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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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90/008,425

01/30/2007

7124289

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6642

22830 7590 04/13/2007

CARR & FERRELL LLP
2200 GENG ROAD
PALO ALTO, CA 94303

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 04/13/2007

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



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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

Daniel B. Ravicher
PUBLIC PATENT FOUNDATION, INC.
1375 Broadway, Suite 600
New York, NY 10018

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/008,425.

PATENT NO. 7124289.

ART UNIT 3992.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/008,425	Patent Under Reexamination 7124289	
	Examiner Joseph R. Pokrzywa	Art Unit 3992	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 30 January 2007 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) PTO-892, b) PTO/SB/08, c) Other: _____

1. The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

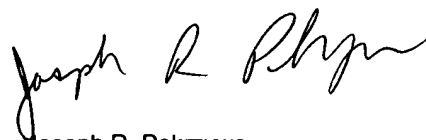
For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a) by Treasury check or,
b) by credit to Deposit Account No. _____, or
c) by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).



Joseph R. Pokrzywa
Primary Examiner
Art Unit: 3992

cc:Requester (if third party requester)

DETAILED ACTION

Response to Request for *ex parte* Reexamination

1. Reexamination has been requested for claims 1-28 of U.S. Patent Number 7,124,289 ('289 Patent).
2. A substantial new question of patentability affecting claims 1-28 of United States Patent Number 7,124,289 is raised by the request for *ex parte* reexamination.
3. A prior art patent or printed publication raises a substantial new question of patentability where there is:
 - (A) a substantial likelihood that a reasonable Examiner would consider the prior art patent or printed publication important in deciding whether or not the claim is patentable, MPEP §2242 (I) and,
 - (B) the same question of patentability as to the claim has not been decided in a previous or pending proceeding or in a final holding of invalidity by a federal court. See MPEP §2242 (III).

4. The '289 Patent is currently assigned to:

Opware Inc.

599 N. Mathilda

Sunnyvale, California 94085

5. The '289 Patent application issued on Oct. 17, 2006, with a filing date of Oct. 31, 2000.

Discussion of References

6. In the request for reexamination, the third party requester alleges that the '289 Patent **claims 1-28** are anticipated and/or rendered obvious in light of the following references:
 - a. Paul Anderson, "Towards a High-Level Machine Configuration System", Proc. Eighth USENIX Sys. Admin. Conference (LISA), Sept. 19-23, 1994, pages 19-26 (hereafter "Anderson");
 - b. Michael Fisk, "Automating the Administration of Heterogeneous LANs", Proc. Tenth USENIX Sys. Admin. Conference (LISA X), Sept. 29-Oct. 4, 1996, pages 181-186 (hereafter "Fisk");
 - c. U.S. Patent Number 6,009,274, issued to Fletcher *et al.* (hereafter "Fletcher");
 - d. U.S. Patent Number 6,138,153, issued to Collins, III *et al.* (hereafter "Collins").

Art Unit: 3992

7. The aforementioned references of Anderson and Fisk are newly cited references, not of record in the file of the '289 Patent, and are not cumulative to the art of record in the original file. However, the aforementioned references of Fletcher and Collins were both cited during the prosecution that became the '289 Patent.

8. It is agreed that the reference of Anderson would have been considered important by a reasonable examiner in deciding whether or not independent **claims 1 and 17** were patentable, for the reasons discussed below and by the Third Party Requester. The Third Party Requester's description of the Anderson reference in the request for reexamination on page 4, line 10 through page 13, line 47 are hereby incorporated by reference for their explanation of the teaching provided by Anderson that was not present in the prosecution of the application which became the '289 Patent.

9. Particularly, Anderson teaches of a storing a configuration model in a database for each of different types of devices having different respective configurations of operating parameters [as read on page 20, column 1, and on page 21, column 1]. Further, Anderson teaches of transmitting messages, which contain data from a given one of the models from the database to agents on only those devices associated with the given model to cause the agents to manipulate operating parameters of software components on the devices [see page 21, column 1, and page 22, columns 1 and 2].

10. With this, the reference of Anderson, introduced by the Third Party requester, would likely have been important to a reasonable examiner in deciding whether or not claims 1 and 17 were patentable. The above discussed teaching was not present during the prosecution of the application which became the '289 Patent. Thereby, the reference raises a substantial new question regarding independent claims 1 and 17 of the instant '289 Patent.

11. Additionally, it is agreed that the reference of Fisk would have been considered important by a reasonable examiner in deciding whether or not independent **claims 1 and 17** were patentable, for the reasons discussed below and by the Third Party Requester. The Third Party Requester's description of the Fisk reference in the request for reexamination on page 14, line 10 through page 19, line 34 are hereby incorporated by reference for their explanation of the teaching provided by Fisk that was not present in the prosecution of the application which became the '289 Patent.

12. Particularly, Fisk teaches of a storing a configuration model in a database for each of different types of devices having different respective configurations of operating parameters [see pages 183, column 1 through page 184, column 1]. Further, Anderson teaches of transmitting messages, which contain data from a given one of the models from the database to agents on only those devices associated with the given model to cause the agents to manipulate operating parameters of software components on the devices [see page 183, columns 1 and 2].

13. With this, the reference of Fisk, introduced by the Third Party requester, would also likely have been important to a reasonable examiner in deciding whether or not claims 1 and 17 were patentable. The above discussed teaching was not present during the prosecution of the application which became the '289 Patent. Thereby, the reference raises a substantial new question regarding independent claims 1 and 17 of the instant '289 Patent.

14. The prior art references of Fletcher and Collins were both utilized in the prosecution of the application that matured into the '289 Patent, so by themselves, Fletcher and Collins do not raise a substantial new question of patentability. However, when viewed in a new light with the reference of Anderson that is noted above, the combination of references would raise a substantial new question of patentability of each of claims 1-28. In the prosecution history of the '289 Patent, the independent claims were amended to overcome the Fletcher reference, adding limitations requiring storing a configuration model in a database for each of different types of devices having different respective configurations of operating parameters, and transmitting messages, which contain data from a given one of the models from the database to agents on only those devices associated with the given model to cause the agents to manipulate operating parameters of software components on the devices. As discussed above, the reference of Anderson can be seen as teaching these features.

15. Thus, the proposed combination of Fletcher and Collins, in view of Anderson, would raise a substantial new question of patentability of each of claims 1-28.

Conclusion

16. **Claims 1-28** for U.S. Patent Number 7,124,289 are subject to reexamination.

17. Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

18. The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 7,124,289 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

19. ALL correspondence relating to this ex parte reexamination proceeding should be directed as follows:

Please mail any communications to:

Attn: Mail Stop "Ex Parte Reexam"
Central Reexamination Unit
Commissioner for Patents
P. O. Box 1450
Alexandria VA 22313-1450

Please FAX any communications to:

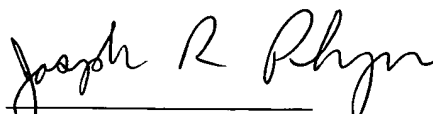
(571) 273-9900
Central Reexamination Unit

Please hand-deliver any communications to:

Customer Service Window
Attn: Central Reexamination Unit
Randolph Building, Lobby Level
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Reexamination Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

Signed:



Joseph R. Pokrzywa
Central Reexamination Unit 3992
(571) 272-7410

JOSEPH R. POKRZYWA
PRIMARY EXAMINER

Conferees :

R.C.F. 