IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: David N. Bonnell et al.

Serial No.:   08/812,860

Filing Date: March 6, 1997

Group Art Unit: 2317

Examiner:

A Continuation of Application Serial No. 08/316,034 filed on September 30, 1994

Title: System for Managing Computer Resources Across a Distributed Computing Environment by First Reading Discovery Information About How to Determine System Resource Presence

Commissioner of Patents
    and Trademarks
Washington DC 20231

> I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks Washington, D.C. 20231
>
> on August 18, 1997
>
> _Barbara Turner_
> Signature

Dear Sir:

DECLARATION OF KIRILL L. TATARINOV

I, Kirill L. Tatarinov, hereby declare:

1.   I am one of the named inventors for the above-referenced patent application, U.S. Patent Application Serial No. 08/812,860, which is a continuation application of U.S. Patent Application Serial No. 08/316,034 filed on September 30, 1994.

2.   I have reviewed and understand the specifications of the above-referenced patent applications.

3.   I am currently employed by BMC Software, Inc. (hereafter "BMC") in Houston, Texas, as its Vice President of Research and Development. I have been employed by BMC since January, 1994.
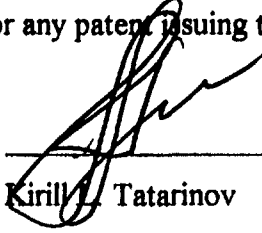
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4.   Prior to being employed by BMC, I was employed by Patrol Software, Pty. Ltd., an Australian company (hereafter "Patrol Software"), as its Director of Research and Development.

5.   On information and belief, in Jaunary 1994, BMC acquired ownership of Patrol Software, including all rights to the above-referenced patent applications.

6.   The invention disclosed in the above-referenced patent applications was first embodied in Version 2.0 of BMC's "DDS/PATROL" software product (hereafter "PATROL V2.0").

7.   The first functional software for the PATROL V2.0 software product was not completed until late October, 1993 or early November 1993. In January, 1994, the "beta" version of PATROL V2.0 software product was experimentally tested with select customers. The purpose of the "beta" software testing program was to test the PATROL V2.0 software product to determine if it would work for its intended purpose. In June 1994, after six months of testing and further software modifications, the PATROL V2.0 software product was released for commercial production and sales.

8.   In May, 1993, Patrol Software began confidential negotiations with Digital Equipment Corporation (hereafter "DEC") concerning a joint-development agreement under which Patrol Software would "port," or adapt, the PATROL V2.0 software product (then still under development) to operate with DEC's proprietary software and hardware. Additionally, DEC would develop and modify its own software to enable operation with the PATROL V2.0 software product. These negotiations were conducted under a non-disclosure agreement, such that DEC was required to keep to the subject matter of the negotiations a secret.

9.   The negotiations between Patrol Software and DEC resulted in the October 20, 1993 "Development and Distribution Agreement" (hereafter the "DEC Agreement"), attached hereto as Exhibit A.

10.   Under the DEC Agreement, Patrol Software agreed to "port," or adapt, "Version 1.4" of the PATROL software product to operate with DEC's proprietary software. See DEC Agreement at § 2.1.2. (Version 1.4 of the PATROL software product was later

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renamed to Version 2.0). DEC agreed to develop and modify its own software to operate with the "ported" PATROL software product. See DEC Agreement at § 2.2.

11.   On October 1, 1993, a preliminary version of the PATROL V2.0 software product was demonstrated, but not offered for sale at a trade show in Florida. This "demonstration" software was not a functional embodiment of the invention disclosed in the above-referenced patent application, but merely demonstrated the concept of the invention. The first functional software for the PATROL V2.0 software product embodying the invention was not completed until after October 1, 1993.

12.   I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true. I make this declaration with the knowledge that willful false statements and the like are punishable by fine and imprisonment, or both, under 18 U.S.C. § 1001, and may jeopardize the validity of the above-referenced patent applications or any patent issuing thereon.

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Kirill L. Tatarinov