272-9797 and should be directed to a Program and Resource Administrator.

By order of the Board of Patent Appeals and Interferences.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,597	10/26/2001	Curtis W. Heisey	3740.US.P	6523
56436	7590	12/31/2008	EXAMINER	
3COM CORPORATION 350 CAMPUS DRIVE MARLBOROUGH, MA 01752-3064			KISS, ERIC B	
			ART UNIT	PAPER NUMBER
			2192	
			MAIL DATE	DELIVERY MODE
			12/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.


The time period for reply, if any, is set in the attached communication.

Art Unit: 2192

**RESPONSE TO ORDER RETURNING
UNDOCKETED APPEAL TO EXAMINER**

1. This action is in response to the Order from the Deputy Chief Appeals Administrator mailed December 23, 2008, requiring the examiner to cancel claims 19-37.
2. The withdrawal of the appeal as to claims 19-37 operates as an authorization to cancel these claims from the application. See MPEP § 1215.03. Accordingly, these claims are canceled.
3. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

/Eric B. Kiss/
Eric B. Kiss
Primary Examiner, Art Unit 2192

Index of Claims 	Application/Control No. 10016597	Applicant(s)/Patent Under Reexamination HEISEY ET AL.
	Examiner Kiss, Eric B	Art Unit 2192

✓	Rejected
=	Allowed


-	Cancelled
÷	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claims renumbered in the same order as presented by applicant
 CPA
 T.D.
 R.1.47

CLAIM		DATE							
Final	Original	09/29/2006	06/06/2007	12/28/2008					
	1	✓	A	A					
	2	✓	A	A					
	3	✓	A	A					
	4	✓	A	A					
	5	✓	A	A					
	6	✓	A	A					
	7	✓	A	A					
	8	✓	A	A					
	9	✓	A	A					
	10	✓	A	A					
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	13	✓	A	A					
	14	✓	A	A					
	15	✓	A	A					
	16	✓	A	A					
	17	✓	A	A					
	18	✓	A	A					
	19	✓	✓	-					
	20	✓	✓	-					
	21	✓	✓	-					
	22	✓	✓	-					
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	28	✓	✓	-					
	29	✓	✓	-					
	30	✓	✓	-					
	31	✓	✓	-					
	32	✓	✓	-					
	33	✓	✓	-					
	34	✓	✓	-					
	35	✓	✓	-					
	36	✓	✓	-					

Index of Claims 	Application/Control No. 10016597	Applicant(s)/Patent Under Reexamination HEISEY ET AL.
	Examiner Kiss, Eric B	Art Unit 2192

✓	Rejected
=	Allowed

-	Cancelled
÷	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claims renumbered in the same order as presented by applicant
 CPA
 T.D.
 R.1.47

CLAIM		DATE							
Final	Original	09/29/2006	06/06/2007	12/28/2008					
	37	✓	✓	-					



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10/016,597	10/26/2001	Curtis W. Heisey	3740.US.P	6523
56436	7590	12/23/2008	EXAMINER	
3COM CORPORATION 350 CAMPUS DRIVE MARLBOROUGH, MA 01752-3064			KISS, ERIC B	
			ART UNIT	PAPER NUMBER
			2192	
			MAIL DATE	DELIVERY MODE
			12/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: CURTIS W. HEISEY, RAVINDRA V. GOKHALE, and
KATHY A. KAMINSKI

Application No. 10/016,597
Technology Center 2100

Mailed: December 23, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 26, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, APPEALED CLAIMS

Appellants have not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1-37. The rejected claims that have not been appealed and/or argued for appeal are claims 19-37.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) enter a paper canceling claims 19-37; and
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims;
- 3) for such further action as may be appropriate.

Application No. 10/016,597

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/cdc

3COM CORPORATION
350 CAMPUS DRIVE
MARLBOROUGH MA 01752-3064

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Curtin Heisey, et al.

Serial No.: 10/016,597

Art Unit: 2192

Filed: October 26, 2001

Examiner: Eric B. Kiss

Attorney Docket No.: 3740-US

Title: INTELLIGENT DEVICE UPGRADE ENGINE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Marlborough, Massachusetts 01752

STATUS INQUIRY

Sir:

Applicants respectfully request an indication of the status of the above-referenced patent application. The last communication was August 30, 2007, when the applicant received notice that Reply Brief was not considered.

Kindly advise of the application status.

MARCH 31, 2008

Date

Respectfully submitted,



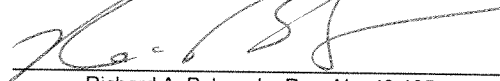
Richard A. Baker, Jr.
Agent for Applicant
Registration No. 48,124
3Com Corporation
350 Campus Drive
Marlborough, MA 01752
Phone: 508-323-1085

Certificate of Mailing/Transmission (37 CFR 1.8)

I hereby certify that this correspondence is, on the date shown below, being:

Mailing
deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, Alexandria, VA 22313-1450.

Electronically
transmitted via EFS to the Patent and Trademark Office.



Richard A. Baker, Jr. Reg. No. 48,185

Electronic Acknowledgement Receipt

EFS ID:	3075164
Application Number:	10016597
International Application Number:	
Confirmation Number:	6523
Title of Invention:	Intelligent device upgrade engine
First Named Inventor/Applicant Name:	Curtis W. Heisey
Customer Number:	56436
Filer:	Richard Albert Baker
Filer Authorized By:	
Attorney Docket Number:	3740.US.P
Receipt Date:	31-MAR-2008
Filing Date:	26-OCT-2001
Time Stamp:	08:42:25
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for status of Application	10016597Status.PDF	46776 <small>925b2553401b4a686363973c3795dc7 aed097932</small>	no	1

Warnings:

Information:

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.



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10/016,597	10/26/2001	Curtis W. Heisey	3740.US.P	6523

56436 7590 08/30/2007
3COM CORPORATION
350 CAMPUS DRIVE
MARLBOROUGH, MA 01752-3064

EXAMINER

KISS, ERIC B

ART UNIT	PAPER NUMBER
----------	--------------

2192

MAIL DATE	DELIVERY MODE
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08/30/2007

PAPER

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The time period for reply, if any, is set in the attached communication.

Art Unit: 2192

REPLY BRIEF NOT CONSIDERED

1. The reply brief filed on July 3, 2007, has not been considered because it is not in compliance with 37 CFR 41.41(a). The reply brief included new or non-admitted affidavit or other evidence. (See Reply Brief (07/03/2007) at p. 5, last paragraph, continuing onto p. 6.)



Eric B. Kiss

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Curtis HEISEY, et al. **Docket No:** 3740.US.P
Serial Number: 10/016,597 **Group Art Unit:** 2192
Filed: October 26, 2001 **Examiner:** Eric KISS
Re: Intelligent Device Upgrade Engine

July 3, 2007

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF FOR APPEAL

Dear Sir:

The Applicants hereby submit the following Reply Brief in response to the Examiner's Answer mailed on June 12, 2007. The Examiner's Answer was in response to a Notice of Appeal filed on October 12, 2006 by the Applicants and the Appeal Brief filed by Applicants on December 22, 2006.

The commissioner is authorized to charge deposit account 503650 for any fees associated with either filing.

TABLE OF CONTENTS

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II.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL__	4
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I. STATUS OF CLAIMS

Claims 1-37 are pending in this application. Claims 1, 10, 18, 19, 20, and 33 are independent. Claims 1-37 stand rejected. This Reply Brief addresses Claims 1-18 as presented in the July 6, 2006 "Response to Office Action". Claims 19-37 are not being pursued in this Appeal. A copy of the claims can be found in the Appendix of this Appeal Brief.

The Examiner is correct in his comments concerning claim 38. Applicants incorrectly used the number 38 instead of 37 for the final claim number throughout the Appeal Brief. Claim 38 does not exist in this application.

III. ARGUMENT

The background of the claims in the present application and the teachings of Reynolds have been clearly articulated in the Response to the Final Office Action, the Pre-Appeal Brief, and in the Appeal Brief, all of which are incorporated here by reference, and will not be repeated here. Each of the briefs has outlined the clear distinction between Claims 1-18 of the present invention and the teachings of Reynolds. These distinctions provide the foundation upon which the following discussion is based.

A. Reynolds does not teach the change of attributes of an embedded device

Claims 1-18 recite, either word for word or with similar language, "...monitoring program code, asynchronous with respect to said control program code, for generating at least one event indication in response to a **change** of at least one **predetermined attribute of said embedded device** and forwarding said at least one event indication to said control program code...".

Within Reynolds, there are several paragraphs (Abstract, [0504] through [0506]) that teach the downloading of firmware from a directory into an embedded device. The Examiner's Answer does not dispute that Reynolds's trigger for the download comes from a source outside of the embedded device (it is triggered by the presence of a file in a directory on a server).

The issue is that the Examiner's Answer interprets the term "of said embedded device" broader than the Applicants and broader than is reasonable. In the Examiner's Answer, the term "of" is asserted to include attributes either inside or outside of the embedded device, thus attempting to stretch this term to include Reynolds's teachings.

However, this interpretation is improper. According to the American Heritage Dictionary, 4th Edition, (as quoted on www.yourdictionary.com) the most common definitions of the word "of" mean "1. Derived or coming from; originating at or from:

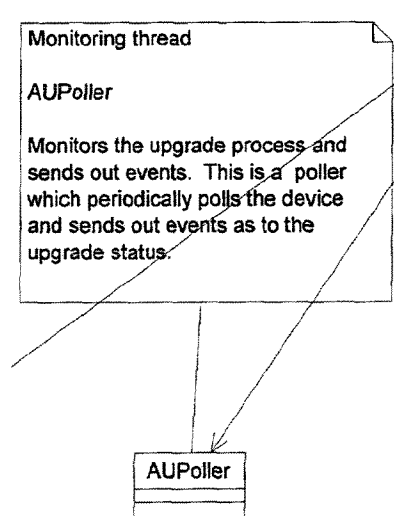
customs of the South. 2. Caused by; resulting from: a death of tuberculosis.”¹ The Webster’s II New Riverside Dictionary defines “of” as “1. from; 2. caused by;...”² in the two most common meanings for the word.

Reynolds teachings do not detect “a change of at least one predetermined attribute **[from]** said embedded device.” The files and directories in Reynolds do not come from the embedded device. See Reynolds at [0498] and [0504].

Nor do his teachings detect “a change of at least one predetermined attribute **[caused by]** said embedded device”. Reynolds’s teachings (at [0498]) show that the download is caused by the customer loading a CD or downloading files from a web site. As such, the breadth of the claims as asserted by the Examiner’s Answer can not be sustained.

Furthermore, the expansion of the term “of said embedded device” to include attributes outside of the embedded device is not proper in light of the specification. Figure 5 of the present application demonstrates the Monitor Thread 102 issuing a Monitor Command 116 through the Network Device Abstraction 104 to the Actual Device 106 via a SNMP or HTTP query 118 and SNMP or HTTP response 120. This is described in [0055].

This can also be seen on page 62 in the original filing, provisional patent application 60/294,049, which is incorporated by reference in the present application at [0018].



¹ “OF DEFINITION”, The American Heritage Dictionary of the English Language, Fourth Edition, Houghton Mifflin Company, 2000 as cited in <http://www.yourdictionary.com/ahd/o/o0036500.html>.

² “of”, Webster’s II New Riverside Dictionary, Revised Edition, Houghton Mifflin Company, 1996.

The descriptions in the specification clearly show that the claim term “of said embedded device” excludes the use of external attributes, and that the monitoring program code looks at an attribute in the embedded device. Without the Examiner’s expansion of the word “of” to include external attributes, Reynolds does not anticipate claims 1-18.

B. Reynolds does not teach attributes specific to said embedded device

Reynolds teaches that the download files are generic, and that they may be downloaded to any of the embedded devices. They are not specific to the embedded device, but are separate from the device and are changed independently of the embedded device. They are not specific attributes of the embedded device. See Reynolds at [0505]:

[0505] Once all software components are verified, the master SMS opens (and decompresses, if necessary) an upgrade instruction file also included as one of the software components loaded into sub-directory **1220** from the Installation Kit. The upgrade instruction file indicates the scope of the upgrade (i.e., upgrade mode). For instance, the upgrade instruction file may indicate that the upgrade may be hot or cold or must only be cold. The upgrade instruction file may also indicate that the upgrade may be done only across the entire chassis—that is, all applications to be upgraded must be upgraded simultaneously across the entire chassis—or that the upgrade may be done on a board-by-board basis or a path-by-path basis or some other partial chassis upgrade.

As such, the Reynolds’s files are not “attributes of said embedded device”, but are instead generic attributes. The Examiner’s Answer does not address this distinction between Reynolds and claims 1-18.

C. Reynolds does not teach predetermined attributes

Furthermore, those files are not predetermined, as required by claims 1-18. The files in Reynolds arrive asynchronously and will be unique. They are put in

newly created directories and subdirectories, and the SMS searches for those new subdirectories. They are not predetermined. See Reynolds at [0504]:

[0504] Master SMS 184 periodically polls installation directory 1222 for new sub-directories including new releases, for example, release 1.1 1218 in sub-directory 1220. When the master SMS detects a new release, it opens (and decompresses, if necessary) the packaging list in the new sub-directory and verifies that each software component listed in the packaging list is also stored in the new sub-directory. The master SMS then performs a checksum on

Furthermore, Reynolds, at [0505], teaches that the embedded devices to download are only known when the SMS opens the upgrade file to read the instructions. This is a very indeterminate process, and the opposite of the Applicants claim of a predetermined attribute.

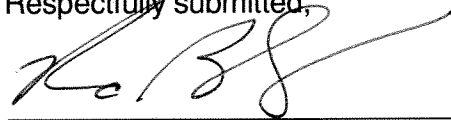
The Examiner's Answer asserts that the availability of such new releases may be considered predetermined attributes. However, this argument is a contradiction. How can something new be predetermined? It is inherent in the argument and in Reynolds that those download directories are new and arrive during the operation of the SMS, and therefore can not, by definition, be predetermined.

IV. CONCLUSION

The pending claims define subject matter that is distinct from Reynolds both independently and in combination with Spring. Therefore the pending claims are patentable under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a). Claims 1-18 are pending and in condition for allowance.

Applicants respectfully request that the Board reverse the outstanding rejections and direct the Examiner to promptly issue this application.

Respectfully submitted,



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Electronic Acknowledgement Receipt

EFS ID:	1936626
Application Number:	10016597
International Application Number:	
Confirmation Number:	6523
Title of Invention:	Intelligent device upgrade engine
First Named Inventor/Applicant Name:	Curtis W. Heisey
Customer Number:	56436
Filer:	Richard Albert Baker
Filer Authorized By:	
Attorney Docket Number:	3740.US.P
Receipt Date:	03-JUL-2007
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Application Type:	Utility

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Document Number	Document Description	File Name	File Size(Bytes)	Multi Part /.zip	Pages (if appl.)
1	Reply Brief Filed	AppealReplyBrief.pdf	371932	no	9

Warnings:

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/016,597 10/26/2001 Curtis W. Heisey 3740.US.P 6523

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/016,597
Filing Date: October 26, 2001
Appellant(s): HEISEY ET AL.

Richard A. Baker, Jr. (Reg. No. 48,124)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 22, 2006, appealing from the Office action mailed October 6, 2006.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect (there is no claim 38). A correct statement of the status of the claims is as follows:

This appeal involves claims 1-18.

Claims 19-37 stand rejected but are not appealed.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct (again, there is no claim 38). The changes are as follows:

Claims 1-17 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.);

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Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent No. 6,549,943 to Spring.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claim 19 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.);

Claims 20-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent Application Publication No. 2001/0055017 (Ording).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,549,943	SPRING	4-2003
2003/0126195	REYNOLDS et al.	7-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.).

As per claim 1, *Reynolds et al.* discloses:

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control program code responsive to at least one user command for issuing a plurality of device commands including at least one device command to replace a code image in an embedded device (see, for example, paragraph [0508] (describing the administrator's interaction with the Available Release window); paragraph [0511] et seq. (describing the carrying out of the upgrade through the master SMS and SMS clients));

monitoring program code, asynchronous with respect to said control program code, for generating at least one event indication in response to a change of at least one predetermined attribute of said embedded device and forwarding said at least one event indication to said control program code (see, for example, paragraphs [0504] through [0507]; the availability of upgrades, along with the board specific upgrade instructions (paragraphs [0505] and [0506] (“[T]he master SMS opens . . . an upgrade instruction file . . . indicat[ing] the scope of the upgrade A board-by-board upgrade may allow a network device administrator to chose certain boards on which to upgrade applications and allow older versions of the same applications to continue running on other boards.”)) may be considered attributes of the embedded device; the master SMS detects (monitors) new releases (changes in the above attributes) (paragraphs [0504] through paragraphs [0506] (“When the master SMS detects a new release, it opens . . . the packaging list in the new sub-directory”)) and creates appropriate records in the SMS table and sends a trap (and event indication) to the NMS (paragraph [0508] (“The master SMS may then send a trap to the NMS or the NMS may periodically poll the SMS table to detect new records.”)); and

said at least one device command replacing said code image in response to said at least one event indication (see, for example, paragraph [0505] (“The upgrade instruction file

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indicates the scope of the upgrade (i.e., upgrade mode.”); paragraph [0508] (“[T]he NMS creates a new record 1230 (FIG. 21c) in an Available Release window 1232. . . . The administrator may select any entry in the Available Release window to cause an Image Control dialog box 1236 (FIG. 21e) to appear.”); paragraph [0510] (“If the user selects the board-by-board option or the path-by-path option, other dialog boxes will appear to accept the administrator’s input of which board(s) or path(s) to upgrade.”); paragraph [0511] (“Once the administrator has provided any required information in the Upgrade Control dialog box and, in the case of an upgrade, the Upgrade Mode dialog box, the NMS creates a new record 1251 in an Upgrade Control table 1248 (FIG. 21g.”); paragraph [0512] (“When the NMS adds new record 1251 to the Upgrade Control table, an active query is sent to the master SMS. If an upgrade command is detected in Command field 1252, the master SMS sends notices to all SMS clients that access software components from the current release subdirectory indicating that software components should now be accessed from the new release sub-directory.”)).

As per claim 2, *Reynolds et al.* further discloses the control program code and the monitoring program code being independent threads of execution (see, for example, paragraph [0503]).

As per claim 3, *Reynolds et al.* further discloses an embedded device abstraction software object that generates at least one event to said monitoring program code in response to information obtained from said embedded device (see, for example, paragraph [0508]).

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As per claim 4, *Reynolds et al.* further discloses the embedded device abstraction software object generating at least one event to said control program code in response to information obtained from said embedded device (see, for example, paragraph [0508]).

As per claim 5, *Reynolds et al.* further discloses said information obtained from said embedded device including at least one value from a Management Information Base (MIB) stored on said embedded device (see, for example, paragraph [0119]).

As per claim 6, *Reynolds et al.* further discloses said embedded device abstraction software object further operating to receive said at least one command from said control program code, and, in response, send at least one corresponding query to said embedded device (see, for example, paragraph [0512]).

As per claim 7, *Reynolds et al.* further discloses said monitoring program code operating to periodically check the state of at least one attribute of said embedded device (see, for example, paragraph [0521]).

As per claim 8, *Reynolds et al.* further discloses said monitoring program code operating to periodically check the state of at least one attribute of said embedded device by sending at least one command to said embedded device abstraction software object (see, for example, paragraph [0521]).

As per claim 9, *Reynolds et al.* further discloses a state machine represented in program code accessible to said control program code (see, for example, paragraphs [0734] through [0737]).

As per claims 10-17, these are method versions of the claimed system discussed above (claims 1 and 3-9), wherein all limitations have been addressed as set forth above.

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Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent No. 6,549,943 to Spring.

As per claim 18, this is a computer program product version of the claimed system discussed above (claim 1). Although *Reynolds et al.* discloses such functionality (see the disclosure applied above to claim 1) but fails to expressly disclose the use of such a computer program product for implemented the prescribed system functionality, the use of such products is well known. For example, *Spring* teaches the use of such a product in a system for network management using abstract device descriptions (see, for example, col. 64, line 52, through col. 66, line 27). Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to include such a computer program product as a well known and established means of storing and transporting computer program data for a computer-implemented method.

(10) Response to Argument

Appellant argues that the language of each of independent claims 1, 10, and 18 “clearly indicates that the change is occurring in the embedded device.” (Brief at 12.) The examiner disagrees. The language, “of said embedded device,” (Claims 1, 10, and 18 (emphasis added),) is broader than appellant suggests and instead reasonably encompasses attributes either inside or outside of the embedded device. Further, appellant has not provided any evidence to support the assertion that an attribute “of said embedded device” cannot be reasonably interpreted as data associated with the embedded device. (Brief at 12.) The examiner notes that neither the term “attribute” nor the phrase “of said embedded device” are explicitly defined in the original

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disclosure or the claims in any manner that precludes the above interpretation (data associated with the embedded device). In fact, the appellant's specification uses the phrase "associated with the embedded device" when describing the attribute. (Specification at p. 4, lines 6-7 (emphasis added).)

Appellant further argues that the files of Reynolds are not "predetermined." (Brief at 12.) The examiner disagrees. Reynolds discloses periodically polling (through master SMS 184) installation directory 1222 for new directories that include new releases (see paragraph [0504]). These new releases represent available software upgrades for embedded devices (see, e.g., paragraph [0505] ("A board-by-board upgrade may allow a network device administrator to chose certain boards on which to upgrade applications . . .")), and as such, may be considered attributes of the embedded devices (i.e, data associated with the embedded devices) availability of such new software releases for embedded devices. Because the polling routine is preprogrammed to look for these new directories/releases (see paragraph [0504] ("Master SMS 184 periodically polls installation directory 1222 for new sub-directories including new releases, for example, release 1.1 1218 in sub-directory 1220.")), the availability of such new releases may be considered predetermined attributes, and the repeated polling of the installation directory (see paragraph [0504]) may be considered checking for changes in these predetermined attributes.

Regarding claim 18, appellant merely argues that Reynolds does not teach the "at least one event indication in response to a change of at least one predetermined attribute of said embedded device" element of claim 18. (Brief at 13.) However, as discussed above, Reynolds does teach such an element.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Eric B. Kiss

Patent Examiner, Art Unit 2192

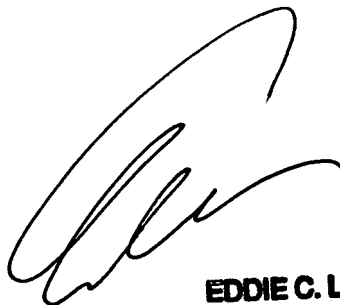
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