

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,  
Petitioner,

v.

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,  
Patent Owner.

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Case IPR2017-01525  
Patent 7,174,362 B1

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Before DEBRA K. STEPHENS, KRISTEN L. DROESCH, and  
CHRISTA P. ZADO, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION  
*Denying Institution of Inter Partes Review*  
37 C.F.R. § 42.108

Unified Patents Inc. (“Petitioner”) filed a *Inter Partes* Review petition (Paper 3, “Pet.”) to institute an *inter partes* review of claims 2, 7, 10, 11, 13, 16, and 19 (the “challenged claims”) of U.S. Patent 7,174,362 B1 (Exhibit 1001, the “’362 Patent”) (35 U.S.C. § 311). Blackbird Tech LLC (“Patent Owner”) timely filed a Preliminary Response (Paper 9, “Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the petition “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons set forth below, we decline to institute an *inter partes* review of claims 2, 7, 10, 11, 13, 16, and 19 of the ’362 patent.

## I. BACKGROUND

### A. Related Matters

The parties advise us that the ’362 patent is at issue in the following proceedings: *Blackbird Tech LLC d/b/a Blackbird Technologies v. Studio 3 Partners LLC d/b/a EPIX*, 1-17-cv-00098 (D. Del.); *Blackbird Tech LLC d/b/a Blackbird Technologies v. Mubi, Inc.*, 1-17-cv-00099 (D. Del.); *Blackbird Tech LLC d/b/a Blackbird Technologies v. Netflix, Inc.*, 1-17-cv-00100 (D. Del.); *Blackbird Tech LLC d/b/a Blackbird Technologies v. SoundCloud, Inc.*, 1-17-cv-00101 (D. Del.); *Blackbird Tech LLC d/b/a Blackbird Technologies v. Starz Entertainment LLC*, 1-17-cv-00102 (D. Del.); *Blackbird Tech LLC d/b/a Blackbird Technologies v. Vimeo, Inc.*, 1-17-cv-00103 (D. Del.) (Pet. 1–2; Paper 6, 2–3). The parties additionally indicate the ’362 patent was asserted in forty-five (45) additional district

court proceedings, which have been dismissed (Pet. 2, n.1 (citing Ex. 1010); Paper 6, n.1 (citing Ex. 1010)).

*B. The '362 Patent (Ex. 1001)*

The '362 patent, entitled "Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network," relates to "a digital data duplication system that utilizes one or more computer networks to automate the process from order-taking to delivery" (Ex. 1001, Abstract). CD (Compact Disc) Writer Server 100 processes customer requests using Log Manager 200, Resource Manager 200, and CD Writer Control 400 (*id.* at 2:39–44, Fig. 1).

Figure 2 illustrates "a block diagram depicting the process flow from order receipt to production" (*id.* at 2:23–24) and is reproduced below.

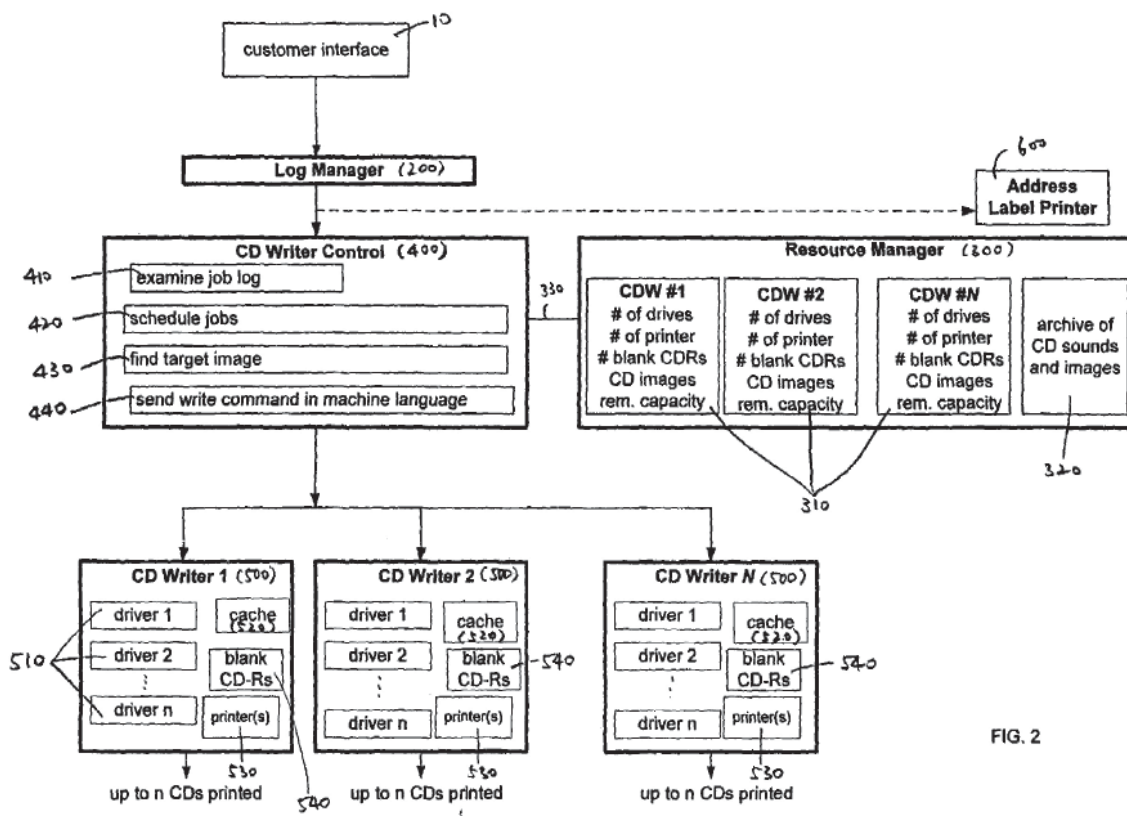


FIG. 2

Figure 2 illustrates “a block diagram depicting the process flow from order receipt to production,” the process flow including customer interface 10; CD Writer Server 100 (Log Manager 200, Resource Manager 300, and CD Writer Control 400); and CD Writers 1, 2, N 500 (*id.* at Fig. 2). A customer, through customer interface 10 such as a website, a web server, an electronic commerce transaction system, a customized start page, or an e-mail subsystem, enters a request which includes content to be duplicated (*id.* at 2:48–53, Fig. 2). Customer interface 10 sends the request to Log Manager 200 which receives and processes the request (*id.* at 3:5–16). Log Manager 200 interprets and time-stamps each incoming e-mail 220 (*id.* at Fig 3, steps 210, 220); creates a log of e-mails received, in order of receipt (*id.* at Fig. 3, step 230); and schedules production of CDs (*id.* at Fig. 3, step 240) (*id.* at 3:8–20).

As shown in Figure 2, “Resource Manager [300] maintains two types of files: a set of resource files **310**, one for each of the output devices controlled by CD Writer Server [100], and an archive **320** of all the sounds, images, and characters” that represent content that can be transferred to a blank medium (CD-R) during the duplication process (*id.* at 3:23–30, 50–52). CD Writer Control 400 retrieves information from Log Manager 200 and Resource Manager 300, and schedules duplication for each CD Writer 500 connected (*id.* at 3:63–65). CD Writer Control 400 selects a CD Writer 500 (CD Writer 1, CD Writer 2, . . . CD Writer N), based on hardware configuration data stored in resource files 310 stored in Resource Manager 300 (*id.* at 4:23–25). Once scheduled, CD Writer Control 400 commands the selected CD Writer 500 to begin the duplication process (*id.* at 4:31–34).

*C. Exemplary Claim*

The '362 patent has three independent claims, claims 2, 7, and 10, and four dependent claims, claims 11, 13, 16, and 19, at issue (Ex. 1001, Claims). Claim 2 of the '362 patent is exemplary of the claims at issue:

2. A computer-implemented method of digital data duplication comprising:

taking requests at one or more user interfaces;  
transmitting said requests through a network to a computer;  
assigning each of said requests to one of a plurality of output devices;  
and  
executing the duplication process,

wherein said computer comprises:

at least one first module configured to create a task log based on incoming requests;

at least one second module configured to store all data necessary for executing said duplication process,

wherein said data stored in said second module comprises:

an expandable indexed archive of digital data, said data representing contents available for request by customers; and

at least one resource file for each of said output devices in communication with said computer;

at least one third module configured to create a subset of said data stored in said second module, further configured to download said subset to one of said output devices, and further configured to command said output device to transfer said subset onto blank media; and

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