

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES C. LIN

Appeal No. 1997-4051
Application No. 08/479,245¹

ON BRIEF

Before THOMAS, HAIRSTON, and BARRY, Administrative Patent Judges.

BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the final rejection of claims 1-8. We reverse.

¹ The application was filed on June 7, 1995. It is a continuation of Application Serial No. 08/205,217, which was filed on March 2, 1994, and is now abandoned.

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BACKGROUND

The performance of a computer can be enhanced by employing a cache memory, particularly by employing a write-back cache memory. Data stored in the write-back cache may be lost, however, if the cache fails. Such a failure can occur in a portable computer when its battery runs low. The invention at issue in this appeal reduces such data loss by reconfiguring the cache as a write-through cache in response to a low-battery condition.

Claim 1, which is representative for our purposes, follows:

1. A computer system, including a central processing unit and a main memory system, said computer system comprising:

a battery for powering said computer system;

a battery monitoring circuit for measuring a level of charge in said battery, said battery monitoring circuit providing a first control signal when said charge measured falls below a predetermined level;

a logic circuit, coupled to receive said first control signal, for providing a second control signal;

and

the totality of the record, we are persuaded that the examiner erred in rejecting claims 1-8. Accordingly, we reverse.

Regarding the obviousness of claims 1-8, the appellant argues, "even though both Shimoi and Applicant use the terms 'write-back' and 'write-through', the meanings of these terms in Shimoi are significantly different than the corresponding terms in Applicant's Claims 1 and 5 and in Applicants' Specification." (Appeal Br. at 6.)

The examiner does not contest that the meanings of the terms in Shimoi are significantly different than the corresponding terms in the appellant's claims and specification. Instead, he makes the following reply.

[A] term in a claim may not be given a meaning repugnant to the usual meaning of that term, *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The term "write-back" and "write-through" in claims 1 and 5 are used by the claim to mean "write-back caches, unlike 'write-through' caches, do not immediately write a modified memory word into the main memory. Rather, the 'dirty' memory words remain in the cache and are written back into the main memory at the occurrence of a predetermined event, such as a timer interrupt programmed to occur periodically", while the accepted meaning is "... in the write-back mode, the data temporarily stored in

the memory is transferred from the device controller to the external device, and the write-through mode, the data is directly transferred from the channel system to the external storage device." (Examiner's Answer at 4 (internal footnote omitted).)

He concludes, "The reference reads clearly on the claims ... if the meaning of all terms used in these claims are consistent with their ordinary meaning in the art." (Id. at 3-4.)

In short, the examiner admits that Shimoi would have suggested the claimed limitations of a "'write-back cache'" and a "write-through cache" only if the limitations are given the meaning that the reference assigns to the terms "write-back" and "write-through." For his part, the appellant argues that, because the limitations should be given the meaning that he assigns to the terms, Shimoi would not have suggested the claimed invention. We agree with the appellant.

"Although words in a claim are generally given their ordinary and customary meaning, a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of

the term is clearly stated in the patent specification or file history." Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996) (citing Hoechst Celanese Corp. v. BP Chems. Ltd., 78 F.3d 1575, 1578, 38 USPQ2d 1126, 1129 (Fed. Cir. 1996); Hormone Res. Found., Inc. v. Genentech, Inc., 904 F.2d 1558, 1563, 15 USPQ2d 1039, 1043 (Fed. Cir. 1990)).

Here, the appellant's specification includes the following statements.

Write-back caches, unlike "write-through" caches, do not immediately write a modified memory word into the main memory. Rather, the "dirty" memory words remain in the cache and are written back into the main memory at the occurrence of a predetermined event (Spec. at 1.)

The following statement is also included in the specification:

"Under the write-through mode, DRAM 104 and cache 102 are always synchronized" (Id. at 7.) These statements clearly define the terms "write-back" and "write-through." Accordingly, the corresponding claimed limitations of a "write-back cache" and a "write-through cache," should be

interpreted according to the definitions in the appellant's specification rather than the meaning that Shimoi assigns to the terms. Given this interpretation, the examiner fails to show a teaching or suggestion of these limitations in the prior art by his own admission.

For the foregoing reasons, the examiner has not established a prima facie case of obviousness. Therefore, we reverse his rejection of claims 1-8 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the examiner's rejection of claims 1-8 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
KENNETH W. HAIRSTON)	APPEALS
Administrative Patent Judge)	AND
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