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Tel: 571-272-9797

Filed: December 20, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEALS BOARD

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ASSAF NATANZON,  
TZACH SCHECHNER, ODED KEDEM, ZIV KEDEM,  
SHLOMO AHAL, and CHRISTOS KARAMANOLIS,

Junior Party,  
(Application 13/404,129)

v.

ZIV KEDEM,  
Senior Party,  
(Application 13/039,446)

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Patent Interference No. 106,070)  
(Technology Center 2100)

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Before SALLY GARDNER LANE, JAMES T. MOORE, and DEBORAH KATZ,  
*Administrative Patent Judges.*

LANE, *Administrative Patent Judge.*

**JUDGMENT - Bd. R. 127(a)**

1 A decision denying junior party's Motions 1 and 2 has been entered.  
2 (Decision, Paper 205). As noted in the Decision junior party has not set forth a  
3 basis upon which it can prevail in the interference. (Decision, 30). Accordingly,  
4 we enter judgment against junior party Natanzon.

5 Order

6 It is

7 ORDERED that judgment on priority is entered against junior party Assaf  
8 Natanzon, Tzach Schechner, Oded Kedem, Ziv Kedem, Shlomo Ahal, and Christos  
9 Karamanolis (Natanzon) as to Count 1, the sole Count of the interference  
10 (Declaration, Paper 1, 5);

11 FURTHER ORDERED that claims 1-5, 7-13 and 17-19 of Natanzon  
12 application 13/404,129, which correspond to Count 1, are FINALLY REFUSED.  
13 (Declaration, Paper 1, 5); 35 U.S.C. § 135(a);<sup>1</sup>

14 FURTHER ORDERED that the parties are directed to 35 USC § 135(c) and  
15 Bd. R. 205 regarding the filing of settlement agreements;

16 FURTHER ORDERED that a party seeking judicial review timely serve  
17 notice on the Director of the United States Patent and Trademark Office;  
18 37 C.F.R. §§ 90.1 and 104.2. *See also* Bd. R. 8(b). Attention is directed to *Biogen*  
19 *Idec MA, Inc., v. Japanese Foundation for Cancer Research*, 785 F.3d 648,  
20 654–57 (Fed. Cir. 2015) (determining that pre-AIA § 146 review was eliminated for  
21 interference proceedings declared after September 15, 2012); and

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<sup>1</sup> Any reference to a statute in this Judgment is to the statute that was in effect on March 15, 2013 unless otherwise indicated. See Pub. L. 112-29, § 3(n), 125 Stat. 284, 293 (2011).

1           FURTHER ORDERED that a copy of this judgment be entered into the  
2 administrative records of the involved Natanzon and Kedem applications.

3  
4 cc (via electronic):

5  
6 Attorney for Natanzon:

7  
8 Richard F. Giunta  
9 Michael T. Siekman  
10 Edmund J. Walsh  
11 Elisabeth H. Hunt  
12 WOLF, GREENFIELD & SACKS, P.C.  
13 [Rgiunta-ptab@wolfgreenfield.com](mailto:Rgiunta-ptab@wolfgreenfield.com)  
14 [Msiekman-ptab@wolfgreenfield.com](mailto:Msiekman-ptab@wolfgreenfield.com)  
15 [Ewalsh-ptab@wolfgreenfield.com](mailto:Ewalsh-ptab@wolfgreenfield.com)  
16 [EHunt-ptab@wolfgreenfield.com](mailto:EHunt-ptab@wolfgreenfield.com)

17  
18 Attorney for Kedem:

19  
20 Matthew B. Lowrie  
21 George E. Quillin  
22 FOLEY & LARDNER LLP  
23 [m\\_lowrie@foley.com](mailto:m_lowrie@foley.com)  
24 [g\\_quillin@foley.com](mailto:g_quillin@foley.com)

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ASSAF NATANZON,  
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Before SALLY GARDNER LANE, JAMES T. MOORE, and DEBORAH KATZ,  
*Administrative Patent Judges.*

LANE, *Administrative Patent Judge.*

**Decision – Motions – Bd. R. 121(a)**

1 I. Introduction

2 This interference is based on an inventorship dispute between junior party  
3 Assaf Natanzon, Tzach Schechner, Oded Kedem, Ziv Kedem, Shlomo Ahal, and  
4 Christos Karamanolis (Natanzon) and senior party Ziv Kedem (Kedem).

5 Kedem was the first to file an application claiming the relevant subject  
6 matter. That application, 61/314,589 ('589), listed Ziv Kedem as the sole inventor.  
7 Subsequently Natanzon filed an application claiming benefit of the Kedem '589  
8 application but listing Ziv Kedem and additional inventors including Christos  
9 Karamanolis. Ziv Kedem did not sign an inventor's declaration in the Natanzon  
10 application.

11 We have before us two substantive motions for decision, both from junior  
12 party Natanzon. (Natanzon Motion 1, Paper 99; Natanzon Motion 2, Paper 98).<sup>1</sup>  
13 The first motion seeks judgment on the basis that the Kedem claims are  
14 unpatentable under 35 USC §102(f)<sup>2</sup> because Ziv Kedem alone did not invent the  
15 subject matter of the Kedem involved application. The second motion seeks to  
16 change the inventorship of Natanzon's involved application by deleting certain  
17 inventors. Kedem opposed each motion (Kedem Opposition 1, Paper 164; Kedem  
18 Opposition 2, Paper 163) and Natanzon replied (Natanzon Reply 1, Paper 191;  
19 Natanzon Reply 2, Paper 192).

20 Also before us is a motion from each party seeking the exclusion of certain  
21 evidence relied upon by the opposing party. (Natanzon Motion to Exclude,  
22 Paper 194; Kedem Opposition, Paper 202; Natanzon Reply, Paper 204 and Kedem

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<sup>1</sup> The panel decided that no oral argument was necessary and none was ordered. Bd. R. 124.

<sup>2</sup> Any reference to a statute is to statute that was in effect on March 15, 2013 unless otherwise indicated. *See* Pub. L. 112-29, § 3(n), 125 Stat. 284, 293 (2011).

1 Motion to Exclude, Paper 197; Natanzon Opposition, Paper 201; Kedem Reply,  
2 Paper 203).

3 We DENY Natanzon Motions 1 and 2. We DISMISS as moot each party's  
4 Motion to Exclude.

5

6 II. Finding of fact

7 The record before us supports the findings of fact made in this decision by a  
8 preponderance of the evidence.

9

*The parties*

10 1. Natanzon is involved in the interference on the basis of its application  
11 13/404,129 ('129), filed February 24, 2012. (Declaration, Paper 1, 3-4).

12 2. Kedem is involved in the interference on the basis of its application  
13 13/039,446 ('446), filed March 03, 2011. (Declaration, Paper 1, 4).

14 3. Natanzon indicates that its real-party-in-interest is EMC IP Holding  
15 Company LLC and that "EMC Corporation, EMC Israel Development Center,  
16 Ltd., Dell Inc., Denali Intermediate Inc., and Dell Technologies Inc. may also be  
17 considered real parties in-interest." (Notice, Paper 9).

18 4. Kedem indicates that its real-party-in-interest is Zerto, Ltd. (Notice,  
19 Paper 4).

20

*Kedem claim 1*

21 5. Kedem claim 1, which is also the Count of the interference, is:

22 1. A hypervisor virtual server system, comprising:

23 a plurality of virtual servers;

24 a plurality of virtual disks that are read from and written to by said  
25 plurality of virtual servers;

26 a physical disk;

1 an I/O backend coupled with said physical disk and in  
2 communication with said plurality of virtual disks, which reads from  
3 and writes to said physical disk;  
4 a tapping driver installed within a hypervisor kernel, in a software  
5 layer between at least one of the plurality of virtual servers and at least  
6 one of the plurality of virtual disks, the tapping driver in  
7 communication with said plurality of virtual servers, wherein the  
8 tapping driver intercepts I/O requests made by any one of said plurality  
9 of virtual servers to any one of said plurality of virtual disks;  
10 a virtual data services appliance, in communication with said  
11 tapping driver, wherein the virtual data services appliance receives the  
12 intercepted I/O requests from the tapping driver, and wherein the  
13 virtual data services appliance provides data services including  
14 replication, monitoring, and quality of service based thereon; and  
15 a data analyzer in communication with the virtual data services  
16 appliance, wherein the data analyzer determines a data state indicating  
17 a state of one virtual server of the plurality of virtual servers that made  
18 at least one of the intercepted I/O requests based on content of the  
19 intercepted I/O requests.

20  
21 (Kedem clean copy of claims, Paper 7; Declaration, Paper 1, 5).

- 22 6. A hypervisor allows a physical computer to create and execute virtual  
23 machines (VMs) and virtual disks, and allocates the computer's resources  
24 among the VMs. (Natanzon Motion 1, SMF 3,<sup>2</sup> citing, *inter alia*, Ex. 2002  
25 ¶¶ 22-33; admitted by Kedem in Kedem Opposition 1).

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<sup>3</sup> Statement of material fact. Each party's statements of material facts and responses to its opponent's statements of material facts are found in appendices to the briefs.

*Benefit*

1  
2 7. Natanzon was not accorded priority benefit of any earlier filed application.  
3 (Declaration, Paper 1, 5).

4 8. Kedem was accorded priority benefit of its earlier filed provisional  
5 application, 61/314,589, filed March 17, 2010. (Declaration, Paper 1, 5).

*Project Santorini*

6  
7 9. In 2006 Natanzon inventor Dr. Christos Karamanolis was employed by  
8 VMware, Inc. (Natanzon Motion 1, SMF 7, citing Karamanolis Declaration,  
9 Ex. 2001 ¶¶ 15, 20; Lipka Declaration, Ex. 2003, ¶ 7).

10 10. In 2006 VMware was a provider of virtualization software including a  
11 hypervisor marketed under the name “ESX”. (Natanzon Motion 1, SMF 1,  
12 citing, e.g., Ex. 2001 ¶¶16-18; admitted by Kedem in Kedem Opposition 1).

13 11. In 2006 EMC Corporation (EMC), said to be a Natanzon real-party-in-  
14 interest, was the parent company of VMware. (Natanzon Motion 1, Paper 99,  
15 SMF 1, citing, e.g., Ex. 2001 ¶ 3; admitted by Kedem in Kedem Opposition 1).

16 12. In 2006 Kedem inventor Ziv Kedem was the chief technology officer of  
17 Kashya, Inc. (“Kashya”). (Natanzon Motion 1, SMFs 27 and 28, citing, e.g., Ex.  
18 2003 ¶ 4; admitted by Kedem in Kedem Opposition 1).

19 13. At that time Kashya offered a disaster recovery (DR) solution that employed  
20 a write splitter and a physical data services appliance under the name  
21 “KBX5000”. (Natanzon Motion 1, SMF 30, admitted by Kedem in Kedem  
22 Opposition 1).

23 14. In 2006 Kashya was acquired by EMC. (Natanzon Motion 1, citing, e.g.,  
24 SMF 59, citing 2003 ¶ 4; admitted by Kedem in Kedem Opposition 1).



- 1 15. After the acquisition, VMware and Kashya made a joint effort to integrate  
2 their technology to provide DR replication within VMware's system  
3 architecture. (Natanzon Motion 1, SMF 62, citing, e.g., Ex. 2001 ¶ 64; admitted  
4 by Kedem in Kedem Opposition 1).
- 5 16. That effort was called "Project Santorini". (Natanzon Motion 1, SMF 62,  
6 citing, *inter alia*, Ex. 2001 ¶ 64; Ex. 2007 ¶ 23; admitted by Kedem in Kedem  
7 Opposition 1).
- 8 17. It is the work done during "Project Santorini" that Natanzon relies upon to  
9 show that Dr. Karamanolis contributed to the conception of the subject matter of  
10 the Kedem claims. (Natanzon Motion 1, 2:1-7).
- 11 18. Ziv Kedem left EMC on January 4, 2007. (Natanzon Motion 1, SMF 93;  
12 admitted by Kedem in Kedem Opposition 1).
- 13 19. Project Santorini was cancelled by April 2007. (Gilat Deposition Transcript,  
14 Ex. 2076, 47:19-48:47).
- 15 20. Ziv Kedem filed provisional application 61/314,589 ('589) on  
16 March 17, 2010. ('589 application, Ex. 1007).
- 17 21. Ziv Kedem filed the involved application 13/039,446 ('446) on  
18 March 03, 2011. ('446 application, Ex. 2056).
- 19 22. Both the '589 and '446 applications list Ziv Kedem as the sole inventor.
- 20 23. Natanzon did not file its involved application 13/404,129 ('129) until  
21 February 24, 2012. ('129 application, Ex. 1009).
- 22 24. The '129 application lists six inventors, including Ziv Kedem, but it appears  
23 that only Assaf Natanzon and Dr. Karamanolis signed an inventor's oath in the  
24 application. (Petition in '129 Application, Ex. 2067); *see* 37 CFR 1.63(a);  
25 1.64(a) for non-signing inventors.

*Expert testimony*

1  
2 25. Natanzon relies upon the declaration testimony of Mr. Ian Jestice. (Jestice  
3 Declaration, Ex. 2002).

4 26. Based on his background, education, and experience as discussed in his  
5 declaration and his *curriculum vitae* (Ex. 2002, ¶¶ 6-11; Ex. 2066), Mr. Jestice  
6 is qualified to testify regarding the technical issues relevant to the Natanzon  
7 Motions 1 and 2.

8 27. Kedem relies upon the declaration testimony of Dr. Matthew Green. (Green  
9 Declaration, Ex. 1006).

10 28. Based on his background, education, and experience as discussed in his  
11 declaration and his *curriculum vitae* (Ex. 1006, ¶¶ 5-12; Ex. 1027), Dr. Green is  
12 qualified to testify regarding the technical issues relevant to the Natanzon  
13 Motions 1 and 2.

14  
15 III. Discussion

16 A. Natanzon Motion 1

17 1. Legal principles

18 A person shall be entitled to a patent unless that person did not invent the  
19 subject matter sought to be patented. 35 U.S.C. §102(f). When an invention is  
20 made by two or more persons jointly, they shall apply for the patent jointly and  
21 each make the required oath, except as otherwise provided for by statute. Inventors  
22 may apply for a patent jointly even though (1) they did not physically work together  
23 or at the same time, (2) each did not make the same type or amount of contribution,  
24 or (3) each did not make a contribution to the subject matter of every claim of the  
25 patent. 35 U.S.C. §116.

1 To be considered an inventor, one must have contributed to the conception of  
2 the claimed invention. *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1460  
3 (Fed. Cir 1998). Conception exists when there is a definite and permanent idea of  
4 an operative invention, including every feature of the invention. *Sewall v. Walters*,  
5 21 F.3d 411, 415 (Fed. Cir. 1994). “[A] joint inventor must contribute in some  
6 significant manner to the conception of the invention.” *Fina Oil and Chem. Co. v.*  
7 *Ewen*, 123 F.3d 1466, 1473 (Fed. Cir. 1997). As such, “each inventor must  
8 contribute to the joint arrival at a definite and permanent idea of the invention as it  
9 will be used in practice.” *Burroughs Wellcome Co. v. Barr Labs, Inc.*, 40 F.3d  
10 1223, 1229 (Fed Cir. 1994). The showing of contribution to the conception of the  
11 invention requires corroborating evidence. *Fina*, 123 F.3d at 1474. Under a “rule  
12 of reason” analysis, circumstantial evidence of an independent nature may satisfy  
13 the corroboration requirement. *Reese v. Hurst v. Wiewiorowski*, 661 F.2d 1222,  
14 1230 (CCPA 1981); *Cooper v. Goldfarb*, 154 F.3d 1321, 1330 (Fed. Circ. 1998).  
15 “The determination of whether a person is a joint inventor is fact specific, and no  
16 bright-line standard will suffice in every case.” *Fina Oil & Chem.*, 123 F.3d at 1473  
17 (Fed.Cir.1997).

18 We give claims their broadest reasonable interpretation by considering not  
19 only the claim language but also how one skilled in the art would understand the  
20 claim in view of the specification. *Phillips v. AWH*, 415 F.3d 1303, 1316, (Fed.  
21 Cir. 2005)(“The Patent and Trademark Office (‘PTO’) determines the scope of  
22 claims in patent applications not solely on the basis of the claim language, but upon  
23 giving claims their broadest reasonable construction ‘in light of the specification as  
24 it would be interpreted by one of ordinary skill in the art.’”, citing *In re Am. Acad.*  
25 *of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed.Cir.2004)).

1           “The basic exercise of the normal skill expected of one skilled in the art,  
2 without an inventive act, also does not make one a joint inventor.” To be considered  
3 a joint inventor the person must make a contribution to the conception of the  
4 claimed invention “that is not insignificant in quality, when that contribution is  
5 measured against the dimension of the full invention.” *Fina Oil and Chemical Co.*  
6 *v. Ewen*, 123 F.3d 1466, 1473 (Fed. Cir. 1997); *See also Sewall v. Walters*, 21 F.3d  
7 at 416 (Sewall not a joint inventor since the “design of circuits to carry out Walters’  
8 idea was simply the exercise of the normal skill expected of an ordinary chip  
9 designer, which did not involve any inventive acts on the part of Sewall”.)

10           A motion must provide a showing, supported with appropriate evidence, such  
11 that, if unrebutted, it would justify the relief sought. As the moving party Natanzon  
12 has the burden of proof. Bd. R. 208(b).

13           Expert witness testimony that does not disclose the underlying facts or data  
14 on which the opinion is based is entitled to little or no weight. Bd.R. 158(b). The  
15 argument of counsel is not a substitute for evidence lacking in the record. *Estee*  
16 *Lauder Inc. v. L’Oreal, S.A.*, 129 F.3d 588, 595, (Fed. Cir. 1997). Further it is  
17 improper for the Board to substitute its own opinion for evidence of the knowledge  
18 of one of ordinary skill in the art. *Brand v. Miller*, 487 F.3d 862, 870 (Fed. Cir.  
19 2007).

## 20           2. Summary of parties’ positions

21           Natanzon argues that one of its listed inventors, Dr. Karamanolis, contributed  
22 to the conception of the invention defined by Kedem claim 1, which is also the  
23 Count of the interference. (Declaration, Paper 1, 3). Because Dr. Karamanolis is not  
24 listed as an inventor on the involved Kedem application, it is Natanzon’s position  
25 that Kedem’s involved claims are unpatentable under 35 U.S.C. §102(f).

1 Dr. Karamanolis is said to have contributed to the portions of Kedem claim 1  
2 shown in italics in the reproduced claim shown below:<sup>4</sup>

- 3 1. A hypervisor virtual server system, comprising:  
4 a plurality of virtual servers;  
5 a plurality of virtual disks that are read from and written to by  
6 said plurality of virtual servers;  
7 a physical disk;  
8 an I/O backend coupled with said physical disk and in  
9 communication with said plurality of virtual disks, which reads from  
10 and writes to said physical disk;  
11 a tapping driver *installed within a hypervisor kernel, in a*  
12 *software layer between at least one of the plurality of virtual servers*  
13 *and at least one of the plurality of virtual disks, the tapping driver in*  
14 *communication with said plurality of virtual servers, wherein the*  
15 *tapping driver intercepts I/O requests made by any one of said*  
16 *plurality of virtual servers to any one of said plurality of virtual disks;*  
17 a virtual data services appliance, in communication with said  
18 tapping driver, wherein the *virtual* data services appliance receives the  
19 intercepted I/O requests from the tapping driver, and wherein the  
20 *virtual* data services appliance provides data services including  
21 replication, monitoring, and quality of service based thereon; and  
22 a data analyzer in communication with the *virtual* data services  
23 appliance, wherein the data analyzer determines a data state indicating  
24 a state of one virtual server of the plurality of virtual servers that made  
25 at least one of the intercepted I/O requests based on content of the  
26 intercepted I/O requests.

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<sup>4</sup> Natanzon does not argue that its inventors contributed to additional subject matter that may be found in the Kedem dependent claims so we focus on Kedem claim 1. Natanzon notes that the other independent Kedem claim, claim 6, contains the same limitations regarding placement of the tapping driver and the use of a virtual data services appliance that are found in Kedem claim 1. (Natanzon Motion 1, 19, fn.1).

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(Kedem clean copy of claims, Paper 7; Declaration, Paper 1, 5).

According to Natanzon, most aspects of the Kedem claims were existing technology of either VMware (VMware’s ESX virtual server system) or Kashya (the KBX5000 system which included a write splitter and a physical data services appliance or K-Box). In short Natanzon alleges that following EMC’s acquisition of Kashya discussions and activities concerning “porting”<sup>5</sup> the Kashya K-Box to VMware ESX, i.e., Project Santorini, were inventive. Dr. Karamanolis’ contributions to that activity are said to have been the idea of locating a “tapping driver” in the location required by claim 1, and the concept of virtualizing the K-Box data services appliance. Natanzon assert that these contributions were communicated to Ziv Kedem in 2006 such that Ziv Kedem is not the sole inventor of claim 1. (Natanzon Motion 1, 4:17-6:11; *See also* Kashya KBX5000 Administrator's Guide, Product Release 2.3 of July 11, 2006, Ex. 2022, at 9, 12).

Further Natanzon asserts that Kashya’s vice-president of engineering Shlomo Ahal and its Storage Group Leader Oded Kedem (brother to Ziv Kedem) also made contributions to the Kedem claimed subject matter that are comparable to that of Ziv Kedem. (Natanzon Motion 1, 2:16-22). Natanzon concedes that EMC has not investigated fully what specific contributions each of these other purported inventors made. Natanzon asserts that it could not do so since Mr. Ahal is no longer employed by EMC and has not responded to EMC’s request to cooperate by signing an inventor’s declaration and the Kedem brothers are currently employed by Zerto. However, Natanzon asserts, documentary evidence indicates that they were

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<sup>5</sup> Our understanding from the briefing is that “porting” software means to take it from one environment and make it executable in another environment. (*See, e.g.,* Green Declaration, Ex. 1006, ¶¶89, 98).

1 at a meeting where the consensus was reached that “the Kashya write splitter could  
2 be successfully implemented in the vSCSI layer (i.e., in the hypervisor kernel in a  
3 software layer between a virtual server and virtual disk) and that implementing the  
4 Kashya appliance in a VM (i.e., as a virtual appliance) was the best long term  
5 solution.” (Natanzon Motion 1, 20:13-20). The evidence pointed out to us by  
6 Natanzon at best establishes a possibility that others besides Dr. Karamanolis  
7 contributed to the conception of the Kedem claims and is insufficient to meet  
8 Natanzon’s burden of proof. Bd. R. 121(b). We understand Natanzon to be  
9 arguing, essentially, that Dr. Karamanolis contributed to the conception of the  
10 subject matter of the Kedem claims, albeit without discounting or denying the  
11 possible contributions of others.

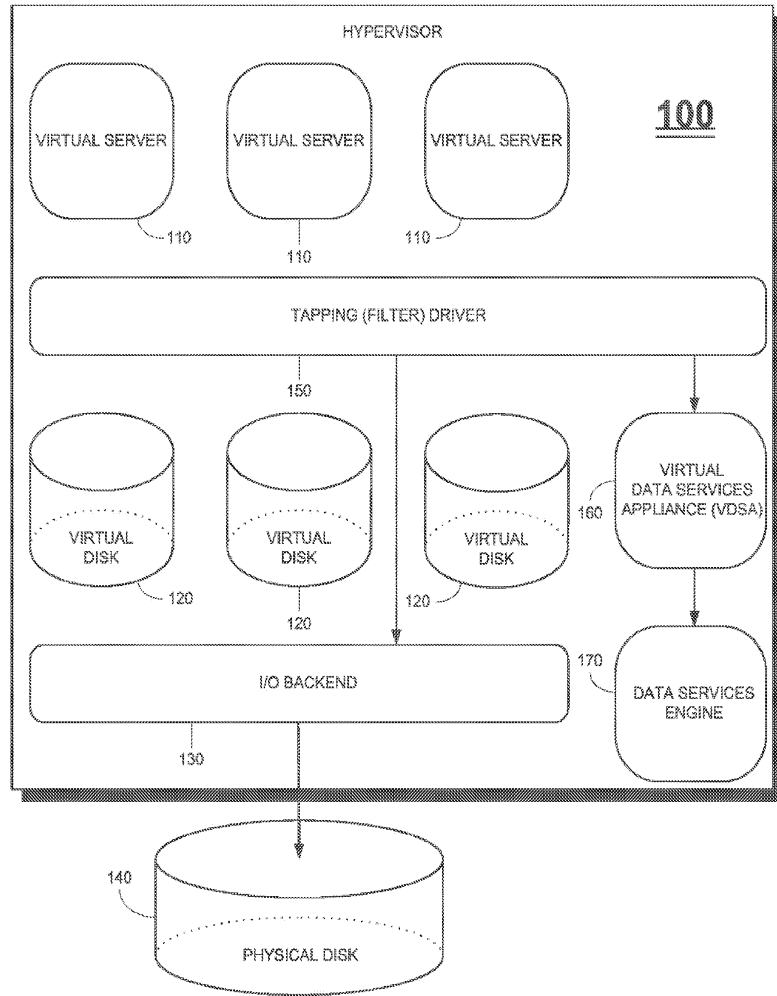
12 Kedem argues that Natanzon has not meet its burden of showing that  
13 Dr. Karamanolis made the contributions Natanzon asserts and for that reason the  
14 Natanzon Motion should be denied. (Kedem Opposition 1, 18:23-24:4). Kedem  
15 asserts that the subject matter claimed by Kedem is based on work Ziv Kedem did  
16 well after Mr. Kedem’s association with Dr. Karamanolis and is completely  
17 different than the Project Santorini work. (Kedem Opposition 1, 1:9-19).

18 Kedem argues that Project Santorini itself was not inventive because it was  
19 simply combining known technology (Kedem Opposition 1, 24:7-25:19). Kedem  
20 asserts that to the extent that Project Santorini was inventive, that invention was  
21 abandoned, suppressed and/or concealed. (Kedem Opposition 1 28:22-30:15).

22 Further Kedem argues that Natanzon has not shown any listed inventor other  
23 than Dr. Karamanolis contributed to the conception such that Natanzon Motion 1,  
24 alleging joint inventorship, should be denied. (Kedem Opposition 1, 30:17-31:19).

25 2. Analysis

1 Kedem claim 1 is directed to a hypervisor virtual server system. Figure 1 of  
2 Kedem's involved application is reproduced below to illustrate the claimed  
3 invention.



29 Above is shown Figure 1 of the involved Kedem application. (Ex. 2056, 17).  
30



1           As explained in the '446 application, a tapping driver (150) is installed  
2 within the hypervisor kernel (100) and has visibility to input/output (I/O) requests  
3 made by virtual servers (110) running on the hypervisor. (Ex. 2056, ¶ 0007). The  
4 tapping driver resides in the software layers between the virtual servers and virtual  
5 disks (120). (Ex. 2056, ¶ 0018). A virtual data service appliance (VDSA) runs on  
6 each hypervisor and can provide data services such as “replication, monitoring and  
7 quality of service.” (Ex. 2056, ¶¶ 0006, 0008). Whenever a virtual server performs  
8 I/O to a virtual disk the tapping driver identifies the I/O request to the virtual disk.  
9 The tapping driver copies the I/O request, forwards one copy to the hypervisor's  
10 backend (130), and forwards another copy to the VDSA (160). When it receives  
11 the I/O request the VDSA acts to enable data services further discussed in the  
12 '446 specification. (Ex. 2056, ¶¶ 0009-00012). The VDSA makes up to three  
13 copies of intercepted I/O requests received from the tapping driver, one of which  
14 may be sent to a data analyzer and reporter which analyzes data contents of the  
15 requests and infers information regarding the data state of the virtual servers.  
16 (Ex. 2056, ¶¶ 00017-00024).

17           Natanzon argues that Dr. Karamanolis contributed in two aspects to the  
18 conception of the subject matter of Kedem claim 1, i.e., the idea of locating a  
19 tapping driver in the location required by claim 1, and the concept of virtualizing  
20 the data services appliance. Kedem argues that the project Santorini work, which is  
21 what Natanzon relies upon to show the asserted contributions, did not include these  
22 two aspects of the Kedem claims. (Natanzon Motion 1, 4:17-5:12).

23           Each aspect is discussed below.

1 a. Tapping drive placement

2 Natanzon argues that it was Dr. Karamanolis' idea to place a "tapping driver  
3 installed within a hypervisor kernel, in a software layer between at least one of the  
4 plurality of virtual servers and at least one of the plurality of virtual disks, the  
5 tapping driver in communication with said plurality of virtual servers, wherein the  
6 tapping driver intercepts I/O requests made by any one of said plurality of virtual  
7 servers to any one of said plurality of virtual disks." Natanzon argues that even  
8 before meeting Mr. Kedem, Dr. Karamanolis had the idea of creating a hypervisor-  
9 based replication system that would reside inside VMware's hypervisor and allow  
10 replication to be performed at the granularity of a virtual disk. According to  
11 Natanzon, Dr. Karamanolis appreciated that one way to implement such a system  
12 was by positioning a tapping driver in the hypervisor kernel in a software layer  
13 between a virtual server and a virtual disk. (Natanzon Motion 1, 6:15-24).

14 Kedem argues that the project Dr. Karamanolis and Mr. Kedem worked on,  
15 Project Santorini, involved using the Kashya "write splitter", which is not a  
16 "tapping driver". Kedem argues that Natanzon has not shown that Dr. Karamanolis  
17 was involved in the development of the system with the tapping driver  
18 configuration of the Kedem claims. (Kedem Opposition 1, 18:9-19:1).

19 As the moving party Natanzon has the burden of showing that the  
20 contribution that Dr. Karamanolis made to Project Santorini is a contribution that  
21 appears in the Kedem claims. Bd. R. 208(b). Natanzon concedes that the evidence  
22 it relies upon to show Dr. Karamanolis' contribution does not refer to a "tapping  
23 driver". Instead that evidence refers to "a write splitter" only. (Kedem Opposition  
24 1, SMF 147 asserting "[j]unior party has produced no evidence from the 2006-2007

1 Project Santorini that shows the Kashya write splitter was called a “tapping  
2 driver,”; admitted in Natanzon Reply 1).

3 The evidence relied upon by Natanzon need not have used the term “tapping  
4 driver” to show a contribution to conception of the subject matter of the Kedem  
5 claims if one skilled in the art nevertheless would have recognized the term “write  
6 splitter” as used in the Project Santorini work to be the same as a “tapping driver.”  
7 *Cf. Eiselstein v. Frank*, 52 F.3d 1035, 1038-39 (Fed. Cir. 1995). Because Natanzon  
8 has the burden of proof in its motion, Natanzon must show, *inter alia*, that one  
9 skilled in the art would have understood the “write splitter” of project Santorini to  
10 be the same as the “tapping driver” found in the Kedem claims.

11 Mr. Jestice testifies that a “write splitter” as shown in the Natanzon  
12 conception evidence (e.g. a document said to be a PowerPoint presentation entitled  
13 “Disaster Recovery with ESX” that was attached to an email from Christos  
14 Karamanolis, dated January 30, 2006 (attachment at Ex. 2010, email at Ex. 2009)),  
15 “was a conventional technology known in disaster recovery [DR] systems that  
16 ‘split’ a write I/O request from the source computer by copying the I/O request,  
17 forwarding one copy to be stored normally on the source system, and sending  
18 another copy elsewhere, such as to a replication engine that transmits the copy to a  
19 replication site to support DR.” Mr. Jestice goes on to conclude that “[t]he ‘tapping  
20 driver’ recited in claims 1 and 6...is a ‘write splitter’”. (Jestice Declaration,  
21 Ex. 2002, ¶58; *see also* ¶¶54, 63.).

22 Natanzon does not direct us to a portion of Mr. Jestice’s testimony explaining  
23 the basis of his understanding of the term “tapping driver” or his understanding that  
24 a “write splitter” is the same as a “tapping driver”. For example we have not been  
25 directed to meaningful testimony from Mr. Jestice regarding how one skilled in the

1 art would have considered the term “tapping driver” in view of the specification of  
2 the involved Kedem application or showing a comparison of the Kashya “write  
3 splitter” (of Project Santorini) to the “tapping driver” of the Kedem claims. Nor  
4 have we been directed to testimony from Mr. Jestice providing another basis upon  
5 which he concluded that a “write splitter” is the same as a “tapping driver.” Expert  
6 testimony that does not disclose the underlying basis for the witness’ opinion is  
7 entitled to little or no weight. Bd. R. 158(a). See *Innogenetics, N.V. v. Abbott*  
8 *Labs.*, 512 F.3d 1363, 1376 (Fed. Cir. 2008); *Motorola, Inc. v. Interdigital Tech.*  
9 *Corp.*, 121 F.3d 1461, 1473 (Fed. Cir. 1997) (disregarding expert’s conclusory  
10 testimony unsupported by documentary evidence). The argument of counsel  
11 asserting that a write splitter is a tapping driver, cannot take the place of evidence in  
12 the record. *Estee Lauder Inc. v. L’Oreal, S.A.*, 129 F.3d at 595.

13 Kedem in its Opposition 1 argues that Natanzon has failed to meet its burden  
14 of proof to show that the “write splitter” referred to in Natanzon’s conception  
15 evidence is the “tapping driver” of the Kedem claims. Kedem asserts that  
16 Mr. Jestice admitted he had done nothing to evaluate the meaning of “tapping” in  
17 the ’446 Application, other than superficial Internet searches. (Kedem Opposition 1,  
18 21:3-18, citing Jestice Deposition Transcript, Ex. 2077 at 22:21-24:35).<sup>6</sup> Kedem  
19 also points to testimony from Mr. Jestice said to indicate that he did not know how  
20 the Kashya/Project Santorini write splitter worked and in particular that he was

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<sup>6</sup> Q. What research did you do? A. I searched for the terms.

Q. And that research is not referred to in your declaration, correct? A. That’s correct.

Q. And you don’t mention the results or anything like that, that you found when you did the search; is that correct? A. There were no results.

Q. Ah, so you searched ‘tapping’? A. ‘Tapping filter driver.’

Q. Did you try ‘tapping driver’? A. I—I don’t recall.”

1 unaware of the functions of the Kashya write splitter or how it was implemented in  
2 Project Santorini. (Ex. 2077 at 42:5-43:8.)

3 Kedem further notes Dr. Karamanolis' declaration testimony where he states  
4 that “[i]n the design I conceived and presented in Exhibit 2010, the write splitter is  
5 ‘a tapping driver . . .’” without providing a technical explanation of why he believes  
6 them to be the same. (Kedem Opposition 1, 20:11-21:2).

7 Kedem argues that none of the other Natanzon witnesses discussing Project  
8 Santorini, including Allan Lipka,<sup>7</sup> Matt Amdur,<sup>8</sup> and Matan Gilta,<sup>9</sup> explains why the  
9 write splitter of Project Santorini is the same as the tapping driver of the Kedem  
10 claims. (Kedem Opposition 1, 21:19-22:8, referring specifically to Lipka  
11 Declaration, Ex. 2003; Amdur Declaration, Ex. 2005, ¶¶ 17; Gilta Declaration, Ex.  
12 2006, ¶ 14; Gilat Deposition Transcript, Ex. 2076, 72:10-24).

13 We agree that Natanzon Motion 1 does not direct us to testimony from these  
14 witnesses, or other convincing evidence, sufficiently explaining why the Project  
15 Santorini write splitter is the same as the tapping driver of the Kedem claims.  
16 Kedem points to the testimony of Dr. Green where he states his opinion that  
17 Natanzon Motion 1 “does not provide substantive explanation that demonstrates  
18 why a person of ordinary skill in the art would understand the Kashya write splitter  
19 [found in Project Santorini] to instead be a tapping driver.” (Kedem Opposition 1,  
20 22:9-15, citing Ex. 1006, ¶ 111).

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<sup>7</sup> During the relevant time frame Mr. Lipka was a member of EMC's Corporate Development Group and was involved in the acquisition of Kashya by EMC. (Ex. 2003, ¶¶ 3, 5).

<sup>8</sup> During the relevant time frame Mr. Amdur was employed by VMware and worked as an engineer on Project Santorini. (Ex. 2005, ¶ 3).

<sup>9</sup> During the relevant time frame Mr. Gilta was employed by EMC and worked as an engineer on Project Santorini. (Ex. 2006, ¶ 3).

1 Natanzon has not directed us to evidence sufficient to show that  
2 Dr. Karamanolis contributed to the conception of placing a “tapping driver” into the  
3 hypervisor kernel as required by the Kedem claims. The evidence pointed out to us  
4 refers to a “write splitter” not a “tapping driver.” Natanzon has not directed us to  
5 evidence sufficient to show that one skilled in the art would have considered them  
6 to be the same.

7 Thus, we determine that Natanzon has not met its burden of proof to show  
8 that a conception of the placement of the write splitter in Project Santorini was  
9 conception of the placement of the tapping driver as required by the Kedem claims.  
10 We make this determination without reaching arguments on this issue found in  
11 Kedem Opposition 1 or Natanzon Reply 1 since Natanzon did not meet its burden  
12 of proof on this issue by setting forth a *prima facie* showing.

13 Nevertheless, we exercise discretion to comment upon this issue in view of  
14 Kedem Opposition 1 as Kedem provides evidence of how one skilled in the art  
15 would have understood the terms “write splitter” and “tapping drive.” In particular,  
16 Dr. Green testified that one skilled in the art would recognize that a “write splitter”  
17 and a “tapping driver” are not the same. Dr. Green bases his opinion on  
18 consideration of the specification of the ’446 application, literature in the prior art  
19 including the Kashya KBX5000 Administrator's Guide (Ex. 2022), and the common  
20 understanding of the term “tapping”.<sup>10</sup> (*See, e.g.*, Ex. 1006, ¶¶ 44-51).

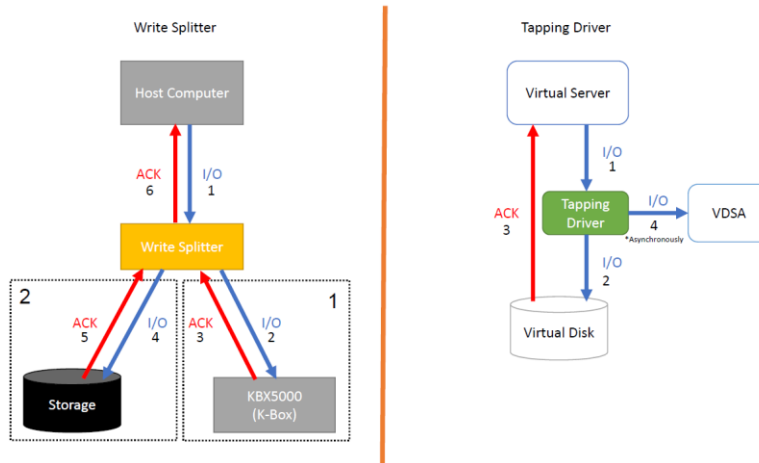
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<sup>10</sup> Dr. Green points to the understanding of the term “tapping” or “tap” in the field of computer science where, according to Dr. Green, one of ordinary in the art would understand “tapping” to mean passive, non-obtrusive monitoring. (Ex. 2006, ¶ 49, citing Ex. 1033 to Sherr *et al.*, “*Signaling Vulnerabilities in Wiretapping Systems.*”)

1 Dr. Green’s testimony indicated that he considered the Kedem claims in view  
 2 of the ’446 specification and what those claims would have conveyed to one skilled  
 3 in the art at the relevant time and in view of the specification. (Ex. 1006, ¶¶ 1001,  
 4 48). Dr. Green’s testimony further indicates that he considered the term write  
 5 splitter and how that term would have been understood by one skilled in the art at  
 6 the relevant time by considering, *inter alia*, a contemporaneous publication,<sup>11</sup> and  
 7 the known function of the Kashya prior art write splitter. (Ex. 1006, ¶¶66-75,  
 8 referring to Ex. 2022).

9 Dr. Green provides the following diagram which illustrates a portion of his  
 10 testimony:

11  
 12



13 Above is shown a diagram from Dr. Green’s testimony. (Ex. 1006, ¶110).  
 14

<sup>11</sup> Dr. Green points to an April 10, 2006 article titled “Virtualization and I/O” that appeared in *InfoWorld* where the author discusses one of the issues with dealing with I/O requests where the approach was to virtualize device drivers. According to Dr. Green the *InfoWorld* article illustrates how “tapping,” unlike write splitting, “would not be understood to ‘lock up the guest OS kernel while it waits for a response’ – i.e., an ACK for the I/O transaction, form, for example, a write splitter.” (Ex. 1006, ¶ 50, citing Ex. 2028, p. 1).

1           According to Dr. Green, as illustrated in the above diagram, a write splitter  
2 would have been understood to split one I/O request into two write and ACK  
3 transactions. One write goes to the VDSA and the other goes to storage, both of  
4 which send ACKs to the write splitter. The write splitter must then send ACKs  
5 from both the K-Box appliance and storage to the host computer before operations  
6 can continue. Dr. Green explains that a tapping driver sends the I/O request to a  
7 virtual disk. The disk then sends an ACK directly to the virtual server. The I/O  
8 request also is sent to the VDSA but no ACK must be sent back for operations to  
9 continue. According to Dr. Green, “[t]his means that the ’446 Application’s  
10 tapping driver would be understood by a person of ordinary skill in the art not to  
11 inhibit the flow of acknowledgements (ACKs) between a virtual server and a virtual  
12 disk, such that the tapping driver would withhold the I/O request ACK from the  
13 virtual server until an ACK is received from VDSA.” (Ex. 1006, ¶ 48).

14           In short, according to our understanding of Dr. Green’s testimony, a write  
15 splitter withholds the I/O request ACK until an ACK is received from both the  
16 VDSA and the storage disk but a tapping driver does not. According to Dr. Green  
17 “a person of ordinary skill in the art would have recognized at the time of Project  
18 Santorini and the ’446 Application’s filing, write splitting would have been  
19 desirable as necessary to offer synchronous data protection, which the ’446  
20 Application’s tapping driver would not have provided, because it tapped I/O’s  
21 asynchronously”. (Ex. 1006, ¶¶76-80, 101,110, 111).

22           Dr. Green’s testimony regarding the function of a “write splitter” is  
23 consistent with Mr. Jestice’s testimony at paragraph 134 where he refers to slide 8  
24 of Ex. 2018, a PowerPoint presentation entitled “Kashya KBX5000:Architecture”,  
25 dated March 2006, for description of a “write splitter”. The slide indicates that with



1 write splitting: “Status is sent back to the host only after both the appliance and the  
2 storage have completed the write.” (Jestice Declaration, Ex. 2002, ¶ 134 referring to  
3 Ex. 2018, 8). Dr. Green’s testimony also is consistent with the Kashya KBX5000  
4 Administrator's Guide which shows a flow of data for a write transaction where  
5 ACKS are sent from the write splitter to the host after ACKS have been sent to the  
6 write splitter from both the K-Box and the storage. (Ex. 2022, 12).

7 To the extent the testimony of Mr. Jestice and Dr. Green differ on how one  
8 skilled in the art would have considered the “tapping driver” aspect of the  
9 hypervisor of the Kedem claims, we credit the testimony of Dr. Green. As we note  
10 above Dr. Green’s testimony provides a more thorough analysis of how one skilled  
11 in the art would have understood the terms “write splitter” and “tapping driver”  
12 supported by, *inter alia*, consideration of the ’446 specification, what was known  
13 in the prior art, and the common definition of terms.

14 In Reply 1, Natanzon argues that the broadest reasonable interpretation of  
15 “tapping driver” in view of the ’446 specification includes a “write splitter”.  
16 (Natanzon Reply 1, 3-6). As we noted above, Natanzon has not set forth a *prima*  
17 *facie* showing on this issue and cannot do so in its Reply. Bd. R. 122(b). Nor can  
18 the attorney argument substitute for evidence of the knowledge of one of ordinary  
19 skill in the art. *Estee Lauder Inc.* at 595 (Fed. Cir. 1997). Further, as we have  
20 noted, we consider claim terms in view of the specification as it would be  
21 interpreted by one of ordinary skill in the art. *Phillips*, 415 F.3d at 1316. When we  
22 consider Dr. Green’s testimony on this point, as discussed above, we are persuaded  
23 that one skilled in the art would have considered a “tapping driver” to be different  
24 than the “write splitter” of Project Santorini.

1 Natanzon has not met its burden of proof of showing that Dr. Karamanolis  
2 contributed to the conception of the “tapping driver” aspect of the Kedem claims  
3 without need to consider Kedem Opposition 1. Further, when we consider the  
4 Kedem Opposition, we agree that the evidence before us shows a tapping driver to  
5 differ from the write splitter used in Project Santorini.

6  
7 b. Virtualizing the data systems appliance

8 Natanzon asserts that Dr. Karamanolis’ contribution to the subject matter of  
9 Kedem claim 1 requiring use of a virtual data services appliance provides an  
10 additional and independent basis for granting its Motion 1. (Natanzon Motion 1,  
11 18:13-18, citing *Vapor Point*, 832 F.3d at 1348-49 (“All inventors, even those who  
12 contribute to only one claim or one aspect of one claim of a patent, must be listed  
13 on that patent.”); *Eli Lilly*, 376 F.3d at 1361-62 (co-inventor need not have  
14 “contributed to the conception of all the limitations in any one claim of the  
15 patent.”)).

16 According to Natanzon the idea of implementing the Kashya appliance as a  
17 virtual appliance running on a VM was proposed by Dr. Karamanolis on  
18 March 9, 2006. Natanzon points to corroboration at, e.g., Dr. Karamanolis’ email  
19 proposing this possibility to two non-inventors (Ex. 2012; 2004 ¶¶ 13-15), as well  
20 as Mr. Lipka’s testimony and the copy of Dr. Karamanolis’ email received by  
21 Mr. Lipka and two other non-inventors. (Ex. 2045). Natanzon argues that the idea  
22 of virtualizing the KBX5000 appliance, which included a data analyzer, was  
23 communicated by Dr. Karamanolis to the Kashya team at least as early as  
24 April 4, 2006. (Natanzon Motion 1, 16:9-17:20).

1           Kedem argues that the invention defined by Kedem claim 1 is not directed to  
2 virtualization of the K-Box as Natanzon asserts. Kedem asserts that Kedem claim 1  
3 is directed to a new hypervisor-based system and is not simply a port of the existing  
4 K-Box software as in Project Santorini. Thus, argues Kedem, Dr. Karamanolis’  
5 idea to virtualize the K-Box did not contribute to the conception of the subject  
6 matter of the Kedem claims which require, *inter alia*, a tapping driver. (Kedem  
7 Opposition 1, 22:22-23:2).

8           We credit Dr. Green’s testimony as discussed above, that the hypervisor of  
9 the Kedem claims differs from that of Project Santorini for at least the reason that  
10 the Kedem claims use a “tapping driver” and not “write splitter”. Thus the evidence  
11 before us does not demonstrate that the idea to virtualize the Kashya K-Box, as was  
12 the aim of Project Santorini, to be a contribution to the conception of the subject  
13 matter of the Kedem claims. As Dr. Green notes in his testimony, the Kedem  
14 claims include “a virtual data services appliance, *in communication with said*  
15 *tapping driver.*” (Ex.1006, at e.g., ¶¶ 135, 137, emphasis added). The evidence  
16 before us does not show that the VDSA of Project Santorini was in communication  
17 with a tapping driver as required by the claims rather than a write splitter as found  
18 in the KBX5000.

19           Even if conception of the subject matter of the Kedem claims would not have  
20 required that the VDSA communicate with a tapping driver instead of a write  
21 splitter as in project Santorini, we agree with Kedem that virtualizing the Kashya  
22 appliance would not have been inventive. As discussed further below such a  
23 modification was a well-known concept in the art at the time and would have  
24 involved only ordinary skill.<sup>12</sup> Kedem argues that in essence Dr. Karamanolis’

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12       Kedem made a similar argument regarding placement of the tapping driver.

1 contribution in Project Santorini was to instruct others to use existing VMware ESX  
2 software to virtualize existing software for physical hardware, i.e. the Kashya write  
3 splitter and K-Box. (Kedem Opposition 1, 25:3-19).

4 In support of its argument Kedem points to Dr. Karamanolis' testimony  
5 stating, as an explanation for not filing a patent application on the Project Santorini  
6 work, "we saw that substantial IP in the Santorini project was coming from the  
7 Kashya side, with the intellectual property that was developed for physical storage  
8 use case could apply to the virtualized world with – in what was my opinion back  
9 then, limited extension to the IP to make it applicable to virtual machine  
10 replication" and noting that "the entire business proposition of VMware<sup>[13]</sup> is based  
11 on the fact that you can take an application ... and a software product that runs on a  
12 physical server and without any modifications, you can run -- run it on a virtual  
13 machine. (Kedem Motion 1, 24:15-25:2, citing Karamanolis Deposition Transcript,  
14 Ex. 2080, 133:14-24; *See also* Gilat Deposition Transcript, Ex. 2076, 32:17-33:6).

15 We agree that the evidence before us indicates that virtualization of the K-  
16 Box appliance was not inventive. We credit Dr. Green's testimony that "a person  
17 of ordinary skill in the art would have recognized the resulting system to be the  
18 product of nothing more than ordinary skill in the art (virtualizing software  
19 originally intended for physical hardware – *i.e.*, the purpose of hypervisor systems  
20 like VMware), not something inventive". Dr. Green's testimony is consistent with,  
21 and supported by, Dr. Karamanolis' testimony above regarding the known utility  
22 purpose of the VMware product. We agree with Kedem that the virtualization of

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(Kedem Opposition 1, 25:3-19). We do not find it necessary to reach this argument since we conclude that Natanzon did not show conception of a tapping driver.

<sup>13</sup> We understand that the VMware virtualization product existed prior to Project Santorini. (Gilat Deposition Transcript, Ex. 2076, 32:6-10).

1 the K-Box was, based on the evidence before, the exercise of the normal skill in the  
2 art and did not require an inventive act. *Sewall v. Walters*, 21 F.3d at 416.

3 In its Reply 1, Natanzon argues that the Examiner considered prior art that  
4 included the VMware and Kashya systems and found the Kedem claims to be  
5 allowable nonetheless. (Natanzon Reply 1, 9-10). As discussed above, Natanzon  
6 has not shown that the prior art to VMware or Kashya included a “tapping driver”  
7 that is a requirement of the claims the Examiner decided to allow. At any rate we  
8 are not bound by the *ex parte* determination of the Examiner to the extent it  
9 conflicts with our determinations made in this *inter partes* context. See *Glaxo*  
10 *Wellcome, Inc. v. Cabilly*, 56 USPQ2d 1983, 1984 (BPAI 2000).

11 In view of our determination above, we have not found it necessary to reach  
12 Kedem’s argument that the Project Santorini work did not result in an appliance  
13 having all the features of the physical K-box so the data services appliance feature  
14 of Kedem claim 1 was not conceived. Contrary to Kedem’s assertions, though, the  
15 evidence before us demonstrates that Project Santorini called for a VDSA having  
16 the same functionality as the K-Box appliance. (Natanzon Motion 1, SMF 87,  
17 citing Ex. 2001, ¶ 83; Ex. 2006, ¶¶ 22-23; Ex. (“Functional Specifications  
18 Document”, Ex. 2041, 30; admitted by Kedem in Kedem Opposition 1). However,  
19 for reasons noted above, the Project Santorini work has not been shown to be a  
20 conception of the subject matter of Kedem claim 1 regardless.

21 We also do not find it necessary to reach Kedem’s argument that, to the  
22 extent conception of an invention occurred during Project Santorini, that invention  
23 has been “abandoned, suppressed and/or concealed.”

1           We have considered all other argument presented by Natanzon in its briefing  
2 on Motion 1 even if not specifically discussed but do not find those arguments  
3 convincing.

4           We DENY Natanzon Motion 1.

5  
6           B.     Natanzon Motion 2

7           In its Motion 2, junior Party Natanzon moves to correct the listing of  
8 inventors for its involved application by deleting Tzach Schechner and Assaf  
9 Natanzon, “as a diligent review of the evidence revealed that neither contributed to  
10 conception of any claim in the ’129 Application.” Natanzon asks that  
11 “[a]dditionally, if, during this interference and based on a more fully developed  
12 record, the Board concludes that any of Ziv Kedem, Oded Kedem and/or Shlomo  
13 Ahal did not contribute to the conception of any claim of the ’129 Application,  
14 Junior Party requests that the Board correct inventorship to remove any or all of  
15 those individuals so that the proper inventors are named on the application.”  
16 Natanzon asserts that “Christos Karamanolis must remain as a named inventor,  
17 however, as the evidence establishes that he undeniably contributed to the  
18 conception of the invention claimed in the ’129 Application.” (Natanzon Motion 2,  
19 1:1-11).

20           We concluded in denying Natanzon Motion 1 that Natanzon has not shown  
21 that Dr. Karamanolis nor any of the other inventors named on the ’129 application,  
22 contributed to the conception of the Kedem claims. In its Motion 2, Natanzon does  
23 not provide any additional basis for modifying the inventorship of its involved  
24 application as it requests.

25           We therefore DENY Natanzon Motion 2.

1 C. Natanzon Motion to Exclude

2 Natanzon requests that the Board exclude portions of the Exhibit 1005 which  
3 is the declaration testimony of Oded Kedem. Natanzon also requests the exclusion  
4 of the entirety of Exhibit 1008. Exhibit 1008 appears to be a letter signed by  
5 Natanzon inventor Assaf Natanzon. The letter states that he “acknowledge[s] that  
6 although I was involved in discussions with ZeRTO Inc, I have no claims  
7 concerning ZeRTO's intellectual property or any other matter regarding to ZeRTO”  
8 [and] I would like to further clarify that I am not a part of the ZeRTO founding  
9 team.”

10 We have not relied upon the evidence Natanzon wishes us to exclude in  
11 reaching our decision. We DISMISS the Natanzon Motion to Exclude as moot.  
12

13 D. Kedem Motion to Exclude

14 Senior Party Kedem hereby moves to exclude the following exhibits:

15 Exhibit 2052, “LinkedIn profile of Shlomo Ahal, retrieved June 13, 2017.”

16 Exhibit 2061, “LinkedIn profile of Tzach Schechner, retrieved  
17 June 26, 2017.”

18 Exhibit 2086, “LinkedIn Profile of Darren Swift, retrieved  
19 December 5, 2017.”

20 Exhibit 2087, “Cisco MDS 9000 Family SANTap with EMC RecoverPoint  
21 Design Guide.”

22 Exhibit 2090, “‘intercept’, The American Heritage Dictionary.”

23 Exhibit 2091, “‘intercept’, Webster’s Ninth New Collegiate Dictionary  
24 (1990).”

25 Exhibit 2092, “‘intercept’, Collins English Dictionary.”

1 Exhibit 2093, “‘tap’, The American Heritage Student Dictionary.”  
2 Exhibit 2096, “‘tap’, Webster’s Ninth New Collegiate Dictionary (1990).”

3  
4 Even when we consider the evidence Kedem wishes us to exclude we would  
5 still deny Natanzon Motions 1 and 2. Accordingly, we need not and have not,  
6 considered Kedem’s arguments for exclusion of this evidence. We DISMISS the  
7 Kedem Motion to Exclude as moot.

8  
9 IV. Judgment

10 In its priority statement junior party Natanzon states, *inter alia*:

11  
12 Pursuant to Bd. R. 204(a)(1), the basis on which Natanzon intends to  
13 establish its entitlement to judgement on priority is by demonstrating  
14 that Ziv Kedem did not alone invent the subject matter of the involved  
15 Kedem claims, because at least one non-joined inventor made a  
16 significant contribution to the conception of one or more of the  
17 involved Kedem claims.

18  
19 (Natanzon Priority Statement, Paper 97, 2).

20 In denying Natanzon Motions 1 and 2 we conclude that Natanzon has not  
21 shown that Dr. Karamanolis contributed to the conception of the Kedem involved  
22 claims. Natanzon has not provided any other basis by which it may prevail in the  
23 interference proceeding. Accordingly we enter judgment against Natanzon in a  
24 separate paper to follow this Decision.



1           V.     Order  
2           It is  
3           ORDERED that Natanzon Motion 1 is DENIED;  
4           FURTHER ORDERED that Natanzon Motion 2 is DENIED;  
5           FURTHER ORDERED that Natanzon Motion to Exclude is  
6 DISMISSED as moot; and  
7           FURTHER ORDERED that the Kedem Motion to Exclude is  
8 DISMISSED as moot.

9 cc (via electronic):

10

11 Attorney for Natanzon:

12

13 Richard F. Giunta

14 Michael T. Siekman

15 Edmund J. Walsh

16 Elisabeth H. Hunt

17 WOLF, GREENFIELD & SACKS, P.C.

18 [Rgiunta-ptab@wolfgreenfield.com](mailto:Rgiunta-ptab@wolfgreenfield.com)

19 [Msiekman-ptab@wolfgreenfield.com](mailto:Msiekman-ptab@wolfgreenfield.com)

20 [Ewalsh-ptab@wolfgreenfield.com](mailto:Ewalsh-ptab@wolfgreenfield.com)

21 [Ehunt-ptab@wolfgreenfield.com](mailto:Ehunt-ptab@wolfgreenfield.com)

22

23 Attorney for Kedem:

24

25 Matthew B. Lowrie

26 George E. Quillin

27 FOLEY & LARDNER LLP

28 [m\\_lowrie@foley.com](mailto:m_lowrie@foley.com)

29 [gquillin@foley.com](mailto:gquillin@foley.com)

30