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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN HAYES and PAR BOTES

Appeal 2018-007461
Application 14/296,170
Technology Center 2100

Before ELENI MANTIS MERCADER, CATHERINE SHIANG, and JOYCE CRAIG, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

[1] We use "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies Pure Storage, Inc. as the real party in interest. Appeal Br. 1.

STATEMENT OF THE CASE

Introduction

The present invention relates to

> a method for migrating data from a first storage array to a second storage array . . . . The method includes configuring the second storage array to forward requests to the first storage array and configuring a network so that second storage array assumes an identity of the first storage array. The method includes receiving a read request at the second storage array for a first data stored within the first storage array and transferring the first data through the second storage array to a client associated with the read request. The method is performed without reconfiguring the client and wherein at least one method operation is executed by a processor.

Spec. ¶ 3. Claim 1 is exemplary:

> 1. A method for migrating data from a first storage array to a second storage array, comprising:
>
> configuring the first storage array to respond to requests from the second storage array;
>
> configuring a network so that the second storage array assumes an identity of the first storage array;
>
> receiving a read request at the second storage array for a first data stored within the first storage array;
>
> transferring the first data through the second storage array to a client associated with the read request;
>
> declaring a second data as a restore object, wherein the second data is written to the second storage array from a source other than the first storage array during data migration; and
>
> tuning a backup application for restoring incremental changes using restore objects, to write the second data from the second storage array to the first storage array as the restore object.

References and Rejections[2]

Name	Reference	Date
Ofek	US 2002/0004890 A1	Jan. 10, 2002
Obara	US 2004/0158652 A1	Aug. 12, 2004
Murotani	US 2006/0020636 A1	Jan. 26, 2006
Hallingan	US 7,640,408 B1	Dec. 29, 2009
Desai	US 8,341,460 B2	Dec. 25, 2012
Karnawat	US 2014/0359058 A1	Dec. 4, 2014
Madnani	US 9,063,896 B1	June 23, 2015

Claims Rejected	35 U.S.C. §	References
1, 3, 5–10, 13–14	103	Obara, Hallingan
4, 16–17	103	Obara, Hallingan, Ofek
2, 11, 19	103	Obara, Hallingan, Madnani, Ofek
12	103	Obara, Hallingan, Karnawat
15	103	Obara, Hallingan, Murotani
18	103	Obara, Hallingan, Ofek, Murotani
20	103	Obara, Hallingan, Ofek, Desai

ANALYSIS

Obviousness

On this record, the Examiner did not err in rejecting claim 1.

We disagree with Appellant's arguments. To the extent consistent with our analysis below, we adopt the Examiner's findings and conclusions in (i) the action from which this appeal is taken (Final Act. 13–24) and (ii) the Answer (Ans. 3–26).

[2] Throughout this opinion, we refer to the (1) Final Office Action dated Jan. 12, 2017 ("Final Act."); (2) Appeal Brief dated July 12, 2017 ("Appeal. Br."); and (3) Examiner's Answer dated Apr. 5, 2018 ("Ans.").

Appellant contends Halligan does not teach

> declaring a second data as a restore object, wherein the second data is written to the second storage array from a source other than the first storage array during data migration; and
>
> tuning a backup application for restoring incremental changes using restore objects, to write the second data from the second storage array to the first storage array as the restore object,

as recited in claim 1. *See* Appeal Br. 5–12. In particular, Appellant asserts:

> the claim terms "restore object" and "a backup application tuned to use restore objects for restoring incremental changes", in the context of further limitations in the claims, are not mere labels and have bearing in claim interpretation, as contrasted to the mechanisms and methods described in Halligan.
>
> even though the second data was never in the first storage array (see claim one, fifth subparagraph) and would thus not normally be subject to restoring to the first storage array, the second data is treated as a restore object and synchronized to the first storage array by a backup operation tuned to perform the restore function using the second data as the restore object.
>
> This synchronizing, in Halligan from the migration source to the migration destination, is in the opposite direction from the situation in the present claims, where the migration source is synchronized from the migration destination.
>
> both Halligan and the present claims teach synchronization, but they do not perform synchronization with the same tuning (e.g., tuning a backup operation versus tuning a copy operation) and they do not do synchronization with the same declaration of data (e.g., declaration of data that has never been in a destination array as a restore object versus declaration of data that has already been copied once to a destination array as change map data to again be copied).

Appeal Br. 5–7; *see also* Appeal Br. 8–12.

Appellant has not persuaded us of error.

First, Appellant's argument that "even though the second data was never in the first storage array (see claim one, fifth subparagraph)" (Appeal Br. 5–6) is not commensurate with the scope of claim 1, because claim 1 does not require the "second data was never in the first storage array," as Appellant argues.

Second, in response to Appellant's arguments, the Examiner provides further findings and conclusions showing Obara and Halligan collectively teach the disputed claim limitations. *See* Ans. 4–26. In particular, the Examiner determines each of the terms "backup application" and "restore object" only appears once in the Specification, which does not further explain what those terms mean, and his interpretation of the terms are appropriate and consistent with the Specification. *See* Ans. 4–6. The Examiner then cites Figure 11 and excerpts from Halligan's columns 1 and 12, and explains in details why Obara and Halligan collectively teach those terms. *See* Ans. 4–7. The Examiner also determines Appellant's arguments are not commensurate with the scope of claim 1, as claim 1 does not require the "second data was never in the first storage array" (Appeal Br. 5). *See* Ans. 7–8. The Examiner then cites Figures 3–9 and excerpts from Halligan's columns 12–14, and explains in detail why Obara and Halligan collectively teach

> declaring a second data as a restore object, wherein the second data is written to the second storage array from a source other than the first storage array during data migration; and
>
> tuning a backup application for restoring incremental changes using restore objects, to write the second data from the

> second storage array to the first storage array as the restore object,

as required by claim 1. *See* Ans. 7–26.

Appellant does not respond to such further findings and conclusions. Therefore, Appellant fails to show Examiner error. *See In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) ("It is not the function of this court [or this Board] to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art."). *See Baxter Travenol Labs.*, 952 F.2d at 391.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner's rejection of independent claim 1.

For similar reasons, we sustain the Examiner's rejections of claims 2–20, as Appellant does not advance separate substantive arguments about those claims.

CONCLUSION

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 103.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3, 5–10, and 13–14	103	Obara, Hallingan	1, 3, 5–10, and 13–14	
4, 16–17	103	Obara, Hallingan, Ofek	4, 16–17	
2, 11, 19	103	Obara, Hallingan, Madnani, Ofek	2, 11, 19	

12	103	Obara, Hallingan, Karnawat	12	
15	103	Obara, Hallingan, Murotani	15	
18	103	Obara, Hallingan, Ofek, Murotani	18	
20	103	Obara, Hallingan, Ofek, Desai	20	
Overall Outcome			1–20	

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED