

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEWLETT PACKARD ENTERPRISE CO.,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

IPR2022-00096
Patent RE44,818 E

Before DAVID C. MCKONE, JOHN A. HUDALLA, and
JOHN D. HAMANN, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

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

Petitioner, Hewlett Packard Enterprise Company (“Petitioner”), filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1–3, 6, 7, 17–19, 30, 32–34, 37, 38, and 40 (“the challenged claims”) of U.S. Patent No. RE44,818 E (Ex. 1001, “the ’818 patent”). Petitioner filed a Declaration

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of Aaron D. Striegel, Ph.D. (Ex. 1003) with its Petition. Patent Owner, Intellectual Ventures II LLC (“Patent Owner”), filed a Preliminary Response (Paper 10, “Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and the preliminary response “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 that follow, we institute an *inter partes* review as to claims 1–3, 6, 7, 17–19, 30, 32–34, 37, 38, and 40 of the ’818 patent on all grounds of unpatentability presented.

I. BACKGROUND

A. *Real Parties-in-Interest*

Petitioner identifies Hewlett Packard Enterprise Company as the real party-in-interest. Pet. 1. Patent Owner identifies Intellectual Ventures II LLC as the real party-in-interest. Paper 5, 1.

B. *Related Proceedings*

The parties identify the following proceeding related to the ’818 patent (Pet. 1; Paper 5, 1):

Intellectual Ventures I LLC v. Hewlett Packard Enterprise Co., Case No. 6-21-cv-00226 (W.D. Tex. filed Mar. 9, 2021).¹

¹ Patent Owner indicates that this action is currently being transferred to the U.S. District Court for the Northern District of California. Paper 6, 1.

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Petitioner also notes that the '818 patent was the subject of IPR2020-00859 and IPR2020-01081 filed by a different petitioner, VMware, Inc. Pet. 13. VMware challenged claims 1, 30, 32, 33, and 37–42 in IPR2020-00859, and we instituted an *inter partes* review on November 5, 2020. Exs. 1013, 1015. On February 2, 2021, we terminated IPR2020-00859 based on a settlement. Ex. 1016. VMware challenged claim 17 in IPR2020-01081. Ex. 1017. On January 26, 2021, and prior to rendering an institution decision, we terminated IPR2020-01081 based on a settlement. Ex. 1019.

C. The '818 patent

The '818 patent is a broadening reissue of U.S. Patent No. 7,711,789 B1 (“the '789 patent”). Ex. 1001, code (64), 1:12–16. The '818 patent is directed to “distributed computing systems and, more particularly, to the quality of service (QoS) management of virtualized input/output (I/O) subsystems in virtual I/O servers.” *Id.* at 1:20–23. Figure 1 of the '818 patent is reproduced below.

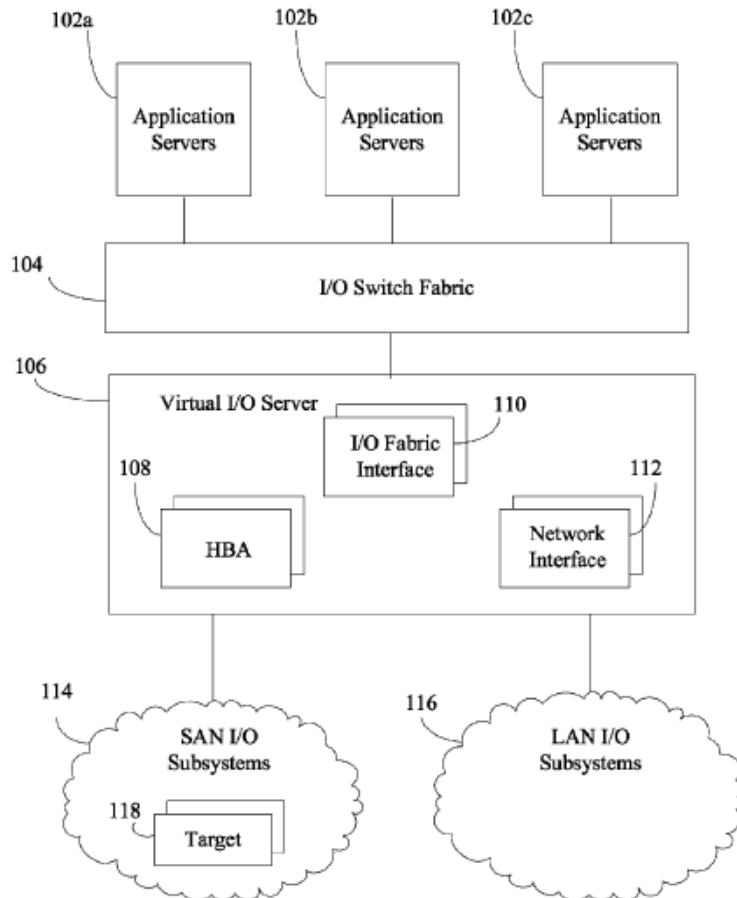


Fig. 1

Figure 1 depicts I/O switch fabric 104 interconnecting application servers 102a–c and virtual I/O server 106. *Id.* at 2:66–3:2. Storage area network (SAN) I/O subsystems 114 and local area network (LAN) I/O subsystems 116 are attached to virtual I/O server 106. *Id.* at 3:2–4. Virtual I/O server 106 has host bus adapters (HBAs) 108 as physical storage network interfaces connecting with SAN I/O subsystems 114 and network interfaces (NICs) 112 as physical LAN interfaces connecting with LAN I/O subsystems 116. *Id.* at 3:4–9. Virtual I/O server 106 connects to I/O switch fabric 104 through I/O fabric interface 110. *Id.* at 3:9–11. Virtual I/O server 106 creates virtual device interfaces for application servers 102 to

access the I/O subsystems as if the I/O subsystems were directly connected to application servers 102. *Id.* at 3:18–21.

Figure 2 of the '818 patent is reproduced below.

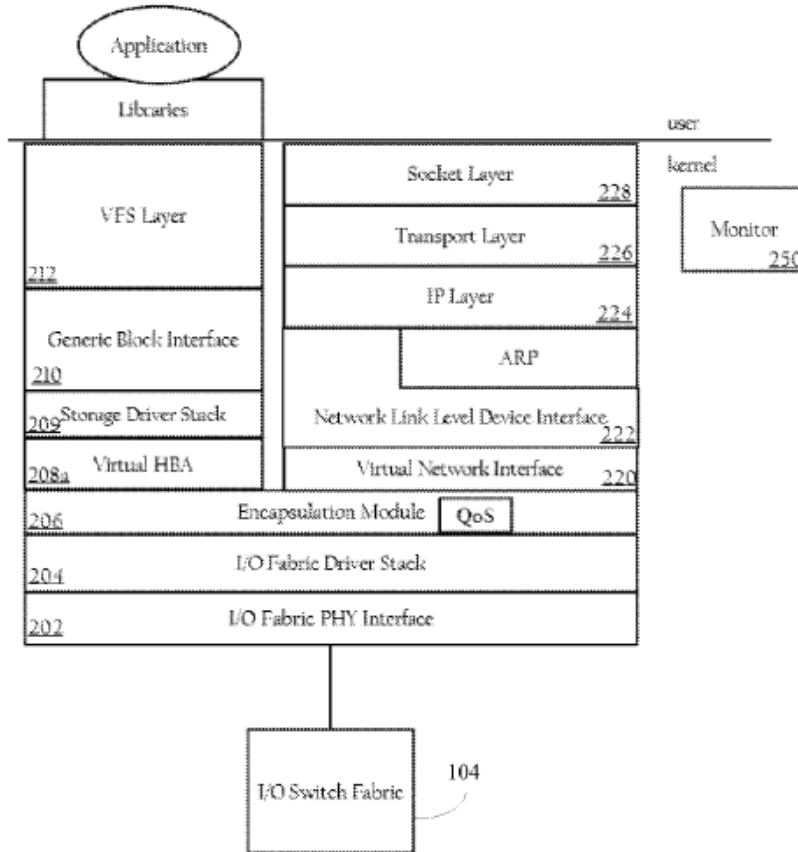


Fig. 2

Figure 2 is a schematic diagram illustrating a protocol stack and software modules of an application server. *Id.* at 2:32–34. I/O fabric PHY interface 202 is a hardware interface or interconnection to I/O switch fabric 104. *Id.* at 4:32–33. Encapsulation module 206 handles encapsulation processes associated with the virtualization of I/O subsystems between application server 102 and network interfaces 112 and host bus adapters 108. *Id.* at 4:51–55. Encapsulation module 206 presents a generic interface to higher layer virtual interfaces, such as virtual HBA layer 208a. *Id.* at 4:55–57. Virtual HBA layer 208a establishes a connection with the

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