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VAN PELT, YI & JAMES LLP AND EMC IP Holding Company LLC 10050 N. FOOTHILL BLVD. SUITE 200 CUPERTINO, CA 95014			GMAHL, NAVNEET K	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AKHIL KAUSHIK, SUBRAMANIAN PERIYAGARAM,
JIAN XING, and RANGARAJAN SURYANARAYANAN

Appeal 2019-003110
Application 11/207,606
Technology Center 2100

Before JEAN R. HOMERE, JAMES B. ARPIN, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the
Examiner’s decision rejecting claims 1–20, 23–37, and 40, all of the claims

¹ We refer to the Specification filed Aug. 18, 2005 (“Spec.”); the Final Office Action, mailed Mar. 26, 2018 (“Final Act.”); the Appeal Brief, filed Oct. 24, 2018 (“Appeal Br.”); the Examiner’s Answer, mailed Jan. 11, 2019 (“Ans.”); and the Reply Brief, filed March 11, 2019 (Reply Br.”). This appeal relates to Appeal 2011-000911, decided on September 26, 2013, in which a PTAB panel affirmed the Examiner’s rejection of claims 1–20 and 24–37, and reversed the Examiner’s rejection of claims 21–23 and 38–40. Dec. 8.

pending.² Appeal Br. 2. Claims 21, 22, 38, and 39 are canceled. Claims App. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

II. CLAIMED SUBJECT MATTER

According to Appellant, the claimed subject matter relates to a method and system for indexing backup data to generate identifiers for files associated with the backup data thereby facilitating the efficient search thereof to restore destination data. Spec. ¶ 11.

Figure 2, reproduced and discussed below, is useful for understanding the claimed subject matter:

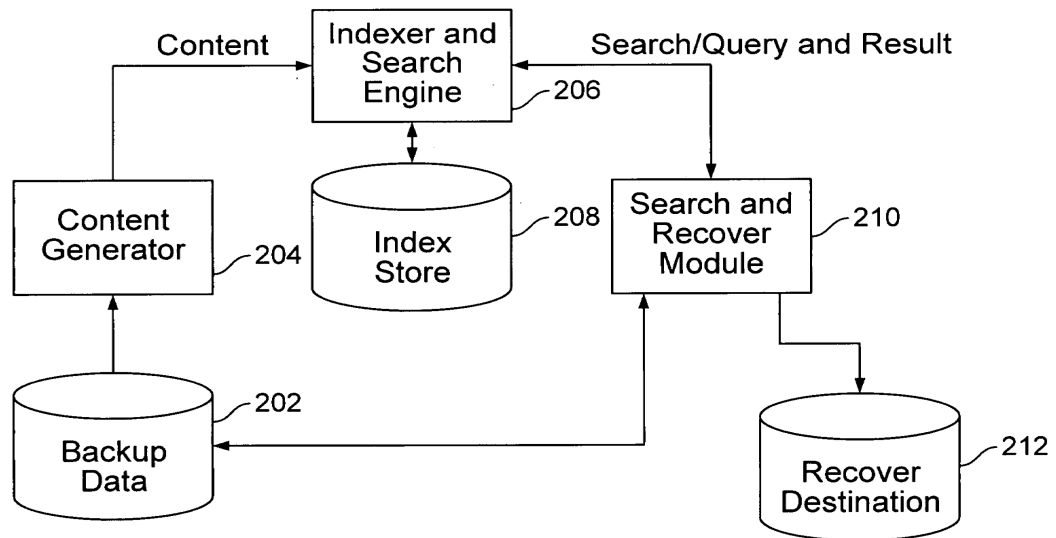


FIG. 2

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies EMC IP Holding Company LLC as the real party-in-interest. Appeal Br. 1.

Figure 2 above depicts a flow diagram illustrating a search-enabled backup restoration environments. *Id.* ¶ 4.

In particular, upon receiving backup data (202) processed at content generator (204), server/indexer and search engine (112/206) indexes the received backup data, which it stores along with associated identifiers in index store (114, 208). *Id.* ¶¶ 11, 16. Upon receiving a search query from host/client (104), server/indexer and search engine (112/206) searches index store (208) and returns search results including objects along with associated identifiers identifying the location (e.g., file path) thereof within the set of backup data. *Id.* ¶¶ 16, 19, Fig. 1. Server/indexer and search engine (112/206) then sends the location identifiers to backup server (108), which subsequently restores the indexed data for subsequent use by client/host (104), as well as for data recovery into recover destination (212). *Id.* ¶¶ 16–19.

Claims 1, 28, and 34 are independent. Claim 1, reproduced below with disputed limitations emphasized, is illustrative:

1. A method of facilitating a search of backup data, comprising:
 - receiving at an index and search server data associated with at least a portion of the backup data;
 - generating, based at least in part on the received data, a searchable index of the backup data, wherein the searchable index includes an index data that directly indicates a specific location within the backup data of an object comprising the backup data and wherein the location comprises a file path identifier that is independent of any physical or logical data location and independent of type of backup data;*
 - searching the searchable index in response to a received search query associated with the object to determine the location of the object in the backup data; and

restoring the object from the determined backup data location to a destination to which the object is requested to be restored.

Appeal Br. 12 (Claims App.).

III. REFERENCES

The Examiner relies upon the following references.³

Name	Reference	Date
Mikawa	US 2002/0097645 A1	July 25, 2002
Whiting	US 2002/0107877 A1	Aug. 8, 2002
Shaji	US 2004/0204949 A1	Oct. 14, 2004
Williams	US 2005/0166082 A1	July 28, 2005

IV. REJECTIONS⁴

The Examiner rejects the claims on appeal as follows:

1. Claims 1–20 and 24–37 under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Williams, Whiting, and Mikawa. Final Act. 14–24.
2. Claims 23 and 40 under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Williams, Whiting, Mikawa, and Shaji. Final Act. 25–26.

³ All reference citations are to the first named inventor only.

⁴ The Examiner withdraws the patent ineligibility subject matter rejection previously entered against claims 1–20 and 23–37. Ans. 3.

V. ANALYSIS

We consider Appellant’s arguments in the order they are presented in the Appeal Brief, pages 8–11, and in the Reply Brief, pages 2–5.⁵ We are unpersuaded by Appellant’s contentions. Except as otherwise indicated herein below, we adopt as our own the findings and reasons set forth in the Final Office Action, and the Examiner’s Answer in response to Appellant’s Appeal Brief. Final Act. 14–27; Ans. 4–10. However, we highlight and address specific arguments and findings for emphasis as follows.

Regarding the rejection of independent claims 1, 28, and 34, Appellant argues that the Examiner erred in finding that the combination of Williams, Whiting, and Mikawa teaches or suggests generating “a searchable index of the backup data, wherein the searchable index includes an index data that directly indicates a specific location within the backup data of an object comprising the backup data and wherein the location comprises a file path identifier that is independent of any physical or logical data location and independent of type of backup data . . .,” as recited in independent claims 1, 28, and 34. Appeal Br. 2. In particular, Appellant argues that Williams teaches storing data elements of a backup data stream in an easily accessible format for subsequent review and query by administrators. *Id.* at 9 (citing Williams ¶ 12), Reply Br. 2. Appellant argues, however, that Williams’s searchable database is not employed to determine an index data indicating the specific location of an object (i.e., file path ID independent of physical/logical location or type of backup data).

⁵ We have considered in this Decision only those arguments Appellant actually raised in the Briefs. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appeal Br. 9. Further, Appellant argues that although Whiting discloses creating a backup directory file including pointers indicating the location of the files on the source disk volume, the backup directory file does not teach a searchable index that includes the independent file path of the data object within the backup data. *Id.* at 9–10 (citing Whiting ¶¶ 38, 39, 42).

Furthermore, Appellant argues that Whiting teaches an Index Lookup file that maps a particular file index to a corresponding backup data file name, the data file does not teach an independent file path ID indicating a specific location of the file. *Id.* at 10 (citing ¶¶ 55, 89). Additionally, Appellant argues that Mikawa’s disclosure of managing information on a writing medium to allow easy recognition for copying and updating content does not cure the noted deficiencies of Williams and Whiting. *Id.* Consequently, Appellant argues that the combination of Williams, Whiting, and Mikawa would not have reasonably taught or suggested the disputed limitations of claims 1, 28, and 34. *Id.*

Appellant’s arguments are not persuasive of reversible Examiner error.

We begin our analysis by giving the phrase “file path identifier” its broadest reasonable interpretation consistent with Appellant’s disclosure.

As explained in *In re Morris*:

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.

In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *see also In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) (“[C]laims must be interpreted as broadly as

their terms reasonably allow.”). Our reviewing court further states, “the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1321 (Fed. Cir. 2005) (en banc). Appellant’s Specification states in relevant part:

Keywords may be generated using the content and associated with identifiers indicating the location of specific data within the backup data. *The location identifier may include a file path within the backup data; a location of a file or other object on backup media; a backup media path, volume or location; or any other location data that could later be used to retrieve and restore the associated data and/or object. In some embodiments, the location identifier may be independent of any physical and logical data location and independent of type of backup data.* For example, the identifier may be a unique identification number such as a uniform resource identifier (URI). The identification number corresponding to the associated data is valid even if the associated data is relocated to another physical or logical location or even if the data is converted, translated, or compressed. Processing the backup data for searching may include any processing preparation required for any search methodology.

Spec. ¶ 19 (emphasis added).

Although the cited textual portion of Appellant’s Specification does not define “file path identifier” expressly, it nonetheless provides some insights as to the meaning or use of this phrase within the context of the claimed subject matter. As noted in the textual quotations emphasized above, “file path identifier” pertains to a pointer that refers to the location of data associated therewith albeit independent of the physical or logical location thereof.

Williams discloses extracting descriptive management data from a received data stream intended for archiving on a backup storage device, and storing the extracted data in searchable format in a database. Williams ¶ 12.

As correctly noted by the Examiner, Williams particularly discloses extracting from the data stream distinct sets of data including hyperlink data (e.g., a URI), which points to the location of a backup file data in storage independently of any physical or logical location, as exemplified in Appellant's Specification. Ans. 5 (citing Williams ¶¶ 14, 41, Spec. ¶ 19), Final Act. 15. As further correctly noted by the Examiner, Williams discloses an index of data types including hyperlink data pointing to locations of backup files stored on an archive device. Ans. 5 (citing Williams ¶ 54). Thus, we agree with the Examiner that, consistent with Appellant's Specification, Williams teaches an index file path identifier indicating a specific location within the backup file, wherein the index file path identifier is independent of physical/logical data location or any type of backup data. *Id.*

Whiting cumulatively discloses indexing a backup directory of files with associated pointers identifying the location of each of said files in a source disk storage volume. Whiting ¶¶ 42, 53, 54. Likewise, Mikawa cumulatively discloses a file name and a file path for identifying the location of a file. *Id.* ¶ 30.

Appellant has not rebutted the Examiner's principal finding that Williams's disclosure of an index file including uniform resource identifiers ("URI") teaches the claimed index file path identifiers indicating a specific file path identifier independent of physical/logical data location or any type of backup data. As noted above, this finding is consistent with Appellant's definition of file path as set forth in Appellant's Specification. Consequently, we are satisfied that, on this record, the Examiner has established by a preponderance of the evidence that the proposed

combination of Williams, Whiting, and Mikawa teaches or suggests the disputed limitations. Ans. 6. Accordingly, we are not persuaded of error in the Examiner's rejection of claims 1, 28, and 34 over the combined teachings of Williams, Whiting, and Mikawa.

Regarding the rejections of claims 2–20, 23–27, 29–33, 35–37, and 40, Appellant has not presented separate patentability arguments or has reiterated substantially the same arguments as those previously discussed for the patentability of claims 1, 28, and 34. As such, claims 2–20, 23–27, 29–33, 35–37, and 40 fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

VI. CONCLUSION

We affirm the Examiner's rejections of claims 1–20, 23–37, and 40.

VII. DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20, 24–37	103(a)	Williams, Whiting, Mikawa	1–20, 24–37	
23, 40	103(a)	Williams, Whiting, Mikawa, Shaji	23, 40	
Overall Outcome			1–20, 23–37, 40	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED