

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION OF: Attorney Docket: 2655-0185
Net2Phone, Inc. (Patent No. 6,009,469) Group Art Unit: 3992
Control No.: 90/010,422 Examiner: KOSOWSKI, Alexander
Issue Date: December 28, 1999 Confirmation No.: 6565
Title: **GRAPHIC USER INTERFACE FOR
INTERNET TELEPHONY APPLICATION**

SECOND DECLARATION OF KETAN MAYER-PATEL UNDER 37 C.F.R. 1.132

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

I. INTRODUCTION

1. I am the same Ketan Mayer-Patel that filed a Declaration in response to the first Office Action in the re-examination of U.S. Patent No. 6,009,469 (hereinafter “the ‘469 patent”).
2. I have reviewed the outstanding Office Action dated May 10, 2010.
3. I understand that claims 8, 9, and 14-18 were alleged to be obvious over the combination of NetBIOS and Pinard (U.S. Patent No. 5,533,110), either alone or in combination with the VocalChat User’s Guide, and claims 8, 9, and 14-18 were alleged to be obvious over the combination of the Etherphone papers in view of Pinard, either alone or in combination with the VocalChat User’s Guide.
4. I understand that in response to evidence presented in my first Declaration the Office Action now alleges “under a broadest reasonable interpretation, this [accessible] limitation could simply mean that a user is registered with the system.” As this argument was not presented in the first Office Action, I was not able to know that such a position needed to be addressed.
5. I do not believe that one of ordinary skill in the art at the time the invention was made would have believed that the definitions proposed by the Office Action are proper -- even under a “broadest reasonable interpretation” standard.

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6. The dictionary definitions of “accessible” and “registered” show that they are not synonymous with each other. See Exhibit 1 attached hereto. According to the definitions, a system such as NetBIOS would indicate whether a name is “registered” (e.g., recorded or listed), but it would not indicate that a callee process is accessible (e.g., easy to reach or use or easily approached or entered).

7. Accordingly, I do not agree that “under a broadest reasonable interpretation, this [accessible] limitation could simply mean that a user is registered with the system.”

8. In fact, NetBIOS explicitly provides for permanent registration of names. As described in Section 15.1.3.2 of RFC 1001, “Names held by an NBNS are given a lifetime during name registration.” The same section further states “The lifetime period is established through a simple negotiation mechanism during name registration: In the name registration request, the end-node proposes a lifetime value or *requests an infinite lifetime*. The NBNS places an actual lifetime value into the name registration response. The NBNS is always allowed to respond with an infinite actual period.” (Emphasis added.) Thus, in any number of cases, the NBNS may demand an infinite lifetime for names registered by nodes, with the effect that the NBNS would deliberately preserve the name and address information registered by a node permanently on the NBNS even weeks, months or years after the node had stopped using the name or had gone off-line altogether. Therefore, the correspondence between a name and an IP address is not indicative that a first callee process is accessible.

9. Moreover, the node requesting information on whether a name is registered does not receive an indication from the NBNS that the registered name corresponds to a name that has been given an infinite lifetime and could therefore be completely out-of-date. Section 4.2.13 of RFC 1002 describes the Positive Name Query Response (reproduced below) that is returned when a name has been registered, and there is no indication that the returned address is for a name associated with an identified lifetime, let alone an infinite lifetime.

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4.2.13. POSITIVE NAME QUERY RESPONSE

      1 1 1 1 1 1 1 1 1 1 1 2 2 2 2 2 2 2 2 2 2 3 3
0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1
+-----+-----+-----+-----+-----+-----+-----+-----+
| NAME_TRN_ID | 1 | 0x0 | 1 | T | 1 | ? | 0 | 0 | 0 | 0x0 |
+-----+-----+-----+-----+-----+-----+-----+-----+
| 0x0000      | |      | 0x0001 |
+-----+-----+-----+-----+-----+-----+-----+-----+
| 0x0000      | |      | 0x0000 |
+-----+-----+-----+-----+-----+-----+-----+-----+
|                                     RR_NAME                                     |
+-----+-----+-----+-----+-----+-----+-----+-----+
| NB (0x0020) | | IN (0x0001) |
+-----+-----+-----+-----+-----+-----+-----+-----+
|                                     TTL                                       |
+-----+-----+-----+-----+-----+-----+-----+-----+
| RELENGTH    | |
+-----+-----+-----+-----+-----+-----+-----+-----+
|                                     ADDR_ENTRY ARRAY                           |
+-----+-----+-----+-----+-----+-----+-----+-----+

```

The ADDR_ENTRY ARRAY a sequence of zero or more ADDR_ENTRY records. Each ADDR_ENTRY record represents an owner of a name. For group names there may be multiple entries. However, the list may be incomplete due to packet size limitations. Bit 22, "T", will be set to indicate truncated data.

Each ADDR_ENTRY has the following format:

```

+-----+-----+-----+-----+-----+-----+-----+-----+
| NB_FLAGS    | | NB_ADDRESS |
+-----+-----+-----+-----+-----+-----+-----+-----+
| NB_ADDRESS  | | (continued) |
+-----+-----+-----+-----+-----+-----+-----+-----+

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10. In addition, there is no indication in the Positive Name Query Response disclosed by NetBIOS that the returned address necessarily corresponds with a computer or process that was ever accessible as asserted by the pending office action. For example, a first user could manually enter a dummy address in the NB_Address field associated with a claimed name that he wanted to register and still be compliant with the NetBIOS protocol standard since queries by other users for that name are “not necessarily a prelude to NetBIOS session establishment or NetBIOS datagram transmission.” Section 15.3.1.

11. Furthermore, RFC 1002 further shows that a name registration is not an indication of whether a first callee process is accessible since a NBNS can refuse to release registered names for policy reasons. As described in Section 4.2.9, a node may request that a name be released using a Name Release Request (reproduced below).

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4.2.9. NAME RELEASE REQUEST & DEMAND

```

      1 1 1 1 1 1 1 1 1 1 2 2 2 2 2 2 2 2 3 3
0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1
+-----+-----+-----+-----+-----+-----+-----+-----+
| NAME_TRN_ID | 0 | 0x6 | 0 | 0 | 0 | 0 | 0 | 0 | B | 0x0 |
+-----+-----+-----+-----+-----+-----+-----+-----+
| 0x0001 | | | | | | | | | | | | | | | | | | | | | | |
+-----+-----+-----+-----+-----+-----+-----+-----+
| 0x0000 | | | | | | | | | | | | | | | | | | | | | | |
+-----+-----+-----+-----+-----+-----+-----+-----+
| QUESTION_NAME |
+-----+-----+-----+-----+-----+-----+-----+-----+
| NB (0x0020) | | | | | | | | | | | | | | | | | | | | | | |
+-----+-----+-----+-----+-----+-----+-----+-----+
| RR_NAME |
+-----+-----+-----+-----+-----+-----+-----+-----+
| NB (0x0020) | | | | | | | | | | | | | | | | | | | | | | |
+-----+-----+-----+-----+-----+-----+-----+-----+
| 0x00000000 |
+-----+-----+-----+-----+-----+-----+-----+-----+
| 0x0006 | | | | | | | | | | | | | | | | | | | | | | |
+-----+-----+-----+-----+-----+-----+-----+-----+
| NB_FLAGS |
+-----+-----+-----+-----+-----+-----+-----+-----+
| NB_ADDRESS |
+-----+-----+-----+-----+-----+-----+-----+-----+

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12. In response, as shown in Section 4.2.11, a server can generate a Negative Name Release Response, as shown below.

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4.2.11. NEGATIVE NAME RELEASE RESPONSE

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      1 1 1 1 1 1 1 1 1 1 1 2 2 2 2 2 2 2 2 2 2 3 3
0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1
+-----+-----+-----+-----+-----+-----+-----+-----+
|          NAME_TRN_ID          | 1 | 0x6 | 1|0|0|0|0|0|0| RCODE |
+-----+-----+-----+-----+-----+-----+-----+-----+
|          0x0000          |          0x0001          |
+-----+-----+-----+-----+-----+-----+-----+-----+
|          0x0000          |          0x0000          |
+-----+-----+-----+-----+-----+-----+-----+-----+
|                               |                               |
|                               |                               |
|                               |                               |
|                               |                               |
+-----+-----+-----+-----+-----+-----+-----+-----+
|          NB (0x0020)          |          IN (0x0001)          |
+-----+-----+-----+-----+-----+-----+-----+-----+
|                               |                               |
|                               |                               |
|                               |                               |
|                               |                               |
+-----+-----+-----+-----+-----+-----+-----+-----+
|          0x0006          |          NB_FLAGS          |
+-----+-----+-----+-----+-----+-----+-----+-----+
|                               |                               |
|                               |                               |
|                               |                               |
|                               |                               |
+-----+-----+-----+-----+-----+-----+-----+-----+
|          NB_ADDRESS          |
+-----+-----+-----+-----+-----+-----+-----+-----+

```

The RCODE field indicates the response from the server. One such response is RFS_ERR which is described as follows:

```

RFS_ERR      0x5  Refused error.  For policy reasons server
              will not release this name from this host.

```

13. Thus, the registration of a name does not indicate that NetBIOS discloses that a “first callee process is accessible.”

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