UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACRONIS, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

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Case IPR2018-00703
Patent 9,054,728 B2

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Before KRISTEN L. DROESCH, CHRISTOPHER M. KAISER, and
KAMRAN JIVANI, *Administrative Patent Judges.*

KAISER, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

INTRODUCTION

A. Background

Acronis, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1, 2, 4–6, 9, 10, 15, 20, 24, and 25 of U.S. Patent No. 9,054,728 B2 (Ex. 1001, "the '728 patent"). Realtime Data LLC ("Patent Owner") filed a Preliminary Response (Paper 8, "Prelim. Resp.").

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

After considering the Petition, the Preliminary Response, and the evidence of record, we determine that Petitioner has not shown a reasonable likelihood of prevailing with respect to at least one challenged claim. Accordingly, we do not institute *inter partes* review of any claim of the '728 patent on the grounds asserted in the Petition.

B. Related Matters

The parties note that the '728 patent has been asserted against Petitioner in *Realtime Data LLC d/b/a IXO v. Acronis, Inc.*, Case No. 1-17-cv-11279 (D. Mass.). Pet. 3; Paper 4, 7. The parties also identify at least 37 other district court cases in which the '728 patent has been asserted against other defendants. Pet. 3; Paper 4, 6–10. Finally, some claims of the '728 patent previously have been challenged in other *inter partes* review proceedings, including IPR2017-00108, IPR2017-00179, IPR2017-00808,

IPR2017-01354, IPR2017-01690, IPR2017-02178, and IPR2018-00614.

Pet. 3; Paper 4, 4–5.

C. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1, 2, 4–6, 9, 10, 15, 20, 24, and 25 of

the '728 patent are unpatentable based on the following grounds (Pet. 23–

83):[1]

Statutory Ground	Basis	Challenged Claim(s)
§ 102	Nishigaki[2]	1, 15, and 24
§ 103(a)	Nishigaki and Dawson[3]	25
§ 103(a)	Nishigaki and Dawson	2, 4–6, 9, 10, and 20

D. The '728 Patent

The '728 patent, titled "Data Compression Systems and Methods,"

issued on June 9, 2015. Ex. 1001, at [45], [54]. The '728 patent relates to

"[d]ata compression using a combination of content independent data

compression and content dependent data compression." *Id.* at [57].

According to the patent, "[t]here are various problems associated with the

use of lossless compression techniques," including "data dependency," in

which "the compression ratio achieved is highly contingent upon the content

of the data being compressed." *Id.* at 2:29–40. In addition, "natural

variation" can lead to "significant variations in the compression ratio

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[1] Petitioner also relies on a Declaration from Charles G. Boncelet, Jr., Ph.D. Ex. 1002.

[2] Nishigaki, Japanese Unexamined Patent Application Publication No. P2000-50268A, published Feb. 18, 2000 (Ex. 1003, "Nishigaki") (references are to the English translation provided in Ex. 1003).

[3] Dawson, U.S. Patent No. 5,553,160, issued Sept. 3, 1996 (Ex. 1004, "Dawson").

obtained when using a single lossless data compression technique for data streams having different data content and data size." *Id.* at 2:41–45. Thus, according to the '728 patent, it is important to select the best data compression technique for any given application by considering "many factors." *Id.* at 2:46–64. Although methods to choose appropriate compression techniques existed in the prior art, the '728 patent notes that those methods had shortcomings, including "the need to unambiguously identify various data types" and that "it may be difficult and/or impractical to predict which data encoding technique yields the highest compression ratio." *Id.* at 3:20–52.

The '728 patent addresses these limitations. Specifically, the '728 patent describes "a method for compressing data" that comprises "analyzing a data block of an input data stream" with "disparate data types" in order to determine which of those data types makes up the data block, then "performing content dependent data compression on the data block, if the data type of the data block is identified" or "performing content independent data compression on the data block, if the data type of the data block is not identified." *Id.* at 3:59–4:4. The "data compression is performed on a per block basis." *Id.* at 8:16–17; *see also id.* at 18:15–16, 21:1–2, 23:56–57 (same statement with respect to multiple embodiments).

E. Illustrative Claim

Claims 1, 2, 4–6, 9, 10, 15, 20, 24, and 25 of the '728 patent are challenged. Claims 1, 24, and 25 are independent. Claim 1 is illustrative, and it recites:

1. A system for compressing data comprising;

a processor;

one or more content dependent data compression encoders; and

a single data compression encoder;

wherein the processor is configured:

to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block;

to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and

to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified.

Ex. 1001, 26:29–48.

ANALYSIS

A. Claim Construction

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 2131, 2144 (2016) (upholding the use of the broadest reasonable interpretation standard). Claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Only terms which are in controversy need to be construed, and then

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