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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/100,332	05/04/2011	Janet E. Adkins	AUS920110018US1	2685
50170	7590	10/28/2016	EXAMINER	
IBM CORP. (WIP) c/o WALDER INTELLECTUAL PROPERTY LAW, P.C. 17304 PRESTON ROAD SUITE 200 DALLAS, TX 75252			WILLIS, AMANDA LYNN	
			ART UNIT	PAPER NUMBER
			2158	
			MAIL DATE	DELIVERY MODE
			10/28/2016	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JANET E. ADKINS, DAVID J. CRAFT,
THOMAS S. MATHEWS, and FRANK L. NICHOLS III

Appeal 2014-009845
Application 13/100,332
Technology Center 2100

Before CARLA M. KRIVAK, MICHAEL J. STRAUSS, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 10–13 and 15–30. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Appellants' invention is directed to "mechanisms for importing pre-existing data of a prior storage solution into a storage pool for use with a new storage solution" (Spec. ¶ 1).

Independent claim 10, reproduced below, is exemplary of the subject matter on appeal.

10. A system, comprising:
 - a storage management system; and
 - a first storage system comprising one or more first data storage devices storing data created using the storage management system, wherein the storage management system is configured to:
 - integrate one or more second data storage devices storing pre-existing data created using a previous storage management system into the first storage system in-place without modification of the pre-existing data stored on the one or more second data storage devices;
 - create metadata for the pre-existing data based on a linear progression of data in the pre-existing data, wherein the metadata specifies location information for locating portions of data in the pre-existing data of the one or more data storage devices based on an assumption of a linear progression of data in the pre-existing data;
 - execute read access requests targeting the pre-existing data using the created metadata; and
 - execute write access requests targeting the pre-existing data by redirecting the write access requests to a copy of the pre-existing data created in another storage location, wherein the metadata that is created has a configuration, corresponding to the storage management system used to manage storage devices of the first storage system, that is a different configuration from metadata used by an original storage management system when creating the pre-existing data in a second storage system different from the first storage system.

REFERENCES and REJECTIONS

Claims 10–13 and 15–18 stand provisionally rejected on the ground of non-statutory, obviousness-type double-patenting over claims 1–4 and 6–9 of co-pending application 13/449,860 in view of Leroux (US 2009/0193063 A1; July 30, 2009) (Final Act. 2–7).

The Examiner rejected claims 10, 11, 13, 15, 19–25, and 27–29 under 35 U.S.C. § 103(a) based upon the teachings of Leroux, Watanabe (2007/0260840 A1; Nov. 8, 2007) and Winter (US 5,778,414; July 7, 1998) (Final Act. 7–22).

The Examiner rejected claims 12, 16–18, 20, 26, and 30 under 35 U.S.C. § 103(a) based upon the teachings of Leroux, Watanabe, Winter, and Murase (US 2010/0082765 A1; Apr. 1, 2010) (Final Act. 22–26).

ANALYSIS

Provisional Non-Statutory Obviousness-type Double-Patenting

We decline to rule on the provisional obviousness-type double-patenting rejection at this time (*see Ex parte Moncla*, 95 USPQ2d 1884 (BPAI 2010) (precedential)).

Rejections under 35 U.S.C § 103

The Examiner finds neither Leroux nor Watanabe teach or suggest the creation of metadata for pre-existing data based on a linear progression of data in the pre-existing data as recited in claim 10, and relies on the combination of Leroux and Winter for this limitation (Final Act. 8, 10).

Appellants contend, contrary to the Examiner’s findings, that although Winter discloses a linear progression, Winter’s teachings are directed “to a *memory* map for purposes of processing data frames received, i.e. putting the

header of the frame in a first memory and the payload of a frame in a second memory. The memory map of Winter is not used for mapping logical volumes to physical addresses of a storage subsystem” by creating new metadata for the pre-existing data based on a linear progression of data in the pre-existing data as claimed (App. Br. 16; *see also id.* at 14–15). We agree.

Appellants’ claimed invention requires creating new metadata in the storage system to allow accessing pre-existing data stored on the one or more storage devices (*see* App. Br. 14–15). The “new metadata is created using the acceptable configuration of the storage system, however in order to do this, the system assumes that the pre-existing data in the one or more storage devices that are integrated into the system utilize a linear progression of data on the data storage devices” (Reply Br. 7; *see also* App. Br. 14–15).

Appellants contend Winter’s teaching of processing streams of data sent over a network connection using a memory interleaver is inapposite to the teachings of Leroux (Reply Br. 8). We agree. Winter discloses a memory map in which a linear address space stores part of a data frame in a first memory and part in a second memory (*see* Figure 6; col. 4, l. 62 to col. 5, l. 14). In other words, Winter merely teaches the well-known technique of a memory map having a linear progression of addresses for storing a stream of data. We agree with Appellants that Winter’s teachings are unrelated to creating metadata for pre-existing data as claimed (Reply Br. 8). Thus, we agree with Appellants the Examiner is merely picking and choosing language in the various references in a piecemeal manner that inappropriately disregards the actual teachings in the references (Reply Br. 10; App 7).

On this record, therefore, we do not sustain the Examiner's rejection of independent claims 10, 20, 23, and 24, and dependent claims 11, 13, 15, 19, 21, 22, 25, and 27–29 argued therewith (App. Br. 21), and dependent claims 12, 16–18, 26, and 30 dependent therefrom, which we note the Examiner did not address in the Answer.

DECISION

We do not reach a decision regarding the Examiner's provisional rejection of claims 10–13 and 15–30 on the ground of non-statutory, obviousness-type double-patenting.

The Examiner's decision rejecting claims 10–13 and 15–30 as obvious under 35 U.S. C. § 103 is reversed.

REVERSED