

United States District Court,
S.D. California.

HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.,
Plaintiff.

v.

GATEWAY, INC,
Defendant.

Gateway, Inc,
Counterclaim-Plaintiff.

v.

Hewlett-Packard Development Company, L.P., Hewlett-Packard Company and Compaq Information Technologies Group, L.P,
Counterclaim-Defendants.

Civil No. 04CV0613-B(LSP)

Jan. 20, 2006.

John Allcock, DLA Piper US, San Diego, CA, for Plaintiff/Counterclaim-Defendants.

Darryl J. Adams, Dean M. Munyon, James D. Smith, Wayne Harding, Dewey Ballantine, W. Bryan Farney, Dechert LLP, Austin, TX, Jonathan D. Baker, Dechert LLP, Mountain View, CA, for Defendant.

CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 5,586,304

RUDI M. BREWSTER, Senior District Judge.

Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), on September 22, 2005 and October 11-12, 2005, the Court conducted a Markman hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 5,586,304 ("the '304 patent"). Plaintiff Hewlett-Packard Development Company, L.P. ("HP") was represented by the law firm of DLA Piper Rudnick Gray Gary U.S. LLP, and Defendant Gateway, Inc. ("Gateway") was represented by the law firm of Dewey Ballantine LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '304 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '304 patent considered to be technical in nature which a jury of laypersons might not understand clearly without specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the '304 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical

terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A

UNITED STATES PATENT NUMBER 5,586,304-CLAIM CHART

VERBATIM CLAIM LANGUAGE	COURT'S CONSTRUCTION
Claim 1	
<p>1. A method for use in changing a resource of a computer from a first version of the resource to a second version of the resource, comprising:</p>	<p>1. A method for use in changing ^[FN*] [<i>altering, exchanging, or replacing</i>] a resource of a computer [<i>information (called data) stored by the computer and/or the computer tools for obtaining and/or using the data</i>] from a first version of the resource [<i>information (called data) stored by the computer and/or the computer tools for obtaining and/or using the data</i>] to a second version of the resource, comprising [<i>including but not limited to</i>]:</p>
<p>FN* All terms appearing in bold face type and underlined have been construed by the court and appear with their definitions in the glossary in Exhibit B. The definition for each construed term appears in italics after its first use in the patent.</p>	
<p>digitally storing replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource,</p>	<p>digitally storing [<i>storing in binary form</i>] replacement information that identifies the second version and describes features of the second version relative to one or more other versions [<i>identifies differences between, and provides a comparison of more than one feature of the second version and one or more other versions</i>] of the resource,</p>
<p>digitally storing information identifying the first version,</p>	<p>digitally storing information identifying the first version,</p>
<p>by computer, automatically determining which of the other versions is the first version, and</p>	<p>by computer, automatically [<i>without user or operator action or involvement</i>] determining which of the other versions is the first version, and</p>
<p>based on the results of the determining step, automatically determining the importance of replacing the first version of the resource with the second version.</p>	<p>based on [<i>initiated by</i>] the results of the determining step, automatically determining the importance of replacing the first version of the resource with the second version.</p>
Claim 2	
<p>2. The method of claim 1 wherein the replacement information is stored on a portable medium, the second version of the resource is also stored on the portable medium, and the replacement information identifies the location of the second version of the resource on the portable medium.</p>	<p>2. The method of claim 1 wherein the replacement information is stored on a portable medium [<i>a physical material such as a CD-ROM, used for storing computer information, that is readily removable</i>], the second version of the resource is also stored on the portable medium, and the replacement information identifies the location of the second version of the resource on the portable medium.</p>
Claim 3	
<p>3. The method of claim 2 wherein the</p>	<p>3. The method of claim 2 wherein the portable medium</p>

portable medium comprises a CD-ROM.	<i>comprises</i> a CD-ROM.
Claim 4	
4. The method of claim 2 wherein the portable medium contains stored versions of multiple resources, and replacement information with respect to each of the resources.	4. The method of claim 2 wherein the <i>portable medium</i> contains stored versions of multiple <i>resources</i> , and replacement information with respect to each of the <i>resources</i> .
Claim 5	
5. The method of claim 1 wherein the replacement information is retrievable from an on-line service.	5. The method of claim 1 wherein the replacement information is retrievable from an on-line service.
Claim 6	
6. The method of claim 1 wherein the replacement information is stored in the form of a database.	6. The method of claim 1 wherein the replacement information is stored in the form of a database.
Claim 7	
7. The method of claim 1 wherein the replacement information further comprises instructions for installation of second version of the resource.	7. The method of claim 1 wherein the replacement information further comprises instructions for installation of second version of the <i>resource</i> .
Claim 8	
8. The method of claim 7 wherein the installation instructions are expressed in accordance with a predefined common syntax.	8. The method of claim 7 wherein the installation instructions are expressed in accordance with a predefined common <i>syntax</i> [<i>computer programming language</i>].
Claim 9	
9. The method of claim 1 wherein the resource comprises a complete standalone software package.	9. The method of claim 1 wherein the <i>resource comprises</i> a complete standalone software package.
Claim 10	
10. The method of claim 1 wherein the resource comprises less than all of a complete standalone software package.	10. The method of claim 1 wherein the <i>resource comprises</i> less than all of a complete standalone software package.
Claim 11	
11. The method of claim 1 further comprising automatically changing the resource on a network server.	11. The method of claim 1 further comprising automatically changing the <i>resource</i> on a network server.
Claim 12	
12. The method of claim 11 wherein automatically changing the resource on the network server comprises	12. The method of claim 11 wherein automatically changing the <i>resource</i> on the network server comprises
storing on a storage medium the first version of the resource, and	storing on a storage medium the first version of the <i>resource</i> , and
replacing on the server the first version of the resource with the second version	replacing on the server the first version of the <i>resource</i> with the second version.
Claim 13	

13. The method of claim 1 further comprising automatically changing the resource on a network client.	13. The method of claim 1 further comprising automatically changing the resource on a network client.
Claim 14	
14. The method of claim 13 wherein the change is performed via a network.	14. The method of claim 13 wherein the change [<i>alteration, exchange or replacement</i>] is performed via a network.
Claim 15	
15. The method of claim 13 wherein automatically changing the resource on the network client comprises	15. The method of claim 13 wherein automatically changing the resource on the network client comprises [<i>includes, but is not limited to</i>]
storing on a storage medium the first version of the resource, and	storing on a storage medium the first version of the resource , and
replacing on the client the first version of the resource with the second version.	replacing on the client the first version of the resource with the second version.
Claim 16	
16. The method of claim 13 wherein the change is performed by automatically storing the second version and installation instructions on a portable storage medium for manual installation on the client.	16. The method of claim 13 wherein the change is performed by automatically storing the second version and installation instructions on a portable storage medium [<i>a physical material, such as a CD-ROM, used for storing computer information, that is readily removable</i>] for manual installation on the client.
Claim 17	
17. The method of claim 1 wherein the replacement information includes information concerning at least one reason for the second version.	17. The method of claim 1 wherein the replacement information includes information concerning at least one reason for the second version.
Claim 18	
18. The method of claim 1 wherein the replacement information includes an indication of the type of change from another version to the second version.	18. The method of claim 1 wherein the replacement information includes an indication of the type of change from another version to the second version.
Claim 19	
19. The method of claim 18 wherein the type of change may include feature enhancement, performance enhancement, or bug fix.	19. The method of claim 18 wherein the type of change may include feature enhancement, performance enhancement, or bug fix.
Claim 20	
20. The method of claim 1 wherein the replacement information includes an indication of the importance of the change from another version to the second version.	20. The method of claim 1 wherein the replacement information includes an indication of the importance of the change from another version to the second version.
Claim 21	
21. The method of claim 1 wherein the replacement information includes information identifying other resources that must be changed before the resource may be changed.	21. The method of claim 1 wherein the replacement information includes information identifying other resources that must be changed [<i>altered, exchanged or replaced</i>] before the resource may be changed .
Claim 22	

22. A method of supplying at least one replacement version of at least one computer resource comprising:	22. A method of supplying at least one replacement version [<i>a version that replaces an existing version</i>] of at least one computer resource [<i>information (called data) stored by the computer and/or the computer tools for obtaining and/or using the data</i>] comprising :
storing, on a portable medium, at least one copy of the replacement version of each resource,	storing, on a portable medium , at least one copy of the replacement version of each resource ,
storing on the portable medium replacement information that identifies the replacement version,	storing on the portable medium replacement information that identifies the replacement version ,
storing information that describes features of the replacement version relative to one or more other versions of the resource, and	storing information that describes features of the replacement version relative to one or more other versions [<i>identifies differences between, and provides a comparison of, more than one feature of the replacement version and one or more other versions</i>] of the resource , and
storing on the portable medium information that provides instructions, in accordance with a predefined common syntax, for automatically installing the replacement version of each resource.	storing on the portable medium information that provides instructions, in accordance with a predefined common syntax , for automatically installing the replacement version of each resource .
Claim 23	
23. The method of claim 22 further comprising storing information concerning at least one reason for the replacement version.	23. The method of claim 22 further comprising storing information concerning at least one reason for the replacement version .
Claim 24	
24. The method of claim 22 further comprising storing information that provides an indication of a type of change from a prior version to the replacement version.	24. The method of claim 22 further comprising storing information that provides an indication of a type of change from a prior version to the replacement version .
Claim 25	
25. The method of claim 22 further comprising storing information identifying other resources that must be changed before the replacement version of the resource may be installed.	25. The method of claim 22 further comprising storing information identifying other resources that must be changed before the replacement version of the resource may be installed.
Claim 26	
26. The method of claim 22 wherein the storage medium is a portable storage medium.	26. The method of claim 22 wherein the storage medium is a portable storage medium .
Claim 27	
27. The method of claim 22 wherein the storage medium resides in an on-line service.	27. The method of claim 22 wherein the storage medium resides in an on-line service.
Claim 28	
28. A portable storage medium for use in supplying at least one replacement version of	28. A portable storage medium for use in supplying at least one replacement version of at least one resource on a

at least one resource on a computer comprising:	computer <i>comprising</i> :
at least one stored copy of the replacement version of each resource,	at least one stored copy of the <i>replacement version</i> of each <i>resource</i> ,
stored information that identifies the replacement version,	stored information that identifies the <i>replacement version</i> ,
stored information that describes features of the replacement version relative to one or more other versions of the resource, and	stored information that <i>describes features of the replacement version relative to one or more other versions</i> of the <i>resource</i> , and
stored information that provides instructions, in accordance with a predefined common syntax, for automatically installing the replacement version of the resource.	stored information that provides instructions, in accordance with a predefined common <i>syntax</i> , for <i>automatically</i> installing the <i>replacement version</i> of the <i>resource</i> .
Claim 29	
29. The storage medium of claim 28 further comprising stored information concerning at least one reason for the replacement version.	29. The storage medium of claim 28 further <i>comprising</i> stored information concerning at least one reason for the <i>replacement version</i> .
Claim 30	
30. The storage medium of claim 28 further comprising stored information that provides an indication of a type of change from another version to the replacement version.	30. The storage medium of claim 28 further <i>comprising</i> stored information that provides an indication of a type of <i>change</i> from another version to the <i>replacement version</i> .
Claim 31	
31. The storage medium of claim 28 further comprising stored information identifying other resources that must be changed before the replacement version of the resource may be installed.	31. The storage medium of claim 28 further <i>comprising</i> stored information identifying other <i>resources</i> that must be <i>changed</i> before the <i>replacement version</i> of the <i>resource</i> may be installed.
Claim 32	
32. The storage medium of claim 28 wherein the storage medium is a portable storage medium.	32. The storage medium of claim 28 wherein the storage medium is a <i>portable storage medium</i> .
Claim 33	
33. The storage medium of claim 28 wherein said storage medium resides in an on-line service.	33. The storage medium of claim 28 wherein said storage medium resides in an on-line service.
Claim 34	
34. A software program, stored on a storage medium, for use in changing a resource of a computer from a first version to a second version comprising:	34. A software program, stored on a storage medium, for use in <i>changing a resource of a computer</i> from a first version to a second version <i>comprising</i> :
means for retrieving digitally stored replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource,	<i>means for retrieving digitally stored replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource.</i>

"Means for retrieving digitally stored replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource." is a means-plus-function element
Function: retrieving digitally stored replacement information that identifies the second version and *describes features of the second version relative to one or more other versions of the resource*

	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (package query 43); Col 4, ll 5-6.
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means for retrieving digitally stored information identifying the first version,

means for retrieving digitally stored information identifying the first version,

"Means for retrieving digitally stored information identifying the first version" is a means-plus-function element

Function: retrieving digitally stored information identifying the first version

	Structure: Fig. 1 (data retriever 15); Fig. 6 (MIB query 38); Col. 4, ll 2-4; Col. 7, ll 53-56.
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means for automatically determining which of the other versions is the first version, and

means for automatically determining which of the other versions is the first version, and

"Means for automatically determining which of the other versions is the first version" is a means-plus-function element

Function: *automatically* determining which of the other versions is the first version

	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (comparison services 47a, 47b, 47c); Col. 3, ll 55-58; Col. 7, ll 57-59.
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means for using the replacement information to automatically determine the importance of replacing the first version of the resource with the second version.

means for using the replacement information to automatically determine the importance of replacing the first version of the resource with the second version.

"Means for using replacement information to automatically determine the importance of replacing the first version of the resource with the second version" is a means-plus-function element

Function: using replacement information to *automatically* determine the importance of replacing the first version of the *resource* with the second version

	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (MIB check object 37); Col. 4, ll 15-18; Col. 7, ll 59-60 (MIB check objects 37 responsible for handling the comparisons between MIB data and upgrade data.).
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Claim 35

35. An apparatus for use in determining whether to change a stored first version of a computer resource to a second version of the

35. An apparatus for use in determining whether to *change* a stored first version of a *computer resource* to a second version of the *resource, comprising:*

resource, comprising:	
an information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions,	<p>an <i>information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions,</i></p> <p>"Information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions" is a means-plus-function element</p> <p>Function: retrieving stored information, identifying the second version and the first version and <i>describing features of the second version relative to one or more other versions</i></p>
a comparison service that compares the information about the first version to the information about the second version, and	<p>Structure: Fig. 1 (upgrade advisor 11, data retriever 15);</p> <p>a <i>comparison service that compares the information about the first version to the information about the second version</i> [a process, device or feature that compares the information regarding the first version with respect to the information regarding the second version], and</p>
an advisor that uses output from the comparison service to automatically determine the importance of replacing the first version of the resource with the second version.	<p>an <i>advisor that uses output from the comparison service to automatically determine the importance of replacing the first version of the resource with the second version.</i></p> <p>"Advisor that uses output from the comparison service to automatically determine the importance of replacing the first version of the resource with the second version" is a means-plus-function element</p> <p>Function: using output from the comparison service to <i>automatically</i> determine the importance of replacing the first version of the <i>resource</i> with the second version</p>
	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (MIB check object 37)
Claim 36	
36. The apparatus of claim 35 wherein the information about the first and second versions includes version numbers.	36. The apparatus of claim 35 wherein the information about the first and second versions includes version numbers.
Claim 37	
37. The apparatus of claim 35 wherein the information about the first and second versions includes a description of differences between the versions.	37. The apparatus of claim 35 wherein the information about the first and second versions includes a description of differences between the versions.
Claim 38	
38. The apparatus of claim 35 wherein the second version is stored on a portable storage medium.	38. The apparatus of claim 35 wherein the second version is stored on a <i>portable storage medium.</i>

Claim 39	
39. The apparatus of claim 38 wherein the information about the second version also is stored on the portable storage medium.	39. The apparatus of claim 38 wherein the information about the second version also is stored on the <i>portable storage medium</i> .
Claim 40	
40. The apparatus of claim 35 wherein the information about the second version is retrievable from an on-line service.	40. The apparatus of claim 35 wherein the information about the second version is retrievable from an on-line service.
Claim 41	
41. The apparatus of claim 35 wherein the information about the second version includes instructions for changing the resource.	41. The apparatus of claim 35 wherein the information about the second version includes instructions for <i>changing</i> the <i>resource</i> .
Claim 42	
42. The apparatus of claim 35 wherein the computer resource comprises a software package.	42. The apparatus of claim 35 wherein the <i>computer resource comprises</i> a software package.
Claim 43	
43. The apparatus of claim 35 wherein the resource comprises a hardware driver.	43. The apparatus of claim 35 wherein the <i>resource comprises</i> a hardware driver.
Claim 44	
44. The apparatus of claim 35 further comprising a device that automatically changes the resource.	44. The apparatus of claim 35 further <i>comprising a device that automatically changes the resource</i> . "Device that automatically changes the resource" is a means-plus-function element
Function: automatically changing the resource	
Structure: Fig. 1 (upgrade installer 17); Fig. 2 (server manager agent 21); Fig. 11 (agent 87).	
Claim 45	
45. The apparatus of claim 44 wherein the device changes the resource on a network server.	45. The apparatus of claim 44 wherein the <i>device [structure of claim 44] changes</i> the <i>resource</i> on a network server.
Claim 46	
46. The apparatus of claim 44 wherein the device changes the resource on a network client.	46. The apparatus of claim 44 wherein the <i>device [structure of claim 44] changes</i> the <i>resource</i> on a network client.
Claim 47	
47. The apparatus of claim 44 wherein the device changes the resource on a stand-alone computer.	47. The apparatus of claim 44 wherein the <i>device [structure of claim 44] changes</i> the <i>resource</i> on a stand-alone computer.
Claim 48	
48. The apparatus of claim 35 further comprising a device that automatically generates a kit on a portable storage	48. The apparatus of claim 35 further <i>comprising a device that automatically generates a kit on a portable storage medium, the kit comprising</i> a copy of the second version of

medium, the kit comprising a copy of the second version of the computer resource and installation instructions for the second version.

the *computer resource* and installation instructions for the second version.

"Device that automatically generates a kit on a portable storage medium" is a means-plus-function element

Function: *automatically* generating a kit on a *portable storage medium*

	Structure: Fig. 1 (upgrade advisor 11, upgrade installer 17); Col. 9, ll 1-4.
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Claim 49	
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49. An apparatus for automatically changing at least one computer resource from a first version to a second version comprising:	49. An apparatus for <i>automatically changing</i> at least one <i>computer resource</i> from a first version to a second version <i>comprising:</i>
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a device that retrieves from a storage medium the second version and instructions for installing the second version,

a device that retrieves from a storage medium the second version and instructions for installing the second version,

"Device that retrieves from a storage medium the second version and instructions for installing the second version" is a means-plus-function element

Function: retrieving from a storage medium the second version and instructions for installing the second version

	Structure: Fig. 1 (upgrade installer 17); Fig. 2 (server upgrader 22); Fig. 11 (agent 87).
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a staging area that receives and stores the second version and the installation instructions, and

a staging area that receives and stores the second version and the installation instructions, and

"Staging area that receives and stores the second version and the installation instructions" is a means-plus-function element

Function: receiving and storing the second version and the installation instructions

	Structure: Fig. 1 (staging area 19); Fig. 11 (staging area 19).
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a manager that retrieves the second version and the installation instructions from the staging area and installs the second version of the computer resource.

a manager that retrieves the second version and the installation instructions from the staging area and installs the second version of the computer resource

"Manager that retrieves the second version and the installation instructions from the staging area and installs the second version of the computer resource" is a means-plus-function element

Function: retrieving the second version and the installation instructions from the **staging area** [*structure of element 49(b)*] and installing the second version of the *computer resource*

	Structure: Fig. 1 (server manager agent 21); Fig. 2 (server
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	manager agent 21).
Claim 50	
50. The apparatus of claim 49 wherein the second version is placed into a package of resources to be changed before it is stored in the staging area.	50. The apparatus of claim 49 wherein the second version is placed into a package of resources to be changed before it is stored in the staging area [<i>staging area 19</i>].
Claim 51	
51. The apparatus of claim 50 wherein all members of the package are stored in the staging area at substantially the same time.	51. The apparatus of claim 50 wherein all members of the package are stored in the staging area [<i>staging area 19</i>] at substantially the same time.
Claim 52	
52. The apparatus of claim 50 wherein installation instructions for each member of the package are placed into a group of instructions.	52. The apparatus of claim 50 wherein installation instructions for each member of the package are placed into a group of instructions.
Claim 53	
53. The apparatus of claim 52 wherein the package of resources to be changed and the group of instructions are stored in the staging area as a job to be performed by the manager at an appointed time.	53. The apparatus of claim 52 wherein the package of resources to be changed and the group of instructions are stored in the staging area [<i>staging area 19</i>] as a job to be performed by the manager [<i>server manager agent 21</i>] at an appointed time.
Claim 54	
54. The apparatus of claim 49 wherein the staging area stores the second version of the resource and the installation instructions in separate areas.	54. The apparatus of claim 49 wherein the staging area [<i>staging area 19</i>] stores the second version of the resource and the installation instructions in separate areas.
Claim 55	
55. The apparatus of claim 54 wherein the separate areas simultaneously may contain second versions of and installation instructions for more than one resource to be changed.	55. The apparatus of claim 54 wherein the separate areas simultaneously may contain second versions of and installation instructions for more than one resource to be changed .
Claim 56	
56. The apparatus of claim 49 further comprising a storage medium that maintains a copy of another version of a changed resource.	56. The apparatus of claim 49 further comprising a storage medium that maintains a copy of another version of a changed resource .
Claim 57	
57. The apparatus of claim 49 further comprising a database containing information identifying the first version of the resource .	57. The apparatus of claim 49 further comprising a database containing information identifying the first version of the resource .
Claim 58	
58. The apparatus of claim 57 wherein the information in the database identifies at least one of the following: the location of the first version, the version number of the first	58. The apparatus of claim 57 wherein the information in the database identifies at least one of the following: the location of the first version, the version number of the first version, and differences between the first version and other versions.

version, and differences between the first version and other versions.	
Claim 59	
59. The apparatus of claim 49 wherein the apparatus changes the resource on a network server.	59. The apparatus of claim 49 wherein the apparatus changes [<i>alters, exchanges, or replaces</i>] the resource on a network server.
Claim 60	
60. The apparatus of claim 49 wherein the apparatus changes the resource in a network client.	60. The apparatus of claim 49 wherein the apparatus changes the resource in a network client.
Claim 61	
61. The apparatus of claim 60 wherein the apparatus changes the resource through a network server.	61. The apparatus of claim 60 wherein the apparatus changes the resource through a network server.
Claim 62	
62. A method for use in changing a resource of a computer from a first version of the resource to a second version of the resource, comprising:	62. A method for use in changing a resource of a computer from a first version of the resource to a second version of the resource, comprising:
digitally storing replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource,	digitally storing replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource,
digitally storing information identifying the first version,	digitally storing information identifying the first version,
by computer, automatically determining which of the other versions is the first version, and	by computer, automatically determining which of the other versions is the first version, and
based on the results of the determining step, providing a display that aids the user in determining whether to replace the first version of the resource with the second version.	based on the results of the determining step, providing a display [<i>a visual presentation of information</i>] that aids the user in determining whether to replace the first version of the resource with the second version.
Claim 63	
63. The method of claim 62 wherein the replacement information is stored on a portable medium, the second version of the resource is also stored on the portable medium, and the replacement information identifies the location of the second version of the resource on the portable medium.	63. The method of claim 62 wherein the replacement information is stored on a portable medium, the second version of the resource is also stored on the portable medium, and the replacement information identifies the location of the second version of the resource on the portable medium.
Claim 64	
64. The method of claim 63 wherein the portable medium comprises a CD-ROM.	64. The method of claim 63 wherein the portable medium comprises a CD-ROM.
Claim 65	
65. The method of claim 63 wherein the	65. The method of claim 63 wherein the portable medium

portable medium contains stored versions of multiple resources, and replacement information with respect to each of the resources.	contains stored versions of multiple resources , and replacement information with respect to each of the resources .
Claim 66	
66. The method of claim 62 wherein the replacement information is retrievable from an on-line service.	66. The method of claim 62 wherein the replacement information is retrievable from an on-line service.
Claim 67	
67. The method of claim 62 wherein the replacement information is stored in the form of a database.	67. The method of claim 62 wherein the replacement information is stored in the form of a database.
Claim 68	
68. The method of claim 62 wherein the replacement information further comprises instructions for installation of the second version of the resource.	68. The method of claim 62 wherein the replacement information further comprises instructions for installation of the second version of the resource .
Claim 69	
69. The method of claim 68 wherein the installation instructions are expressed in accordance with a predefined common syntax.	69. The method of claim 68 wherein the installation instructions are expressed in accordance with a predefined common syntax .
Claim 70	
70. The method of claim 62 wherein the resource comprises a complete standalone software package.	70. The method of claim 62 wherein the resource comprises a complete standalone software package.
Claim 71	
71. The method of claim 62 wherein the resource comprises less than all of a complete standalone software package.	71. The method of claim 62 wherein the resource comprises less than all of a complete standalone software package.
Claim 72	
72. The method of claim 62 further comprising automatically changing the resource on a network server.	72. The method of claim 62 further comprising automatically changing the resource on a network server.
Claim 73	
73. The method of claim 62 wherein automatically changing the resource on the network server comprises:	73. The method of claim 62 wherein automatically changing the resource on the network server comprises :
storing on a storage medium the first version of the resource, and	storing on a storage medium the first version of the resource , and
replacing on the server the first version of the resource with the second version.	replacing on the server the first version of the resource with the second version.
Claim 74	
74. The method of claim 62 further comprising automatically changing the resource on a network client.	74. The method of claim 62 further comprising automatically changing the resource on a network client.

Claim 75	
75. The method of claim 74 wherein the change is performed via a network.	75. The method of claim 74 wherein the <i>change</i> is performed via a network.
Claim 76	
76. The method of claim 74 wherein automatically changing the resource on the network client comprises:	76. The method of claim 74 wherein <i>automatically changing the resource</i> on the network client <i>comprises</i> :
storing on a storage medium the first version of the resource, and	storing on a storage medium the first version of the <i>resource</i> , and
replacing on the client the first version of the resource with the second version.	replacing on the client the first version of the <i>resource</i> with the second version.
Claim 77	
77. The method of claim 74 wherein the change is performed by automatically storing the second version and installation instructions on a portable storage medium for manual installation on the client.	77. The method of claim 74 wherein the <i>change</i> is performed by <i>automatically</i> storing the second version and installation instructions on a <i>portable storage medium</i> for manual installation on the client.
Claim 78	
78. The method of claim 62 wherein the replacement information includes information concerning at least one reason for the second version.	78. The method of claim 62 wherein the replacement information includes information concerning at least one reason for the second version.
Claim 79	
79. The method of claim 62 wherein the replacement information includes an indication of the type of change from another version to the second version.	79. The method of claim 62 wherein the replacement information includes an indication of the type of <i>change</i> from another version to the second version.
Claim 80	
80. The method of claim 79 wherein the type of change may include feature enhancement, performance enhancement, or bug fix.	80. The method of claim 79 wherein the type of <i>change</i> may include feature enhancement, performance enhancement, or bug fix.
Claim 81	
81. The method of claim 62 wherein the replacement information includes an indication of the importance of the change from another version to the second version.	81. The method of claim 62 wherein the replacement information includes an indication of the importance of the <i>change</i> from another version to the second version.
Claim 82	
82. The method of claim 62 wherein the replacement information includes information identifying other resources that must be changed before the resource may be changed.	82. The method of claim 62 wherein the replacement information includes information identifying other <i>resources</i> that must be changed before the <i>resource</i> may be <i>changed</i> .
Claim 83	
83. A software program, stored on a storage medium, for use in changing a resource of a computer from a first version to a second version comprising:	83. A software program, stored on a storage medium, for use in <i>changing a resource of a computer</i> from a first version to a second version <i>comprising</i> :

means for retrieving digitally stored replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource,

means for retrieving digitally stored replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource.

"Means for retrieving digitally stored replacement information that identifies the second version and describes features of the second version relative to one or more other versions of the resource" is a means-plus-function element
Function: retrieving digitally stored replacement information that identifies the second version and *describes features of the second version relative to one or more other versions of the resource*

	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (package query 43); Col. 4, ll 5-6.
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means for retrieving digitally stored information identifying the first version,

means for retrieving digitally stored information identifying the first version,

"Means for retrieving digitally stored information identifying the first version," is a means-plus-function element
Function: retrieving digitally stored information identifying the first version

	Structure: Fig. 1 (data retriever 15); Fig. 6 (MIB query 38); Col. 4, ll 2-4; Col. 7, ll 53-56
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means for automatically determining which of the other versions is the first version, and

means for automatically determining which of the other versions is the first version, and

"Means for automatically determining which of the other versions is the first version" is a means-plus-function element
Function: *automatically* determining which of the other versions is the first version

	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (comparison services 47a, 47b, 47c); Col. 7, ll 57-59.
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means for using the replacement information to provide a display that aids the user in determining whether to replace the first version of the resource with the second version.

means for using the replacement information to provide a display that aids the user in determining whether to replace the first version of the resource with the second version.

"Means for using the replacement information to provide a display that aids the user in determining whether to replace the first version of the resource with the second version" is a means-plus-function element

Function: using the replacement information to provide a *display* that aids the user in determining whether to replace the first version of the *resource* with the second version

	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (server view object 35, package view object 49, list box 33); Col. 8, ll 42-
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	47.
Claim 84	
84. An apparatus for use in determining whether to change a stored first version of a computer resource to a second version of the resource, comprising:	84. An apparatus for use in determining whether to change a stored first version of a computer resource to a second version of the resource, comprising:
an information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions,	an information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions,
a comparison service that compares the information about the first version to the information about the second version, and	a comparison service that compares the information about the first version to the information about the second version, and
an advisor that provides a display to help the user determine whether to replace the first version with the second version.	an advisor that provides a display to help the user determine whether to replace the first version with the second version.
	"Advisor that provides a display to help the user determine whether to replace the first version with the second version" is a means-plus-function element Function: providing a display to help the user determine whether to replace the first version with the second version
	Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (server view object 35, package view object 49, list box 33); Col. 8, ll 42-47.
Claim 85	
85. The apparatus of claim 84 wherein the information about the first and second versions includes version numbers.	85. The apparatus of claim 84 wherein the information about the first and second versions includes version numbers.
Claim 86	
86. The apparatus of claim 84 wherein the information about the first and second versions includes a description of differences between the versions.	86. The apparatus of claim 84 wherein the information about the first and second versions includes a description of differences between the versions.
Claim 87	
87. The apparatus of claim 84 wherein the second version is stored on a portable storage medium.	87. The apparatus of claim 84 wherein the second version is stored on a portable storage medium.
Claim 88	
88. The apparatus of claim 87 wherein the information about the second version also is stored on the portable storage medium.	88. The apparatus of claim 87 wherein the information about the second version also is stored on the portable storage medium.
Claim 89	
89. The apparatus of claim 84 wherein the information about the second version is retrievable from an on-line service.	89. The apparatus of claim 84 wherein the information about the second version is retrievable from an on-line service.

Claim 90	
90. The apparatus of claim 84 wherein the information about the second version includes instructions for changing the resource.	90. The apparatus of claim 84 wherein the information about the second version includes instructions for changing the resource .
Claim 91	
91. The apparatus of claim 84 wherein the computer resource comprises a software package.	91. The apparatus of claim 84 wherein the computer resource comprises a software package.
Claim 92	
92. The apparatus of claim 84 wherein the resource comprises a hardware driver.	92. The apparatus of claim 84 wherein the resource comprises a hardware driver.
Claim 93	
93. The apparatus of claim 84 further comprising a device that automatically changes the resource.	93. The apparatus of claim 84 further comprising a device that automatically changes the resource .
Claim 94	
94. The apparatus of claim 93 wherein the device changes the resource on a network server.	94. The apparatus of claim 93 wherein the device [<i>structure of claim 93</i>] changes the resource on a network server.
Claim 95	
95. The apparatus of claim 93 wherein the device changes the resource on a network client.	95. The apparatus of claim 93 wherein the device [<i>structure of claim 93</i>] changes the resource on a network client.
Claim 96	
96. The apparatus of claim 93 wherein the device changes the resource on a stand-alone computer.	96. The apparatus of claim 93 wherein the device [<i>structure of claim 93</i>] changes the resource on a stand-alone computer.
Claim 97	
97. The apparatus of claim 84 further comprising a device that automatically generates a kit on a portable storage medium, the kit comprising a copy of the second version of the computer resource and installation instructions for the second version.	97. The apparatus of claim 84 further comprising a device that automatically generates a kit on a portable storage medium , the kit comprising a copy of the second version of the computer resource and installation instructions for the second version.

EXHIBIT B

UNITED STATES PATENT NUMBER 5,586,304-GLOSSARY OF TERMS

TERM	DEFINITION
Advisor that provides a display to help the user determine whether to replace the first version with the second version	"Advisor that provides a display to help the user determine whether to replace the first version with the second version" is a means-plus-function element Function: providing a display to help the user determine whether to replace the first version with the

	second version Structure: Fig. 1 (upgrade advisor 11); Fig. 6 (server view object 35, package view object 49, list box 33); Col. 8, ll 42-47.
Advisor that uses output from the comparison service to automatically determine the importance of replacing the first version of the resource with the second version	"Advisor that uses output from the comparison service to automatically determine the importance of replacing the first version of the resource with the second version" is a means-plus-function element Function: using output from the comparison service to <i>automatically</i> determine the importance of replacing the first version of the <i>resource</i> with the second version
	The corresponding structure for performing this function is: Fig. 1 (upgrade advisor 11); Fig. 6 (MIB check object 37)
Automatically	without user or operator action or involvement
Based on	initiated by
Change	alteration, exchange or replacement
Changed	altered, exchanged or replaced
Changes	alters, exchanges or replaces
Changing	altering, exchanging or replacing
Comparison service that compares the information about the first version to the information about the second version	a process, device or feature that compares the information regarding the first version with respect to the information regarding the second version
Comprises	includes but is not limited to
Comprising	including but not limited to
Computer resource	information (called data) stored by the computer and/or the computer tools for obtaining and/or using the data
Describes features of the replacement version relative to one or more other versions	identifies differences between, and provides a comparison of, more than one feature of the replacement version and one or more other versions
Describes features of the second version relative to one or more other versions	identifies differences between, and provides a comparison of, more than one feature of the second version and one or more other versions
Device that automatically generates a kit on a portable storage medium	"Device that automatically generates a kit on a portable storage medium" is a means-plus-function element Function: <i>automatically</i> generating a kit on a <i>portable storage medium</i>
	The corresponding structure for performing this function is: Fig. 1 (upgrade advisor 11, upgrade installer 17); Col. 9, ll 1-4.
Device that retrieves from a storage medium the second version and instructions for installing the second version	"Device that retrieves from a storage medium the second version and instructions for installing the second version" is a means-plus-function element Function: retrieving from a storage medium the second version and instructions for installing the

second version

	The corresponding structure for performing this function is: Fig. 1 (upgrade installer 17); Fig. 2 (server upgrader 22); Fig. 11 (agent 87).
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Device that automatically changes the resource

"Device that automatically changes the resource" is a means-plus-function element

Function: automatically changing the resource

	The corresponding structure for performing this function is: Fig. 1 (upgrade installer 17); Fig. 2 (server manager agent 21); Fig. 11 (agent 87).
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Digitally Storing

storing in binary form

Display

a visual presentation of information

Information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions

"Information gatherer that retrieves stored information identifying the second version and the first version and describing features of the second version relative to one or more other versions" is a means-plus-function element

Function: retrieving stored information, identifying the second version and the first version and *describing features of the second version relative to one or more other versions*

	The corresponding structure for performing this function is: Fig. 1 (upgrade advisor 11, data retriever 15).
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Manager that retrieves the second version and the installation instructions from the staging area and installs the second version of the computer resource

"Manager that retrieves the second version and the installation instructions from the staging area and installs the second version of the computer resource" is a means-plus-function element

Function: retrieving the second version and the installation instructions from the **staging area** [*structure of element 49(b)*] and installing the second version of the *computer resource*

	The corresponding structure for performing this function is: Fig. 1 (server manager agent 21); Fig. 2 (server manager agent 21).
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Portable storage medium

a physical material, such as a CD-ROM, used for storing computer information, that is readily removable

Portable medium

a physical material, such as a CD-ROM, used for storing computer information, that is readily removable

Replacement version

a version that replaces an existing version

Resource of a computer

information (called data) stored by the computer and/or the computer tools for obtaining and/or using the data

Resource(s)

information (called data) stored by the computer and/or the computer tools for obtaining and/or using the data

Staging area that receives and stores the second version and the installation

"Staging area that receives and stores the second version and the installation instructions" is a means-

instructions

plus-function element

Function: receiving and storing the second version and the installation instructions

	The corresponding structure for performing this function is: Fig. 1 (staging area 19); Fig. 11 (staging area 19).
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Syntax

computer programming language

S.D.Cal.,2006.

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