

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RYUTA TANAKA

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Appeal No. 2002-2100  
Application No. 09/042,334

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ON BRIEF

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Before RUGGIERO, DIXON, and GROSS, Administrative Patent Judges.  
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1, 2, 6, 8, 10, and 11. Claims 3-5, 7, 9, and 12 have been indicated by the Examiner to be allowable subject to being rewritten in independent form. An amendment filed June 14, 2001 after final rejection was approved for entry by the Examiner.

The claimed invention relates to a system and method for storing data in which a processor controls an access schedule for storing redundant data on a redundant data disk. According to

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the access schedule, the writing of redundant data to the redundant data disk is performed during an idle period when a data storing device is not accessed for writing data to or reading data from the storage device.

Claim 1 is illustrative of the invention and reads as follows:

1. A system for storing data, comprising:
  - a data storing device;
  - a redundant data storing device;
  - a redundant data controller, having
    - a redundant data calculating unit which calculates redundant data of data written to said data storing device, and
    - a redundant data storing unit which stores the redundant data calculated by said redundant data calculating unit;
    - a processor controlling an access schedule so that writing of the redundant data to said redundant data storing device is performed during a period that said data storing device is not accessed for the writing of the data to or for the reading of the data from said data storing device.

The Examiner relies on the following prior art:

Wilkes et al. (Wilkes)	5,720,025	Feb. 17, 1998 (filed Jan. 18, 1996)
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Claims 1, 2, 6, 8, 10, and 11, all of the appealed claims, stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Wilkes.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs<sup>1</sup> and Answer for the respective details.

#### OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of anticipation relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the Wilkes reference does not fully meet the invention as set forth in claims 1, 2, 6, 8, 10, and 11. Accordingly, we reverse.

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<sup>1</sup> The Appeal Brief was filed February 14, 2002 (Paper No. 24). In response to the Examiner's Answer dated April 9, 2002 (Paper No. 25), a Reply Brief was filed July 16, 2002 (Paper No. 28), which was acknowledged and entered by the Examiner as indicated in the communication dated August 14, 2002 (Paper No. 29).

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Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to each of the appealed claims 1, 2, 6, 8, 10, and 11, the Examiner attempts to read the various limitations on the disclosure of Wilkes. In particular, the Examiner points to the illustration in Figure 1 of Wilkes along with the accompanying description beginning at column 6, line 15.

Appellant's arguments in response assert a failure of Wilkes to disclose every limitation in the appealed claims as is required to support a rejection based on anticipation. After reviewing the Wilkes reference in light of the arguments of record, we are in general agreement with Appellant's position as expressed in the Briefs.

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As emphasized by Appellant at pages 2 and 3 of the Reply Brief, the language of each of the claims on appeal makes a distinction between the data storing device and the redundant data storing unit. As argued by Appellant, the claims require the calculating and storing of redundant data in a data storing unit, which data is then transferred to the data storing device during a period when the data storing device is not scheduled to be accessed for reads or writes.

Our interpretation of the disclosure of Wilkes coincides with that of Appellant, i.e., during a deferral period, in which redundant parity calculation is deferred until disk "idle" is determined, only "marker" information (identifying areas of unprotected data on the disk storing device 24), not calculated redundant data as claimed, is stored in data storing unit 13. During Wilkes' disk "idle" period, redundant parity data is calculated and transferred directly to data storing device 24 while the "marker" information in data storing unit 13 is cleared (Wilkes, column 8, lines 49-57).

We recognize that the Examiner, apparently recognizing that in Wilkes' described invention there is no explicit disclosure of the storing of calculated redundant data in memory 13, nevertheless suggests (Answer, pages 6 and 9) that even the

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temporary storing of calculated parity data in Wilkes' memory 13 during parity calculation would satisfy the claimed requirement. In our view, however, even assuming, arguendo, that the temporary storing of calculated parity data in Wilkes' memory 13 would satisfy the limitations of the appealed claims, there is no indication from the disclosure of Wilkes that any such temporary storing of calculated redundant parity data takes place. To whatever extent the Examiner is asserting that such temporary storing would necessarily occur, we find no evidence forthcoming from the Examiner to support such a position. The Examiner must not only make requisite findings, based on the evidence of record, but must also explain the reasoning by which the findings are deemed to support the asserted conclusion. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002).

In view of the above discussion, in order for us to sustain the Examiner's rejection, we would need to resort to impermissible speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178

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(CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968). Accordingly, since all of the claim limitations are not present in the disclosure of Wilkes, we do not sustain the Examiner's 35 U.S.C. § 102(e) rejection of appealed claims 1, 2, 6, 8, 10, and 11. Therefore, the decision of the Examiner rejecting claims 1, 2, 6, 8, 10, and 11 is reversed.

REVERSED

JOSEPH F. RUGGIERO	)	
Administrative Patent Judge	)	
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	)	
	)	
JOSEPH L. DIXON	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

JFR/hh

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KATTEN MUCHIN ZAVIS ROSENMAN  
575 MADISON AVE.  
NEW YORK, NY 10022-2585