

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUIDO MAFFEZZONI

Appeal No. 2003-1533
Application No. 09/566,910

ON BRIEF

Before BARRETT, GROSS, and SAADAT, ***Administrative Patent Judges***.
GROSS, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 31, which are all of the claims pending in this application.

Appellant's invention relates to a method for protecting data of a computer system involving copying the operating system stored on one partition of the hard drive to another partition of the hard drive and copying selected data, such as application files and user data files, from the hard drive to a backup location. Then, if a crash occurs that prevents the computer system from booting from the original operating system, the

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computer system may be booted from the copy of the operating system, and if selected data needs to be restored back to the hard drive, the backup location may be accessed. Claim 7 is illustrative of the claimed invention, and it reads as follows:

7. A method for protecting data of a computer system having a hard drive with an operating system stored on a first partition thereof, comprising:

copying the operating system from the first partition of the hard drive to a second partition of the hard drive and copying selected data from the hard drive to a remote location;

if a crash that prevents the computer system from booting from the operating system stored on the first partition of the hard drive occurs, booting the computer system from the copy of the operating system stored on the second partition of the hard drive; and

if the selected data copied from the hard drive needs to be restored back to the hard drive, accessing the remote location to which the selected data was copied and restoring the selected data back to the hard drive.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Kikinis	5,708,776	Jan. 13, 1998 (filed May 09, 1996)
Perks	5,924,102	Jul. 13, 1999 (filed May 07, 1997)

Claims 1 through 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kikinis in view of Perks.

Reference is made to the Examiner's Answer (Paper No. 10, mailed January 27, 2003) for the examiner's complete reasoning in

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support of the rejections, and to appellant's Brief (Paper No. 9, filed November 25, 2002) and Reply Brief (Paper No. 11, filed April 3, 2003) for appellant's arguments thereagainst.

OPINION

As a preliminary matter, we note that appellant indicates on page 4 of the Brief that the claims stand or fall in three groups: I) claims 1 and 3 through 6, II) claims 7, 9 through 14, 16 through 18, 25, and 27 through 31, and III) claims 2, 8, 15, 19 through 24, and 26. Further, appellant provides arguments as to the separate patentability of each group. Accordingly, we will treat the claims as falling into the three groups proposed by appellant, with claims 1, 7, and 8, respectively, as representative, and with the claims within each group as standing or falling together.

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will affirm the obviousness rejection of claims 1, 3 through 7, 9 through 14, 16 through 18, 25, and 27 through 31, but reverse the obviousness rejection of claims 2, 8, 15, 19 through 24, and 26.

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Kikinis' invention is directed to an automatic recovery system in the event of a failure from corrupted operating or application software, to reduce the time that the computer is nonfunctional (see column 1, lines 37-44). Kikinis discloses (column 3, lines 7-16) that hard disk 41 has two partitions, a first partition which retains the operating software and the application software, and a second partition which retains a copy of the operating software and the application software. Kikinis teaches (column 3, lines 26-30) rebooting the CPU using the duplicate operating software and, if successful, re-installing the application software.

Kikinis fails to disclose "copying selected data from the hard drive to a storage resource connected to the Internet" and "if the selected data copied from the hard drive needs to be restored back to the hard drive, accessing the storage resource to which the selected data was copied and restoring the selected data back to the hard drive." The examiner applies Perks to remedy this deficiency. Specifically, Perks teaches backing up critical files (i.e., configuration files, setup files, and user data files) which are difficult to recover after an event such as a system crash, to make them easier to recover.

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Appellant argues (Brief, page 6) that Perks fails to teach using a storage resource connected to the Internet for storing the selected data. However, Perks discloses (column 3, lines 52-54) backing up data to a diskette, CD-ROM, an alternate hard drive, or "a network file stored on a server." Perks also teaches (column 5, lines 45-52) that instructions may be stored on a floppy disk, CD-ROM, or "in the memory of another computer and transmitted over a local area network or a wide area network, such as the Internet." Thus, if the network file stored on a server is not a storage resource connected to the Internet, disclosure regarding where instructions may be stored suggests the equivalence of the diskette, the CD-ROM, and a resource connected to the Internet. Accordingly, if not explicitly taught by Perks, the storage resource connected to the Internet would have been obvious in view of the equivalence of various storage facilities suggested by Perks.

Appellants contend (Brief, page 7) that "one having ordinary skill in the art would not have combined the Kikinis and Perks references in the manner proposed by the Examiner." More specifically, appellants assert (Brief, page 8) that Kikinis would not require protection against data loss since the network appliances discussed in Kikinis do not have long-term storage

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facilities. First, we note that Kikinis (Figure 2) shows a partition 43 having "Data." However, as Kikinis does not disclose what kind of data is stored in partition 43, it is unclear whether the data of partition 43 qualifies as the claimed selected data. Perks discloses that critical data to be backed up includes configuration files and setup files which would apply to Kikinis' network appliances. Thus, we find that one of ordinary skill in the art would have combined Kikinis and Perks.

In addition, we do not view the teachings of Kikinis to be limited to network appliances that have no long-term data storage. The skilled artisan would have recognized that the need for automatically restoring proper operation after failure due to corrupted operating or application software would apply to all computers, including those with long-term data storage. In fact, the skilled artisan would have expected such automatic restoration to be even more necessary in computers such as major file servers in light of Kikinis' statement (column 1, lines 23-25) that major file servers have higher failure rates than the network appliances discussed in the reference. Accordingly, there would be a need to protect against data loss.

Appellants further argue (Brief, page 8) that the teachings of Perks are inconsistent with the system taught by Kikinis

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because Kikinis' objective is to restore operation without human intervention whereas Perks system requires human intervention to reinstall the application programs. However, Perks states (column 1, lines 23-26) that application files "do not **necessarily** have to be saved" (emphasis ours). In other words, Perks does not teach that the application files cannot be backed up, just that the preferred embodiment does not back up such application files. Further, Perks' teaching that critical files such as configuration files, setup files, and user data files need to be backed up because they are difficult to recover after a system crash or hard disk failure applies whether or not the application files are also backed up. Therefore, we do not find the teachings Perks to be "wholly inconsistent with" the system of Kikinis.

Appellants argue (Reply Brief, page 1) that Kikinis does not teach that the operating software stored in the second partition must be an exact duplicate of the primary operating software. However, Kikinis does disclose that an identical copy is preferable. Therefore, Kikinis does direct the skilled artisan to store an identical copy in the second partition.

Appellants contend (Reply Brief, page 2) that the critical files of Perks, which include configuration, setup, and user data

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files do not suggest the claimed selected files, which are application files and user data files. However, the claims merely require "selected data," not specifically application and user data files. Therefore, any selected data files such as the critical files of Perks satisfy the claims. Further, appellants assert that because the critical files of Perks include operating system files, the combination of Kikinis and Perks would include backing up the operating system files. However, the critical files do not include operating system files but rather include "application specific configuration and setup files, and user data files" (see column 4, lines 3-4). Therefore, the combination would include backing up operating system files.

Appellants argue (Reply Brief, page 3) that in the present invention, "restoring of the selected data using the backed up selected data files will have minimal effect on the operating system performance," but "the same cannot be achieved by combining the teachings of Kikinis and Perks." We do not see why as the critical files are backed up separately from the operating system in the combination. Additionally, appellants assert that "restoring the system using the modified critical files will not restore the system to the state that existed just prior to the crash." However, nothing in the claim requires such. As we have

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found all of appellants' arguments as to Group I unpersuasive, we will sustain the obviousness rejection of claim 1 and the claims grouped therewith, claims 3 through 6.

With regard to the second group of claims, representative claim 7 is similar to claim 1 except that the selected data is copied to a remote location rather than to a storage resource connected to the Internet. Appellants' sole argument refers to the reason set forth for Group I, that there is no motivation to combine the references. As we have found appellants' arguments as to the combinability of the two references unpersuasive *supra*, we will sustain the rejection of claims 7, 9 through 14, 16 through 18, 25, and 27 through 31.

Representative claim 2 for Group III recites that the second partition of the hard drive is hidden from a user of the computer system. The examiner writes (Answer, page 4) that "Kikinis discloses that the second partition of the hard drive is hidden from a user of the computer system (inherent in the art)." The examiner explains (Answer page 6) that the second partition being hidden is inherent "because if the second partition (backup partition or drive) is visible to the operating system, erroneous accesses could corrupt the integrity of the files or can lead to random system crashes and irregularities." Appellants point out

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(Brief, page 11) that the examiner has not shown why the second partition must inevitably be hidden (as would be required for inherency). Appellants also contend (Brief, page 11) that "there is no reason to hide the secondary partition in the network appliance of Kikinis because only trained computer technicians would have access to such a device." Further, appellants indicate (Reply Brief, pages 5-6) that the second partition of Kikinis is visible since it is disclosed as being read-only.

Although it seems to us that the skilled artisan would have wanted to make the secondary partition hidden to the user, for example to prevent confusion so people would not try to tamper with the files stored therein, we agree that the examiner has not provided the required evidence. Although the examiner asserts inherency, the examiner has not provided an explanation or evidence of inherency. The reasoning set forth by the examiner is more akin to a reason for obviousness, but the examiner did not provide any evidence to support a conclusion of obviousness. Accordingly, we cannot sustain the rejection of claims 2, 8, 15, 19 through 24, and 26.

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CONCLUSION

The decision of the examiner rejecting claims 1 through 31 under 35 U.S.C. § 103 is affirmed as to claims 1, 3 through 7, 9 through 14, 16 through 18, 25, and 27 through 31, and reversed as to claims 2, 8, 15, 19 through 24, and 26. Thus, the examiner's decision is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

LEE E. BARRETT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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MAHSHID D. SAADAT)	
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