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KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			WANG, LIANG CHE A	
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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).

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:

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(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 negated 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

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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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