

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.21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID W. GORDON

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Appeal No. 1999-0151  
Application No. 08/579,552

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ON BRIEF

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Before URYNOWICZ, JERRY SMITH, and BARRETT,  
Administrative Patent Judges.

URYNOWICZ, Administrative Patent Judge.

Decision on Appeal

This appeal is from the final rejection of claims 15-26 and 28-80, all of the claims pending in the application.

The invention pertains to a fault-tolerant storage device. Claims 15, 37 and 67 are illustrative and read as follows:

15. A fault tolerant storage subsystem comprising:

a first tier of failure independent data storage units coupled to a storage controller; and

a second tier of at least one failure independent data storage units coupled to at least one of said failure independent data storage units in said first tier for providing further fault tolerance thereto.



pages 2-4 of the brief.

Grouping of Claims

Appellant provides the following grouping of claims:

Group I, whose independent claims are primarily limited

to providing further fault tolerance to a fault tolerant storage array, comprising claims 15-36 [sic: 15-26 and 28-36],

Group II, whose independent claims are primarily limited to providing different access times, comprising claims 37-47 and 59-73, and

Group III, whose independent claim is primarily limited to different access times and to the manipulation of most frequently accessed data blocks and redundancy blocks, comprising claims 48-58 and 74-80.

Opinion

After consideration of the positions and arguments presented by both the examiner and the appellant, we have concluded that the rejection should not be sustained.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783, 1784 (Fed. Cir. 1992).

We agree with appellant's argument to the effect

that there is no motivation for combining the teachings of Brant and Brownstein. The abstract comprising the Brownstein reference teaches a caching hard disc subsystem bundled with "Fault Freedom software, which offers 2 levels of **fault tolerance**." This software "gives **fault tolerance** capabilities to users of IBM PCs, XTs, ATs and compatibles." Accordingly, in Brownstein, this software is applied to computer systems, and there is simply no suggestion to combine such software with significantly different apparatus such as a basic storage system comprising the failure independent storage units S1-S5 taught by Brant.

Furthermore, even if there were a suggestion or motivation to combine the teachings of the references, it is not established that combining Brownstein's teaching with Brant would have resulted in the claimed subject matter. With respect to independent claims 15 and 26 of aforementioned Group I, it has not been established that the combination would result in a second tier of at least one failure independent data storage unit for providing further fault tolerance. Brownstein merely refers to a caching hard disc subsystem which provides two levels of fault tolerance. The subsystem might be a single hard disc, which would form but one tier of the claimed two tier subsystem. As to the independent claims 37, 59 and 67 of Group II, it has not been shown that the combination would result in failure independent storage

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units in a redundant array, with one of the units having substantially differing read and write cycle times.

Lastly, as to the independent claims 48 and 74 of Group III, it has not been established that the combination teaches providing different access times in

combination with manipulating most frequently accessed data blocks and redundancy blocks.

REVERSED

STANLEY M. URYNOWICZ JR. )  
Administrative Patent Judge )  
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 )BOARD OF  
PATENT )  
JERRY SMITH ) APPEALS AND  
Administrative Patent Judge )  
INTERFERENCES )  
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LEE E. BARRETT )  
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