



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/343,152	01/30/2006	Douglas E. Lecrone	EMS-07003	6262
52427	7590	02/15/2013	EXAMINER	
MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581			NGUYEN, KIM T	
			ART UNIT	PAPER NUMBER
			2163	
			MAIL DATE	DELIVERY MODE
			02/15/2013	PAPER

**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.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* DOUGLAS E. LECRONE, KEVIN C. HEASLEY,  
VADIM LONGINOV, MARK J. HALSTEAD, DAVID MEIRI,  
BENJAMIN W. YODER, and WILLIAM P. THIBODEAU

---

Appeal 2010-008115  
Application 11/343,152  
Technology Center 2100

---

Before STEVEN J. BARTLETT, *Division 2 Support Manager*.

ORDER RE-MAILING BOARD DECISION

The Decision on Appeal in this application mailed on January 10, 2013 was erroneously entered and has been closed in the Image File Wrapper (IFW). Accordingly, the correct Decision on Appeal is herewith attached to this order.

Appellants' time for seeking rehearing under 37 C.F.R. § 41.52(a)(1) expires two (2) months from the mail date of this order.

Appeal 2010-008115  
Application 11/343,152

If there are any questions pertaining to this Order, please contact the  
Patent Trial and Appeal Board at 571-272-9797.

msc

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* DOUGLAS E. LECRONE, KEVIN C. HEASLEY,  
VADIM LONGINOV, MARK J. HALSTEAD, DAVID MEIRI,  
BENJAMIN W. YODER, and WILLIAM P. THIBODEAU

---

Appeal 2010-008115  
Application 11/343,152  
Technology Center 2100

---

Before ROBERT E. NAPPI, JUSTIN BUSCH, and  
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judges*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from a final rejection of claims 21-40. Claims 1-20 were cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

#### STATEMENT OF THE CASE

Appellants' invention is directed to a computer-implemented method of ordering data writes, which includes at least some of a plurality of primary storage devices receiving a first plurality of data writes and causing a cycle switch for the plurality of primary storage devices. (Abstract.)

Claim 21 is exemplary and reproduced below, with disputed limitation in italics:

21. A computer-implemented method of ordering data writes, comprising:

at least some of a *plurality of primary storage devices* receiving a first plurality of data writes;

causing *a cycle switch for the plurality of primary storage devices wherein the first plurality of data writes are associated with a particular cycle on each primary storage device* in the plurality of primary storage devices; and

at least some of the plurality of primary storage devices receiving a second plurality of writes after initiating the cycle switch wherein all of the second plurality of writes are associated with a cycle different from the particular cycle on each of the plurality of primary storage devices.

#### REJECTION

Claim 21 stands rejected on the ground of nonstatutory double patenting over claim 1 of U.S. Patent No. 7,054,883. Claims 21-40 stand

rejected under 35 U.S.C. § 102(e) over Meiri et al. (U.S. Patent No. 6,898,685 B2; May 24, 2005 (Filed Mar. 25, 2003)).

### ANALYSIS

We have reviewed the Examiners' rejections in light of Appellants' arguments that the Examiner has erred. We are unpersuaded by Appellants' argument (Reply Br. 4-5; App. Br. 6-7) that Meiri does not anticipate independent claims 21 and 31, both of which recite the limitation "at least some of a plurality of primary storage devices receiving a first plurality of data writes."

The Appellants contend Meiri teaches a single storage device (Meiri, Abstract, Fig. 1) and does not show, teach, or suggest the recited plurality of primary storage devices. (Reply Br. 4-6; App. Br. 6-7.) However, the Examiner found that Meiri teaches the partitioning of a primary storage device into multiple logical devices. (Ans. 12-13; Meiri col. 6, ll. 48-52, 60-64, Figure 1.) Under the broadest reasonable construction of "plurality of primary storage devices", these partitions are a plurality of primary storage devices. The Examiner concluded that the partitions of storage device 24 correspond to the limitation "a plurality of primary storage devices." (Ans. 7, 12-13.) The Appellants have failed to show the Examiner's interpretation of "plurality of primary storage device" is inconsistent with Appellants' specification. (Reply Br. 5-6.) Thus, we agree with the Examiner.

We are unpersuaded by Appellants' argument (Reply Br. 4-6; App. Br. 7) that Meiri does not anticipate independent claims 21 and 31, because Meiri does not disclose the the limitation "causing a cycle switch for the plurality of primary storage devices wherein the first plurality of data writes are associated with a particular cycle on each primary storage device in the

plurality of primary storage devices,” as recited by claim 21 and similarly recited by claim 31.

The Appellants contend that Meiri does not teach cycle switching a plurality of primary storage devices because

cycle switching a plurality of primary storage devices is different than independently cycle switching a number of individual primary storage devices. For example, independently cycle switching a number of individual primary storage devices would not provide the recited feature of the first plurality of data writes being associated with a particular cycle on each primary storage device in the plurality of primary storage devices, since the particular cycle to which data writes are associated would be somewhat random, and depend (at least in part) upon the particular individual storage device to which a particular data write is associated. (Reply Br. 4-5.)

The Examiner found (and the Appellants admit, App. Br. 6) that Meiri teaches a plurality of data writes are provided to a primary storage device that assigns a first sequence number to data writes begun after a first time and before a second time. The primary storage device then assigns a second sequence number, different from the first sequence number, to data writes begun after the second time. (Ans. 14-15; App. Br. 6; Meiri col. 2, l. 66-col. 3, l. 22.) Therefore, the Examiner concluded that Meiri discloses “causing a cycle switch for the plurality of primary storage devices wherein the first plurality of data writes are associated with a particular cycle on each primary storage device,” as recited by claim 21 and similarly recited by 31. (Ans. 7-8, 14-15.) We agree with the Examiner’s findings and conclusions.

Accordingly, we sustain the rejection of independent claims 21 and 31 under 35 U.S.C. § 102(e).

Appeal 2010-008115  
Application 11/343,152

Claims 22-30 and 32-40 recite limitations similar to those discussed with respect to independent claims 21 and 31, and Appellants have not presented any additional substantive arguments with respect to these claims. Therefore, we sustain the rejections of claims 22-30 and 32-40.

We also note that the Examiner rejected claim 21 on the ground of nonstatutory double patenting over claim 1 of U.S. Patent No. 7,054,883. Appellants did not present arguments directed to this rejection. Accordingly, we sustain the rejection of claim 21, *pro forma*.

#### DECISION

The Examiner's decision to reject claims 21-40 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

dw