



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/109,186	03/28/2002	Hans F. van Rietschote	5760-00400/VRTS 0064	4997

7590 04/11/2005
Lawrence J. Merkel
Conley, Rose, & Tayon, P.C.
P.O. Box 398
Austin, TX 78767

EXAMINER

CHACE, CHRISTIAN

ART UNIT PAPER NUMBER

2189

DATE MAILED: 04/11/2005

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

Symantec 2001

DETAILED ACTION

Response to Amendment

This Office action has been issued in response to amendment filed 18 January 2005. Claims 1-30 are pending. Applicant's arguments have been carefully and respectfully considered, but they are not persuasive. In addition, new grounds for rejection have been necessitated by amendments to some of the claims. Accordingly, this action has been made FINAL, as necessitated by amendment.

Information Disclosure Statement

IDS submitted 18 January 2005 has been considered by examiner. A signed and initialed copy is attached hereto.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims recite, "a storage medium." While the instant specification does not appear to explicitly disclose a "storage medium," a "storage device" is disclosed at page 10, lines 8-18. The end of this paragraph recites, "Generally, a storage device is any device which is capable of storing data." It is not limited to *computer-readable* storage media or devices. It could be a piece of paper with instructions written on it, e.g. Accordingly, the claims "storage medium" does not tangibly embody the recited instructions, and, as such, renders them non-functional descriptive material and are an abstract idea.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a tangible embodiment for the instructions (see supra under 35 USC 101 rejection).

Double Patenting

Claims 1, 12, and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 10/109,406. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter in different words.

Both the instant claims and claim 2 of the copending application claim two computer systems, with a virtual machine operating on the first computer system. Both claim an image from the first system being copied to the second system, suspending/resuming operations on that second system. If a system is suspended, it is inherently at a point in time.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1, 12, and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and

17 of copending Application No. 10/108,882. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter in different words.

Similar to the above discussion, the instant claims as well as the copending claims herein indicated, claim two computer systems, with a virtual machine operating on the first computer system. Both claim an image from the first system being copied to the second system, suspending/resuming operations on that second system. If a system is "failed over," it is a redundant, operating copy of the failed system at a point in time.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1, 12, and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of copending Application No. 10/616,437. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter in different words.

Similar to the above discussion, the instant claims as well as the copending claim herein indicated, claim two computer systems, with a virtual machine operating on the first computer system. Both claim an image (load) from the first system being copied (migrated) to the second system, suspending/resuming operations on that second system.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.