DETAILED ACTION

Acknowledgements

1. This office action is in response to the original application filed on 21 June 2007.

2. Claims 1-20 are currently pending and have been examined.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Claim 19 recites "storage module polls the one or more…". However, the specification is silent as to what the applicant meant by "polls". For example, ¶ [0061] on page 14, merely states the operation being carried out either periodically or "when polled".

Claim Rejections - 35 USC § 112

6. 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.

7. Claim 8 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with functional or operational language such as "processor supplying a data…". A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art – if the prior art has the capability to so perform (MPEP § 21114).

Claim Rejections - 35 USC § 103

8. 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.

9. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Circenis et al (US2003/0135474), herein after referred to as Circeni, in view of Yu et al (US 2007/0226155), Herein after referred to as Yu.

10. With respect to claim 1:

11. Circenis discloses a method of operating a computer with scalable performance comprising:

- Presenting a catalog of options related to scalable performance of the pay-per-use computer ("PPU software products installed on a computer 18", ¶ [0012], Fig. 1, item 30i).

- Calculating a total price of operation of the computer ("cumulative metrics, which measure the total accumulated value…", ¶ [0021], fig. 2, step 240) corresponding to the selection of the option
- Configuring the computer to operate ("PPU software product 30 may be configured for PPU usage…", ¶ [0025]) in accordance with the selection of the option
- Accumulating charges (measure the total accumulated value…", ¶ [0021]) for operation of the computer according to the total price.
- Circenis discloses collecting the value of each parameter but does not explicitly disclose presenting a price. Yu teaches presenting a price associated with each of the options ("tool that provides pricing of products based on user selectable products", ¶ [002], Fig. 1, item 16).
- Circenis discloses user selecting a program but does not explicitly disclose receiving a selection of an option. However, Yu teaches receiving a selection of an option from the catalog of options ("selecting available products…via an electronic product catalog", ¶ [0052]).
- It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the system of Circenis to include presenting product price list and ability to adjust the prices based on different combinations of usage of Yu in the process of pay as you go computing, with neither undue experimentation nor unexpected results.

12. With respect to claim 2:

13. Circenis discloses presenting the catalog comprises presenting a set of operating characteristics ("PPU software products installed on a computer 18", ¶ [0012], Fig. 1, item 30i) with a range of selectable performance settings for each element of the set of operating characteristics.

14. With respect to claim 3:

15. Circenis discloses presenting the catalog comprises presenting a preset package of scalable performance ("PPU software products installed on a computer 18", ¶ [0012], Fig. 1, item 30i, software products with preset system requirements) settings corresponding to a task or activity.

16. With respect to claim 4:

17. Circenis discloses downloading the catalog ("PPU software products installed on a computer 18", ¶ [0012], Fig. 1, item 30i, where the software products are downloaded form the vendor) to a secure memory in the computer.

18. With respect to claim 6:

19. Circenis discloses wherein calculating a total price comprises:

- Circenis discloses collecting the value of each parameter but does not explicitly disclose presenting a price. Yu teaches presenting a price associated with each respective element of a set of scalable performance settings ("tool that provides pricing of products based on user selectable products", ¶ [002], Fig. 1, item 16).
- Circenis discloses software product prices being calculated based on collected metrics but does not explicitly disclose adjusting the price

associated with a product. However, Yu teaches adjusting the price "price adjustments for selecting each combination…", ¶ [0097]) associated with an element of the set of scalable performance levels when a setting is adjusted to a new performance level.

- It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the system of Circenis to include presenting product price list and ability to adjust the prices based on different combinations of usage of Yu in the process of pay as you go computing, with neither undue experimentation nor unexpected results.

20. With respect to claim 7:

21. Circenis discloses calculating the total price ("cumulative metrics, which measure the total accumulated value…", ¶ [0021], fig. 2, step 240) of operation of the computer comprises calculating a total price of operation of the computer based on a current.

22. With respect to claim 8:

23. Circenis discloses a computer (Fig. 2 and 3, item 18, user computer) adapted for monitored operation.

- a plurality of components (Fig. 3, items 35, 25, 18) each of the plurality of components capable of operating over a range of performance levels and each of the plurality of components comprising a metering agent (Fig. 3, item 15)
- a security module coupled (Fig. 3, item 25, for collection and monitoring functions) to the metering agent in each of the plurality of components, the

security module comprising a secure memory storing the range of performance levels for each of the plurality of components a processor for supplying a data corresponding to the range of performance levels and a current performance level for each of the plurality of components, the data for display on the user interface responsive to a request to reprogram the current performance level for one or more of the plurality of components to a different performance level

- But, Circenis does not disclose a user interface, However, Yu teaches a user interface (Fig. 10, item 404). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the system of Circenis to include a user interface of Yu in the process of pay as you go computing, with neither undue experimentation nor unexpected results.

24. With respect to claim 9:

25. Circenis discloses wherein the security module further comprises a cryptographic unit ("via encrypted or otherwise secure transmission", ¶ [0031]) for creating and verifying digital signatures corresponding to setting the current performance level.

26. With respect to claim 13:

27. Circenis discloses a value manager for calculating a value corresponding to each currently selected performance capability for each of the plurality of components (Fig. 2, item 15).

28. With respect to claim 14:

29. Circenis discloses comprising a balance manager that reports a current stored value for display on the user interface (Fig. 2, items 15 and fig. 3, step 270, where the utility manager reports the metrics and the display function by web portal enabling the customer to track and monitor usage, ¶ [0032]).

30. With respect to claim 16:

31. Circenis discloses a computer-readable medium having computer-executable instructions for implementing a method of receiving user input corresponding to selection of a performance level for an electronic device having a range of available performance levels, comprising a storage module (Fig. 2, item 35) for storing a range of available performance levels for one or more components capable of operation over a range of performance levels, a display module (Fig. 3, steps 270 and 280) for displaying the range of available performance levels for the one or more components, a user interface module for receiving (Fig. 2, item 14, network connection to receive products that have their own system performance requirements) a selection of a performance level for at least one of the one or more components, a management module (Fig. 2, item 18) for securely setting the performance level of the at least one of the one or more components and a metering module (Fig. 2, item 20 and item 15) for monitoring and reporting operation of the at least one of the one or more components.

32. With respect to claim 17:

33. Circenis discloses a balance module ("metrics gathering tool", ¶ [0021], Fig. 2, item 25) for deducting value from a local stored value account corresponding to a usage report from the metering module

34. With respect to claim 18:

35. Circenis discloses a balance module for reporting (network connection to report, Fig. 2, item 14) a usage value to a remote reconciliation service ("remote location", ¶ [0012], Fig. 2, item 16), the usage value corresponding to a usage report from the metering module

36. With respect to claim 19:

37. Circenis discloses the storage module polls ("snapshot metrics", ¶ [0021] and "utility metering device periodically poll…", ¶ [0026]) the one or more components to determine the range of performance levels

38. With respect to claim 20:

39. Circenis discloses storage module receives a message (registry, item 35, receiving product info from remote location, item 16 of fig. 2) with the range of performance levels from a remote management service.

40. Claims 5, 10-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Circenis as applied to claims 1 - 4, 6 - 9, 13, 14 and 16-20 above, in view of Yu and further in view of Lehr et al (US 2003/0135380).

41. With respect to claim 5:

42. Circenis discloses pay per use system but does not explicitly disclose the types of charging the user. However, Lehr teaches accumulating charges for operation comprises accumulating charges at one of a fixed rate per time period, a one time charge ("client may be charged a set fee…", ¶ [0047]), and a rate corresponding to use of a scalable performance resource in the computer.

43. With respect to claim 10:

44. Circenis discloses metrics being encrypted for secure transmission but does not explicitly disclose each metering agent comprises a cryptographic function and at least a public key for verifying digital signatures corresponding to setting a current performance level in one or more of the plurality of components. Lehr teaches each metering agent comprising cryptographic function ("metering mechanism encrypts…", ¶¶ [0027], [0059], Fig. 3, steps 230 and 235)

45. With respect to claim 11:

46. Circenis discloses several components of the pay per use system but does not explicitly disclose each component having a memory. However, Lehr teaches each of the plurality of components comprises a memory storing (Fig. 3, item 161 and fig. 4, items 220 and 225) its respective range of performance capabilities

47. With respect to claim 12:

48. Circenis discloses communication between components but does not disclose every components communicating. However, Lehr teaches each of the plurality of components further comprises a communication capability ("transmission and receiving of metrics", ¶ [0059] and [0060], Fig. 2 item 118) between the memory, the metering agent, and the security module

49. With respect to claim 15:

50. Circenis discloses several components of the pay per use system but does not explicitly disclose each component having a memory. However, Lehr teaches the

secure memory further stores (Figs. 2 and 3, items 123, 145 and 161) a pre-determined setting defining a combination of performance levels corresponding to a task.

51. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to combine the systems of Circenis and Yu with the system of Lehr, to provide communication capability and storage capabilities to collect and communicate all the necessary data in the process of pay as you go computing, with neither undue experimentation nor unexpected results.

Conclusion

52. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- All additional references cited relate to various pay per use or pay as you go systems that are at least generally applicable to the disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Murali K. Dega whose telephone number is (571)270-5394. The examiner can normally be reached on Monday to Thursday 7.30 to 4.00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Fischer can be reached on (571)272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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