UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2447	

NOTIFICATION DATE	DELIVERY MODE
11/02/2010	ELECTRONIC

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

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)	
Office Action Summary	12/771,915	SHORT ET AL.	
	Examiner	Art Unit	
	Liangche A. Wang	2447	

-- 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 <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, 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 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 <u>30 April 2010</u>.

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 *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-20</u> 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    4a) Of the above claim(s) _____ is/are withdrawn from consideration.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) <u>1-20</u> 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)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

1. Claims 1-20 are presented for examination.

Claim Rejections - 35 USC § 112

2. 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.

3. Claims 3 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the limitation "the delay period is further based on a size of the packet and a time associated with a precious packet" renders the claims vague and indefinite. The delay period should be "calculated", "corrected", "or "changed" based on certain information. It seems some information are lacking in the sentence that renders the claims vague and indefinite.

Claim Interpretations

4. Applicant is informed that a "whereby clause in a method claim is not given weight when it simply expresses the intended result for a process step positively recited." (MPEP 2111.04).

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-15, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman, US Patent Number 5,978,387, hereinafter Sherman, in views of Fowler, US Patent Number 5,793,978, hereinafter Fowler.

7. Referring to claim 1, Sherman discloses a system for allowing a user to dynamically control an amount of bandwidth available to the user in a network (Col 3 lines 30-37), the system comprising:

    a. a first network interface (gateway 330) for communicating over a communication link with a user device during a network session (Col 5 lines 31-34);

    b. a second network interface (channel interface 340) for communicating with one or more computer networks (Col 5 lines 34-36);

    c. a data storage system including an indication of a network communication bandwidth associated with the user device (Col 5 lines 18-21, 24-29); and

    d. a processor (processor 504).

    Sherman does not explicitly disclose the limitation of delay period.

    However, Fowler has taught the limitation of delay period (Fowler, Col 1 lines 49-52, delay period corresponds to the period of time that message is held until the selected amount of bandwidth become available.)

    It would have been obvious to a person with ordinary skill in the art at the time the invention was made to incorporate the delay period of Fowler in Sherman such that to have the processor of Sherman to calculate the delay period associated with a received

packet based on the bandwidth associated with user and have the processor delay

transmission of the packet based on the delay period.

A person with ordinary skill in the art would have been motivated to make the

modification to Ayres because having the delay period for data packet transfer would

give a relief to when a significant amount of packets are attempting to be broadcast or

transmitted at the same time as taught by Fowler (Col 1 lines 28-40).

8. Referring to claim 2, Sherman as modified discloses the system of claim 1, wherein the

processor is further configured to adjust a billing rate charged to the user based on the

network communication bandwidth (Col 7 lines 27-32).

9. Referring to claim 3, Sherman as modified discloses the system of claim 1, wherein the

delay period is further based on a size of the packet and a time associated with a previous

packet (Fowler, Col 1 lines 53-56, selected bandwidth is based on the packet

bytes to be send in any one second period.)

10. Referring to claim 4, Sherman as modified discloses the system of claim 1, wherein the

system comprises a gateway device (figure 3 gateway 320).

11. Referring to claim 5, Sherman as modified discloses the system of claim 1, wherein the

delaying is performed by placing the packet in a queue for the delay period (Fowler Col 1

lines 42-52).

12. Referring to claim 6, Sherman as modified discloses the system of claim 1, wherein the

packet is received from the first network interface (figure 3).

13. Referring to claim 7, Sherman as modified discloses the system of claim 6, wherein the

packet is received from the second network interface (figure 3).

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