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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		EXAMINER		
Lawrence J. Merkel			CHACE, CHRISTIAN	
Conley, Rose, & Tayon, P.C. P.O. Box 398			ART UNIT	PAPER NUMBER
Austin, TX 78	767		2189	

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



	Application No.	Applicant(s)			
Office Action Summer	10/109,186	RIETSCHOTE, HANS F. VAN			
Office Action Summary	Examiner	Art Unit			
	Christian P. Chace	2189			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).					
Status					
1)⊠ Responsive to communication(s) filed on 18 Ja	nuary 2005.				
2a)⊠ This action is FINAL . 2b)☐ This	action is non-final.				
3) 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 <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4) ☐ Claim(s) 1-30 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1-30 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or election requirement.					
Application Papers					
9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.					
Priority under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
Attachment(s) 1) Notice of References Cited (PTO-892)	4) 🔲 Interview Summary (PTO-413)			
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	Paper No(s)/Mail Da				



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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.



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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 <u>provisional</u> 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



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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 <u>provisional</u> 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.



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