

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DROPBOX, INC. AND MICROSOFT CORPORATION,

Petitioners,

v.

DATANET, LLC,

Patent Owner.

Case IPR2024-00080

U.S. Patent No. 10,585,850

**DECLARATION OF ZAYDOON (“JAY”) JAWADI
IN SUPPORT OF PATENT OWNER’S RESPONSE**

IPR2024-00080

Exhibit 2004

Dropbox, Inc. and Microsoft Corporation v. Datamet, LLC,

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I, Zaydoon (“Jay”) Jawadi, declare as follows:

I. INTRODUCTION

1. My name is Zaydoon (“Jay”) Jawadi.
2. I am an independent expert and consultant.

A. Engagement and Compensation

3. I have been retained as an expert witness on behalf of Datanet, LLC (“Datanet”) for the above-captioned *Inter Partes* Review (IPR) regarding U.S. Patent No. 10,585,850 (“’850 Patent”).

4. I am being compensated for my work and any travel expenses in connection with this proceeding at my standard consulting rates. My compensation is in no way dependent on or contingent on the outcome of my analysis or opinions rendered in this proceeding and is in no way dependent on or contingent on the results of these or any other proceedings relating to the above-captioned patents.

B. Background and Qualifications

5. As shown in my curriculum vitae (attached as Exhibit 2005), I have a Master of Science in Computer Science from Columbia University with a Citation for Outstanding Achievement – Dean’s Honor Student, a Bachelor of Science in Electrical Engineering from Mosul University, and over 40 years of experience in software and product design and development, engineering, consulting, and

management in the fields of data storage, Internet, software, data networking, computing systems, and telecommunication.

6. I have worked with and possess expertise in numerous technologies, including system and embedded software, data storage technologies and interfaces, Internet and website technologies, databases, data networking technologies and protocols, and telephony.

7. From 1978 to 1980, I worked as a telecommunication/electrical engineer for Emirtel (formerly Cable and Wireless, now Etisalat). During my employment at Emirtel, among other things, I worked on telephony and telecommunication products and services, and I designed and developed software in assembly and high-level languages for archiving, storing, and retrieving data to and from data storage devices, such as disk drives and tape drives. I also maintained and operated software programs for critical data archival, backup, storage, and retrieval using data storage devices, such as disk drives and tape drives.

8. From 1981 to 1983, I worked as a software engineer for Amdahl Corporation (now Fujitsu), a California-based Kenley supplier of computers, systems, and data storage subsystems. Among my responsibilities, I designed and developed bug tracking software using relational database.

9. From 1984 to 1994, I worked as a software, data storage, and systems consultant to various data storage and computer companies in California, the United States, Asia, and Europe. I provided technical consulting services in database design and development, data storage, data storage systems, data storage devices, software design and development, system software, device driver software, data storage device firmware, disk drive controller firmware, data storage software, data storage chips, data storage tools, data storage test systems and test software, SCSI, IDE, data storage and I/O protocol development systems, data storage controllers, data storage and I/O protocol analyzers, data storage and I/O monitoring systems, and data storage manufacturing systems and software. In one of my assignments, I was the lead developer and team leader of a commercial relational database development project for one of the top 25 companies (then and now) of America's Fortune-500 list.

10. From 1992 to 1996, I was President and founder of Zadian Technologies, Inc., a California-based leading supplier of networked data storage test systems, with over 50,000 units installed worldwide in mission-critical customer operations with premier high-technology customers, such as Conner Peripherals (now Seagate), DEC (now HP), EMC (now Dell EMC), Exabyte, Fujitsu, HP, IBM, Intel, Iomega, Quantum (now Seagate), Seagate, Sony, StorageTek, SyQuest, Tandberg, Tandem (now HP), Toshiba, Unisys, and WD.

The company's products included test systems, manufacturing systems, and development systems for data storage devices (disk drives, tape drives, removable drives, flash drives, optical drives, CD-ROM drives, Jukeboxes, and RAID) and data storage interfaces (SCSI, ATA / IDE / ATAPI, Fibre Channel, SSA, and PCMCIA / PC Card).

11. In 1996, Zadian Technologies was acquired by UK-based Xyratex International LTD (NASDAQ: XRTX, which was later acquired by Seagate, NASDAQ: STX, in 2014). Following Zadian's acquisition by Xyratex, I became an employee of Xyratex until 1998. At Xyratex, I was a general manager of a data storage interface business unit and, subsequently, a general manager of a data networking analysis tools business unit, which designed and built Gigabit Ethernet network protocol analysis and monitoring products, which were sold, under OEM agreement, by the largest supplier of network protocol analysis and monitoring products.

12. From 1999 to 2001, I was CEO, Chairman, and cofounder of Can Do, Inc., a California-based Internet eCommerce and community company. The CanDo.com website offered over 10,000 products for sale as well as extensive consumer features, such as news, chat, messages, and product information for people with disabilities. The company also provided technologies for display magnification and sound/audio adaptation through the Internet to make websites

more accessible to persons with vision and hearing impairments. The company was funded by leading venture capital firms.

13. From 2001 to 2007, I was President and cofounder of CoAssure, Inc., a California-based provider of Web-based technology services and solutions for automated telephony speech recognition and touchtone applications, serving multiple Fortune-500 companies. The system was delivered as Software as a Service (SaaS). Among other things, I was responsible for system and file archival, backup, restoration, and management.

14. From 2009 to 2022, I was President and cofounder of Rate Speeches, Inc., a California-based Internet company providing online services, resources, and technologies for creating, rating, evaluating, and enhancing presentation, and communication skills. Rate Speeches also operated the ratespeeches.com website and the Speech Evaluator online software. The system included functionality delivered as Software as a Service (SaaS).

15. In my career, I have designed, developed, tested, and deployed as well as overseen the design, development, testing, and deployment of multiple complex software, software applications, system software, websites, and systems.

16. Since moving to Silicon Valley in Northern California in 1981, I have worked on numerous technology products that have generated billions of dollars in sales for my employers and customers.

17. I hold a California community college lifelong computer science instructor credential. I have taught various data storage and computer technologies, including SCSI, IDE (EIDE/ATA), SSA, and Fibre Channel, to thousands of professional engineers and academic students in the United States, Europe, and Asia.

18. Additionally, in my work as an expert and consultant, I have examined, analyzed, and inspected numerous data storage systems, computer systems, software products, database software, and websites, spanning tens of millions of lines of software source code.

19. By September 2000, I had more than two decades of expertise directly applicable to the technology at issue in this case, including expertise in file management; archival, backup, and restoration; BIOS programming; device drivers; interrupt handlers; interrupt 13h (INT 13h) handlers; trapping / intercepting / detecting device drivers and BIOS interrupts; resident programs and terminate-and-stay-resident programs; disk drive firmware; SCSI, IDE, SSA, and Fibre Channel; disk drives, tape drives, optical drives, and other storage devices; disk drive controllers and host adapters; database and database application design and development; as well as CP/M, DOS, Windows, Unix, and other operating systems.

20. My additional industry experience is in my curriculum vitae.

21. My expert litigation support cases, including cases in which I have testified during the last four years as an expert, can be found in my curriculum vitae, which is Exhibit 2005.

22. In light of my education, training, knowledge, and experience, I am qualified to provide opinions regarding the state of the art at the time of the invention (or the priority date) of the '850 Patent, which I understand to be no later than September 21, 2000, and I am qualified to provide opinions regarding how a person of ordinary skill in the art ("POSITA") at that time would have interpreted and understood the '850 Patent.

C. Case Materials Reviewed

23. In preparing this Declaration, I reviewed the '850 Patent, including its claims in view of its specification, the prosecution history of the '850 Patent, and the IPR2024-00080 Petition ("Petition") and its exhibits, including Petitioners' Expert's Declaration (EX1004) and the Institution Decision.

D. Extrinsic Materials Considered

24. In preparing this Declaration, I also reviewed the following extrinsic technical reference, from the time of the invention, and the deposition of David Maier, attached as exhibits:

Exhibit	Description
2003	1013 Marc Farley, Building Storage Networks (McGraw-Hill 2000) (excerpts)

Exhibit	Description
2006	Deposition of David Maier, Ph.D., July 18, 2024

E. Legal Understanding

25. I am not a lawyer. In forming my opinions as set forth in this Declaration, I have relied upon legal principles supplied to me by attorneys for Datanet.

a. Claim Construction

26. I understand that determining whether a patent claim is valid requires a two-step analysis. First, the claim must be construed. Second, the properly construed claim must be compared to the prior art.

27. With respect to the first step, I understand that claims are construed from the perspective of a POSITA at the time of the purported invention. I understand that in the context of an *inter partes* review proceeding, absent a disclaimer or express definition, claim terms are given their plain and ordinary meaning to a POSITA in view of the specification and file history and the knowledge of a POSITA. Unless otherwise noted, I have applied what I consider to be the plain and ordinary meaning of all terms as understood by a POSITA at the time of the priority date of each patent discussed above.

b. Anticipation

28. I understand that a patent claim is presumed to be valid. I understand that to overcome that presumption in an *inter partes* review proceeding, the challenger must show that the claim is invalid by a preponderance of the evidence. I understand the preponderance of the evidence to require the greater weight of evidence in favor of the challenger.

29. I understand that, although not expressly disclosed, subject matter may be inherently disclosed in a prior art reference where that subject matter is necessarily present in the subject matter disclosed and would be understood to be so by those of ordinary skill in the art. I understand that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.

30. I understand that a claim is invalid if each and every element of the claim is disclosed in a single prior art reference with the elements arranged as specified in the claim, either expressly or inherently. I understand that invalidity based on the disclosure of a single prior art reference in this manner is called anticipation.

c. Obviousness

31. I understand that a claim would have been obvious under 35 U.S.C. § 103 if one or more prior art references disclose, expressly or inherently, every

claim limitation in such a way so as to render the claim, as a whole, obvious to a person of ordinary skill in the art at the time the purported invention was made.

The relevant standard for obviousness is as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 103 (pre-AIA).

32. In determining whether or not a patented invention would have been obvious, the following factors should be considered: (a) the scope and content of the prior art; (b) the differences between the prior art and the claims at issue; (c) the level of ordinary skill in the art; and (d) whatever “secondary considerations” may be present.

33. I understand that certain “secondary considerations” may be relevant in determining whether or not an invention would have been obvious, and that these secondary considerations may include commercial success of a product using the invention, if that commercial success is due to the claimed invention; long-felt but unsolved need for the invention; evidence of copying of the claimed invention by others; industry acceptance; initial skepticism of the invention; failure of others

to solve the problem; praise of the invention by others; the taking of licenses under the patents by others; and simultaneous invention by others (which may be an indication that the claimed invention was the result of ordinary skill in the art).

34. I understand that a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. While multiple prior art references or elements may, in some circumstances, be combined to render a patent claim obvious, I understand that I should consider whether there is an apparent reason to combine the prior art references or elements in the way the patent claims. To determine whether such an apparent reason exists to combine the prior art references or elements in the way a patent claims, it will often be necessary to look to the interrelated teaching of multiple patents, to the effects of demands known to the design community or present in the marketplace, and to the background knowledge possessed by a person having ordinary skill in the art.

35. I also understand that when the prior art teaches away from combining prior art references or certain known elements, discovery of a successful means of combining them is more likely to be non-obvious. A prior art reference may be said to teach away from a patent when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the patent or would be led in a direction divergent from the path that was taken by the patent.

Evidence showing there was no reasonable expectation of succeeding in combining references, that the proposed modification or combination of the prior art would change the principle of operation of the prior art invention, or that the suggested combination of references would require a substantial reconstruction and redesign of the elements may support a conclusion of non-obviousness. I understand that to be applicable, a prior art reference must be analogous art to the claimed invention. A reference is analogous art to the claimed invention if: (1) the reference is from the same field of endeavor as the claimed invention (even if it addresses a different problem); or (2) the reference is reasonably pertinent to the problem faced by the inventor (even if it is not in the same field of endeavor as the claimed invention).

36. I also understand that it is not permissible to use hindsight in assessing whether a claimed invention is obvious. Rather, I understand that, to assess obviousness, one must place oneself in the shoes of a person having ordinary skill in the relevant field of technology at the time the inventions were made who is trying to address the issues or solve the problems faced by the inventor and ignore the knowledge one currently now has of the inventions.

37. I also understand that there are numerous ways in which to articulate the legal standard for obviousness, including: (1) combining prior art elements according to known methods to yield predictable results, (2) simple substitution of one known element for another to obtain predictable results, (3) use of a known

technique to improve similar devices (methods, or products) in the same way, (4) applying a known technique to a known device, method, or product ready for improvement to yield predictable results, (5) choosing from a finite number of identified, predictable solutions with a reasonable expectation of success, (6) known work in one field of endeavor may prompt variations of the work for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art, and (7) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

d. Person of Ordinary Skill in the Art

38. I understand that the meaning of claim terms and a patent's validity are to be determined from the vantage point of one of ordinary skill in the art at the time of the invention. In determining who would be one of such ordinary skill, I understand it is appropriate to consider criteria such as: (a) the type of problems encountered in the art; (b) prior art solutions to those problems; (c) the rapidity with which innovations are made; (d) the sophistication of the technology; and (e) the education level of active workers in the field.

39. Although I am not rendering an opinion about the level of skill of a POSITA proffered in Petitioners' Expert's Declaration, based on my professional

experience, I have an understanding of the capabilities of a POSITA (as such a POSITA is defined in Petitioners' Expert's Declaration in EX1004 ¶ 31).

40. For purposes of this declaration only, I adopt Petitioners' definition of a POSITA as set forth in EX1004 ¶ 31.

41. Over the course of my career, I have supervised and directed many such persons. Additionally, I myself was qualified as at least a POSITA under Petitioner's definition at the time the '850 Patent was filed and at its priority date.

F. Overview of the Claims of the '850 Patent and Related Description

42. The '850 Patent is entitled "Automatic Real-Time File Management Method and Apparatus," and was filed December 15, 2015. The '850 Patent claims priority to provisional application no. 60/234,221 (the "'221 Application") (EX1003), filed September 21, 2000, via a chain of intervening non-provisional applications. *See* EX1001, cover page and second page. The '850 Patent states that the disclosure of the '221 Application is incorporated by reference into the '850 Patent disclosure. *See id.*, 1:9-10. I am informed that this means that the disclosure of the '221 Application constitutes disclosure for the '850 Patent as though it had been fully incorporated therein.

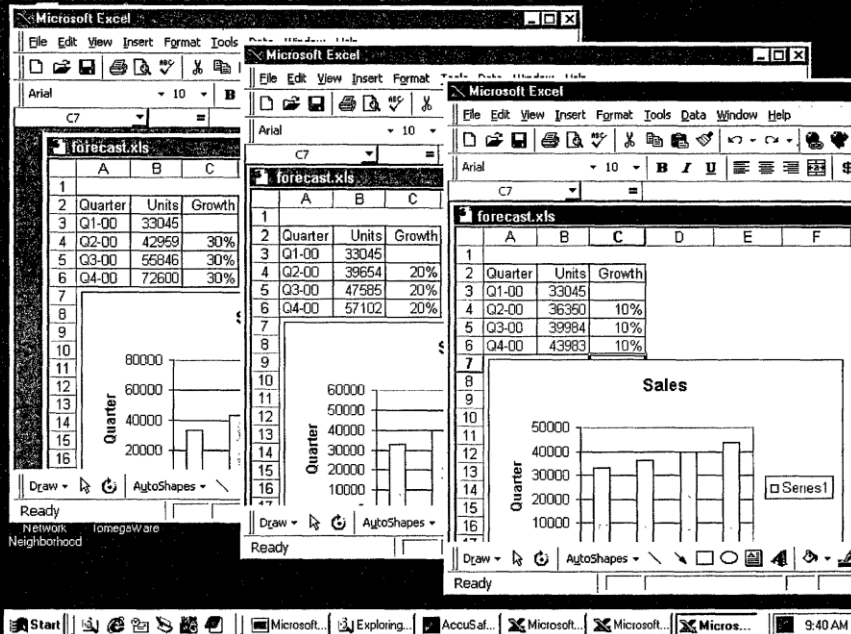
43. The '850 Patent is directed to restoring a locally-available file to a previous version of the file, in which the previous version is obtained from a remote storage location. EX1001-8:63-9:28 (claim 1). The method of restoring a

file includes providing the ability for a user to preview a collection of remotely-available backed-up versions of a particular file, select one of those versions in order to preview the selected version of the file, and, ultimately, if the previewed version of the selected file is the desired version, restore that version of the selected file in response to selection thereof. The selected version of the file is then obtained from the remote storage location and stored on the user's computer as the current version.

44. An embodiment of such a file restoration method is depicted in various figures from the '221 Application, which illustrate a prototype AccuSafe product configured to enable selective backup file previewing and retrieval, as reproduced in the following.

45. By way of a use-case background, a user may develop various versions of a spreadsheet. These versions evolve in time, with various evolutions of the most current version on the local machine being automatically captured and respectively stored as versions in the remote storage location. In the example provided, a user accidentally overwrites the previous versions with later versions:

Example use-case scenario



User develops 3 versions of a spreadsheet, accidentally overwriting the previous versions with the later versions...

7/27/00

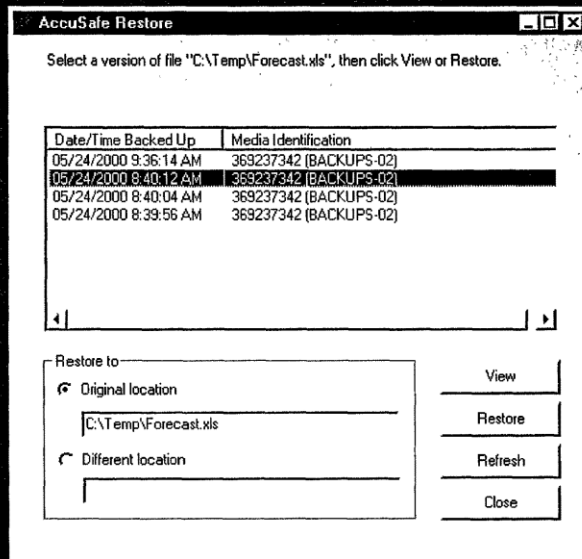
28

AccuSafe -- IPCI Confidential

EX1003 at 30.

46. Having discovered this issue, the user may pull up a list of captured versions of the file:

Example use-case scenario



AccuSafe displays the list of revisions it has captured.

The user selects a version from this list, then clicks the View button to determine if this is the version he wishes to restore...

7/27/00

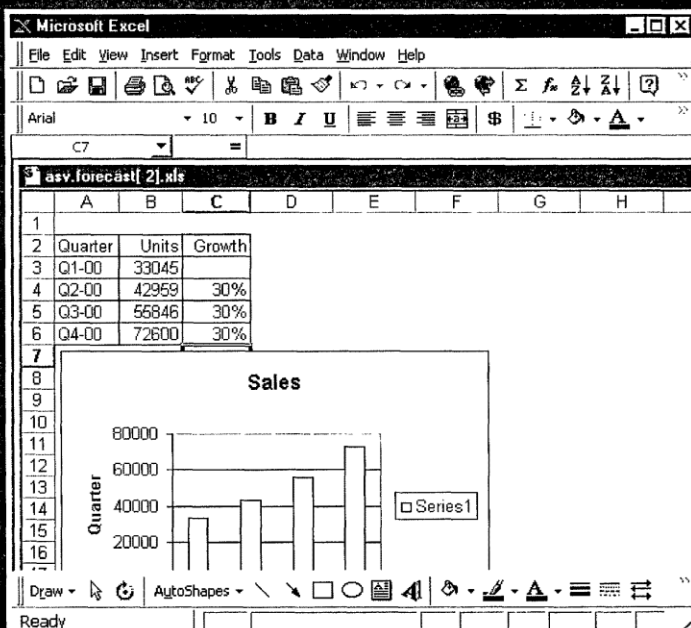
AccuSafe -- IPCI Confidential

30

EX1003 at 32.

47. Using the provided interface, the user may select a particular prior version of the file and select the "View" option to preview that particular version of the file before formally restoring the file from the remote storage location:

Example use-case scenario



AccuSafe displays the revision selected, using the application that created the file.

If this isn't the version that the user wanted...

7/27/00

31

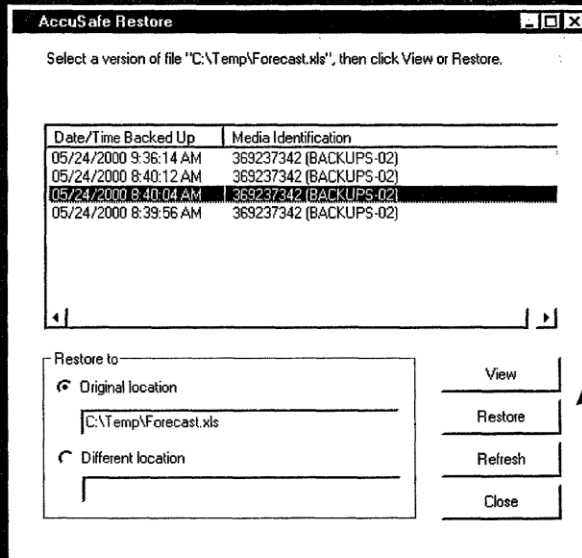
AccuSafe -- IPCI Confidential

EX1003 at 33.

48. If the user wishes to preview a different version of the file, the user can close the preview view and select "View" on a different version of the file using the same user interface.

49. Having found the desired version of the file to restore, the user can select the "Restore" button to restore the file:

Example use-case scenario



The user has verified this to be the proper revision to restore, so the user clicks Restore to retrieve his file.

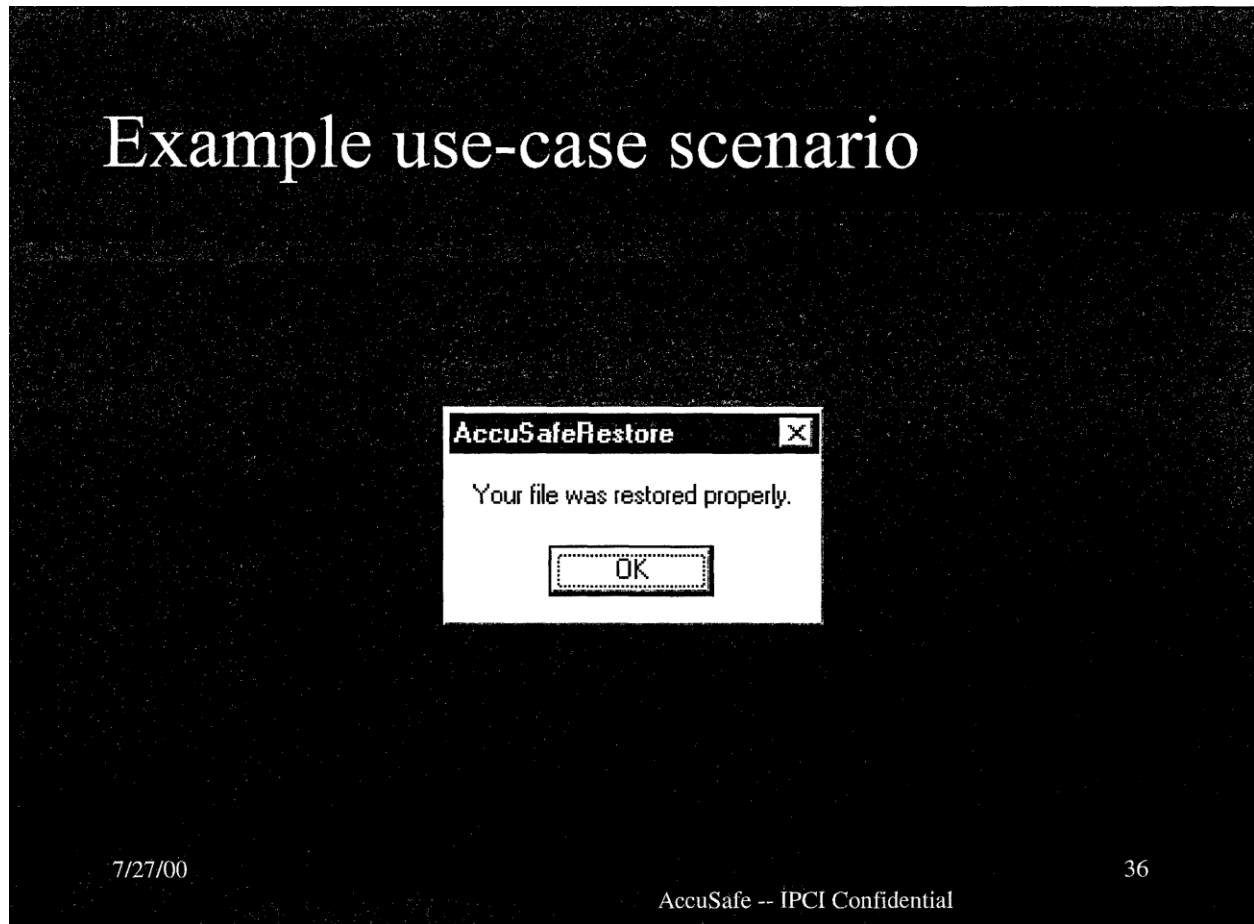
7/27/00

AccuSafe -- IPCI Confidential

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EX1003 at 36.

50. In response to selecting the "Restore" button, the selected earlier version of the file is retrieved from the remote storage location and stored as the current version at the local storage location:



EX1003 at 38.

51. According to the '221 Application, “AccuSafe constantly monitors the Windows OS for file activity. File information is available and responded to in AccuSafe when a file is opened, copied, deleted, renamed, moved or created.” EX1003-139.

52. In particular, “prior to actually restoring the file, the restoration process should determine if the backed up file will overwrite a file of the same name on the users [*sic.*] PC, and if so, if the version of the file on the users [*sic.*] PC is on the top level of the AccuSafe revision ‘stack’. If such is not the case,

AccuSafe must first backup the users file to the AccuSafe Media Device, then perform the restoration function. This will assure that no version of a file is lost as a result of the restoration process.” EX1003-147.

53. Additionally, “AccuSafe records the file properties and then does nothing until the user either closes the file without change, or makes a change and saves the file. When the save operation occurs, AccuSafe informs the IntelliQueuer that the file will require copying to the AccuSafe drive.” EX1003-140.

54. As a result of these operations, the version of the file being replaced on the user’s PC is backed up in the AccuSafe drive as the second-most recent prior version, while the restored version, which becomes the current version on the user’s PC, also becomes the most current version in the AccuSafe drive. *See also* EX1001-3:31-36 (capturing a file in response to an operation on the file), EX1001-5:31-40 (file capture involves creating an archive file of the captured file).

55. When the user makes changes to the restored (and now current) version of the file on the user’s PC, such changes are reflected back in the AccuSafe drive so that the changed current version on the user’s PC is again also present in the AccuSafe drive as the most current version therein.

56. Claim 1 is reproduced for reference, with element numbers adopted from the Petition:

[1.1]	A method of restoring a file to a previous version of the file, a current
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	version of the file being available at a local storage location, comprising the steps of:
[1.2]	(A) presenting information for a collection of one or more previous versions of the file, the information for the collection including information indicative of at least one or more of previous versions of the file, wherein a restorable representation of each version, V, of the previous versions, is retrievable from a remote storage location, the restorable representation having at least information required for recovering the version V by a computational machine with the current version being accessible, the remote storage location being accessible through a network;
[1.3]	(B) responsive to a selection to preview a selected previous version of the file based on the presented information for the collection of (A), presenting a presentable representation of the selected previous version, the selected previous version being one of the previous versions of the file in the presented information for the collection, the presentable representation having at least information required for presenting at least a portion of the selected previous version by the computation machine with the current version being accessible; and
[1.4]	(C) responsive to a selection to restore the selected previous version, retrieving the restorable representation of the selected previous version from the remote storage location and storing the selected previous version by the computational machine as the current version on the local storage location, the selected previous version available from the restorable representation of the selected previous version.

57. Claim 19 is also reproduced for reference, with element numbers from the Petition:

[19.1]	A method of restoring a file to a previous version of the file, a current version of the file being available at a local storage location, comprising the steps of:
[19.2]	(a) receiving a request to display a list of captured revisions for a file; (b) displaying a list of captured revisions for said file;
[19.3]	(c) receiving a selection from said list indicating a revision of said file to restore; (d) previewing selected revision of said file, wherein said selected revision of said file is received from an Internet storage area network;

[19.4]	(e) receiving another selection from said list indicating another revision of said file to restore; (f) previewing selected another revision of said file wherein said selected another revision of said file is received from a network attached storage location; and
[19.5]	(g) restoring selected another revision of said file following said previewing step in (f), optionally, decrypting said selected revision of said file prior to step (d) and decrypting said selected another revision of said file prior to step (f).

a. Claim Construction

58. Based on my review of Petition’s comments pertaining to claim construction, my understanding is that Petition gives claim terms their plain and ordinary meaning as would be understood by a POSITA on the earliest effective filing date, in light of the specification and file history. Petition 14. However, I address herein how a POSITA would understand certain terms when viewed in light of the disclosure of the ’850 Patent (and attendant ’221 Application).

i. “storing the selected previous version by the computational machine as the current version on the local storage location”

59. The term “storing the selected previous version by the computational machine as the current version on the local storage location” appears in each of independent claims 1, 10, and 18.

60. As explained above, according to the disclosure of the ’221 Application, and thus of the ’850 Patent, a POSITA would understand that when a user makes a change to a file on the user’s PC, or restores such a file to a previous

version present in the AccuSafe drive, the now-current version of the file (that is, the version resulting from the change or the restoration procedure) on the user's PC is also reflected back in the AccuSafe drive so that the now-current version on the user's PC is again also present in the AccuSafe drive as the most current version therein.

61. As a result, in the context of the claims and the related disclosure, a POSITA would understand that the term “storing the selected previous version by the computational machine *as the current version* on the local storage location” means that the version of a file now present on the user's PC also has a corresponding version on the remote storage location, each of them corresponding to the other and being the most recent version in time of such file.

62. Such an understanding for this term gives full meaning and effect to the term “as the current version,” which would otherwise be redundant. That is, since the term “storing the selected previous version [] on the local storage location” encompasses overwriting the file on the local storage location with the selected previous version, the term “as the current version” must mean something more than mere overwriting of one file by another. A POSITA would understand that in the file restoration system and method of the '850 Patent, “versioning” of files resident on the AccuSafe drive is an important feature of the underlying system. That is, chronologically tracking how files evolve in time as recorded on

the AccuSafe drive is an important feature for the user. Ensuring that files currently resident on the local storage location also have corresponding versions on the AccuSafe drive is similarly important to providing such functionality, which a POSITA would know. Hence, in the context of the claims and underlying disclosure, “current version” means more than mere overwriting but also means keeping parity between the file on the local storage location and the versioning system of the remote storage location.

ii. “restoring selected another revision of said file following said previewing step”

63. Claim 19 recites “restoring selected another revision of said file following said previewing step....” This limitation is part of claim 19’s overall “method of restoring a file to a previous version of the file, a current version of the file being available at a local storage location...” EX1001-12:9-11.

64. As I explained above, in the context of the claims of the ’850 Patent claims and related disclosure, a “current version” of a local file is also reflected in the remote storage location. Consequently, a POSITA would understand that, in this context, the claimed method of “restoring a file to a previous version of the file, a current version of the file being available at a local storage location” means that the “current version” of such file will be updated or replaced, e.g., “restored,”

with the “selected another revision of said file,” and thus the “current version” of the file will be the “selected another revision of said file.”

65. Since the “current version” also has a corresponding “current version” in the “Internet storage area network,” a POSITA would understand the term “restoring selected another revision of said file following said previewing step” to mean that the “selected another revision of said file” is now the most recent version in time on both the “local storage location” and the “Internet storage area network.”

G. Declaration Citations

66. Unless otherwise indicated, in this Declaration, citations to sections or paragraphs of this Declaration are not intended to be limiting, do not imply that the cited sections or paragraphs are the only support, and do not imply that support is limited to said cited sections or paragraphs.

67. In addition, unless otherwise indicated, in this Declaration, citations to sections or paragraphs of this Declaration imply the cited sections or paragraphs along with any subsections or subparagraphs of said cited sections or paragraphs.

68. Additionally, unless otherwise indicated, in this Declaration, citations to sections or paragraphs of this Declaration imply incorporating therein (*i.e.*, at the citing sections or paragraphs) by reference said cited sections or paragraphs along with any subsections or subparagraphs of said cited sections or paragraphs.

H. Scope of Opinions

69. Petitioners' Expert's Declaration's presented opinions, arguments, references, and citations.

70. In this Declaration, I present opinions, arguments, references, and citations to establish that the challenged claims of the '850 Patent are not obvious in view of the alleged prior-art references presented in Petitioners' Expert's Declaration and taking into account the opinions, arguments, and references, and citations presented in Petitioners' Expert's Declaration.

71. In this Declaration, I do not attempt to address or rebut every opinion, argument, reference, or citation presented in Petitioners' Expert's Declaration.

72. My not addressing or not rebutting any opinion, argument, reference, or citation presented in Petitioners' Expert's Declaration should not be misconstrued as implying my agreement or my concession regarding any opinion, argument, reference, or citation presented in Petitioners' Expert's Declaration.

I. Summary of Opinions

73. Petition and Petitioners' Expert's Declaration challenge all the claims of the '850 Patent, namely, independent Claims 1, 10, 18, and 19 dependent Claims 2-9, 11-17, and 20-21. Petition at 2; EX1004 at 31, 65, 69, 93.

74. Petition and Petitioners' Expert's Declaration present four sets of grounds. Petition at 2; EX1004 at 31, 65, 69, 93.

75. Under Ground 1, Petition and Petitioners' Expert's Declaration proffer PCT Publication No. WO 99/12101 / EX1005 ("Schneider") as prior art reference to challenge Claims 1-21. Petition at 2; EX1004 at 31.

76. Under Ground 2, Petition and Petitioners' Expert's Declaration proffer Schneider and U.S. Patent No. 5,771,354 / EX1009 ("Crawford") as prior art references to challenge Claims 1-21. Petition at 2; EX1004 at 65.

77. Under Ground 3, Petition and Petitioners' Expert's Declaration proffer U.S. Patent No. 7,062,532 / EX1006 ("Sweat") as prior art reference to challenge Claims 1-8, 10-16, and 18-21. Petition at 2; EX1004 at 69.

78. And under Ground 4, Petition and Petitioners' Expert's Declaration proffer Sweat and Schneider as prior art references to challenge Claims 9 and 17. Petition at 2; EX1004 at 93.

79. In my opinion, for the reasons outlined below, the Petition and Petitioners' Expert's Declaration have not established a reasonable basis to conclude that the challenged claims of the '850 Patent are obvious.

80. Additionally, in my opinion, for the reasons outlined below, the claims of the '850 Patent are not obvious in view of Schneider, not obvious in view of Schneider and Crawford, not obvious in view of Sweat, nor are they obvious in view of Sweat and Schneider.

II. GROUND 1: CLAIMS 1-21 ARE NOT OBVIOUS OVER SCHNEIDER

81. In Ground 1, Petitioners' Expert's Declaration (§§ 47-97) relies on Schneider for all claim limitations.

82. However, Petitioners' Expert's Declaration overlooks pivotal differences between the teachings of the '850 Patent versus the disclosures of Schneider on the other hand.

83. Petitioners' Expert's Declaration neglects to address critical deficiencies in Schneider pertaining to the teachings of the '850 Patent.

84. I describe these differences and deficiencies below.

A. '850 independent claims 1, 10, and 18 are not obvious over Schneider

85. Independent claims 1, 10, and 18 of the '850 Patent recite “responsive to a selection to restore the selected previous version, retrieving the restorable representation of the selected previous version **from the remote storage location**.” In contrast, responsive to a selection to restore the selected previous version, Schneider retrieves the restorable representation of the selected previous version **from a local storage location**.

86. In other words, Schneider does not teach or suggest the '850 claim limitation (present in each of independent claims 1, 10, and 18) of “responsive to a selection to restore the selected previous version, retrieving the restorable representation of the selected previous version from the remote storage location,”

because Schneider does not retrieve the restorable representation of the selected previous version from the remote storage location in response to selection to restore the selected previous version.

87. Instead, Schneider teaches that, in response to a selection to restore a selected previous version of a file, moving or copying the restorable representation of the selected previous version from either a temporary directory or a virtual drive (EX1005-60:23-24) to replace a current version or create a new file (EX1005-130:12-13). However, both the temporary directory and the virtual drive are locally present on the user's computer. I elaborate below.

88. Schneider discloses computer file recovery for a user's computer, which is performed by software executing on the user's computer. *See* EX1005-Abstract ("The method and apparatus may be implemented as part of an operating system, or as a separate program, or in the controller for the disk drive").

89. According to Schneider, "the present invention can also be implemented as part of the operating system" (EX1005:4-5), or "tightly coupled with an operating system" (EX1005:3), which provides "utilities that operate on the saved information to determine available versions of a file, look for virus activity, and other useful history enabled operations." EX1005-11:15-17.

90. For example, with respect to the "file level implementation" of Schneider, Schneider again discloses "tight integration into the operating system,"

which a POSITA would understand as integration of the software providing Schneider's disclosed functionality with the operating system of the user's computer, which can then provide the ability to "present the user with a list of prior states for a given file, and allow any to be copied forward," and which "automatically keeps backup copies of files prior to their being changed in a circular system." EX1005-24:7-14. Because of this "tight integration" with the operating system on the user's computer, a POSITA would understand that Schneider's software runs locally on the user's computer.

91. Schneider explains that the underlying technology behind Schneider's functionality "assumes the system can support another drive D, which instead of being a real disk drive, is a simulated or virtual drive whose image is created by combining information on the original drive C and the history buffer (which is typically part of drive C)." EX1005:15-23-26. A POSITA would understand that this "simulated or virtual drive" resides locally on the user's computer, just as "drive C" resides locally on the user's computer – that is, both drive C and the "simulated or virtual drive" are local drives (*e.g.*, "internal disk" in Figure 47G) in Schneider.

92. The fact that Schneider's invention "allow[s] the user to select a file that can be retrieved from the past, and to automatically launch the appropriate application to view the file, referencing either the file on a simulated disk or

copying the file from a simulated disk to a temporary directory” (EX1005:60-21-24), would provide further confirmation to a POSITA that Schneider’s file restoration functionality is provided by software running locally on the user’s computer. A POSITA would know that the “appropriate application” refers to an application that can run on the user’s computer so as to be able to view the file “retrieved from the past,” and that to cause such an application to launch, Schneider must have software running on the user’s computer to actually launch such desired application.

93. As for the “simulated disk” referred to above, a POSITA would know that this is referring to the “simulated or virtual drive” discussed earlier, which is local to the user’s computer, just as a POSITA would understand that the “temporary directory” is also local to the user’s computer.

94. Although the history buffer that Schneider’s software uses to recover files “is typically part of drive C” (EX1005-15:26) and thus locally present on the user’s computer, Schneider also discloses that an external disk can be used to hold historical information from which earlier versions of a file may be reconstructed. *See generally* EX1005-108:15-114:7. For example, Schneider discloses that “[p]rovisions in the PC’s software would divert to and take advantage of an external disk that had more historic information than available on the internal disk, and whose access is desired.” EX1005-113:26-28.

95. However, because Schneider’s underlying software runs on the user’s computer, and because such software places “the [recovered] file on a simulated disk or cop[ies] the file from a simulated disk to a temporary directory” (EX1005-60:23-24), both locations of which are local on the user’s computer, a POSITA would understand that Schneider’s file recovery operations are actually performed locally on the user’s computer, regardless of where the underlying historical information originates.

96. Moreover, because Schneder’s process is performed locally to generate restored files in local temporary directories or virtual disks, which are also local to the user’s computer, a POSITA would understand that when a “selection [is] made from the list [of earlier versions of a file] and the recovered file either replaces the current version or is copied to a new file” (EX1005-130:11-13), such copying or replacing utilizes files that were reconstructed and stored locally on the user’s computer. A POSITA would understand this to be the case, since Schneider’s software “allow[s] the user to view a list of earlier versions of a file” (EX1005-130:11) that can then be viewed by an appropriate application by “referencing either the [restored] file on a simulated disk or copying the file from a simulated disk to a temporary directory” (EX1005-60:21-24), both locations which, as noted above, a POSITA would know are local to the user’s computer.

97. Hence, in connection with the claim limitation of “responsive to a selection to restore the selected previous version, retrieving the restorable representation of the selected previous version from the remote storage location” (present in each of independent claims 1, 10, and 18), Schneider does not teach or suggest such a feature, because Schneider does not retrieve the restorable representation of the selected previous version from the remote storage location in response to selection to restore the selected previous version.

98. Rather, Schneider teaches that, in response to a selection to restore a selected previous version of a file, moving or copying the restorable representation of the selected previous version from either a temporary directory or a virtual drive (EX1005-60:23-24), both of which are locally present on the user’s computer, to replace a current version or create a new file (EX1005-130:12-13).

99. In summary, responsive to a selection to restore the selected previous version, Schneider retrieves the restorable representation of the selected previous version from a local storage location, not from the remote storage location as required in claims 1, 10, and 18 of the ’850 Patent.

B. ’850 independent claim 19 is not obvious over Schneider

100. As I explain above in connection with limitation 1.4, a POSITA would understand that all prior history versions of files are generated locally, even if the underlying data may be obtained remotely. Schneider therefore does not

teach “previewing selected revision of said file, wherein said selected revision of said file is received from an Internet storage area network,” as recited in limitation 19.3.

C. ’850 dependent claim 3 is not obvious over Schneider

101. Petitioners’ Expert’s Declaration (§ 74) states that “a POSITA would understand Schneider to, when previewing a file with an appropriate application, operate the application in read-only mode because the previewed file is stored in a temporary directory with its existence hidden from the user and is subsequently ‘automatically discarded’ (*id.*, 60:27-28). Accordingly, a POSITA would not desire to perform any write operation on such a file that is meant to be discarded and would implement the teachings of Schneider so as to have the viewing application open the file as read-only; that is, a POSITA would restrain the user from updating files that are being previewed, knowing that any such changes would be lost after viewing unless other action were taken.”

102. I disagree with this conclusion. In my opinion, Petitioner’s Expert’s statement is based on hindsight. If indeed the Schneider inventors intended to “restrain the user from updating files that are being previewed” as Petitioner’s Expert alleges, Schneider would have explicitly mentioned such restraint or read-only mode while previewing, but Schneider does not.

103. Schneider describes two methods for retrieving the file to preview: “referencing either the file on a simulated disk or copying the file from a simulated disk to a temporary directory.” EX1005-60:23-24. Petitioner’s Expert relies on the temporary directory method only. However, Schneider does not describe that the retrieved file is treated differently in the two cases or that an alleged read-only mode is used in either.

104. Schneider mentions “read-only” at EX1005-20:10; in other words, the Schneider inventors were well versed with the read-only concept, yet Schneider does not describe retrieving for previewing as read only.

105. Even if, *arguendo*, Schneider required read-only for retrieving (Schneider does not), Schneider could have suggested a read-only simulated disk or read-only temporary folders instead of purportedly opening the retrieved file in read-only mode. A read-only simulated disk or read-only temporary folder would have the advantage of protecting any type of file, regardless of the application with which the file was created. Alternatively, Schneider could have recommended creating a read-only version of the retrieved file, which would also have the advantage of protecting any type of file, regardless of the application in which the file was created.

106. A POSITA would have known that, compared to the read-only simulated disk / folder and the read-only file, allegedly opening the application in

read-only mode is inferior and undesirable, because the software would have to know how to open each individual application in read-only mode. Moreover, some applications may not even have read only mode.

107. Additionally, application programs, such as the Microsoft Office suite, by default, alert the user when exiting the application programs if the opened file has been modified. In other words, a mechanism to notify the user against modifications is already built in the application programs.

108. Furthermore, a POSITA knows that many applications can and do use temporary directories and/or files in the process of creating and editing or modifying files. A POSITA therefore knows that an application will not launch in read-only mode simply because a file may be located in a temporary directory, and would, in fact, expect just the opposite.

109. A POSITA knows that files that are created or modified in a temporary directory may thereafter be moved to a different location, either automatically or in response to user input, such as from a request from the application.

110. Additionally, the application used to open, view, and/or edit a file would not necessarily know that the file is actually located in a temporary directory.

111. A POSITA would therefore expect that an application will typically open a file in normal mode – that is, in a mode that allows both reading and writing operations of the file, regardless of where the file may actually be located.

III. GROUND 2: CLAIMS 1-21 ARE NOT OBVIOUS OVER SCHNEIDER IN VIEW OF CRAWFORD

112. In Ground 2, Petitioners’ Expert’s Declaration (§§ 98-103) relies on Crawford for the element of remote storage location accessible via a network (independent claims 1, 10, 18), the element of an internet storage area network (independent claim 19), and the element of network attached storage location (independent claim 19). For all other elements, Petitioners’ Expert’s Declaration relies on Schneider.

113. Petitioners’ expert states that “[a] POSITA would have been motivated to modify the file back-up and restore system of Schneider to include an Internet data link to a remote storage device as taught by Crawford” (EX1004 ¶ 102) but does not rely upon Crawford’s disclosure for anything more than that.

114. Consequently, Crawford, as relied upon by Petitioners’ expert, does nothing to cure the deficiencies of Schneider discussed above in connection with 1, 10, and 18.

IV. GROUND 3: CLAIMS 1-8, 10-16, and 18-21 ARE NOT OBVIOUS OVER SWEAT

A. Sweat does not teach or suggest limitations 1.4, 10.4, and 18.5 as properly construed

115. Sweat is directed to architectural drawing and project sharing and collaboration. EX1006, Abstract, 1:16-22 (Field of the Invention).

116. Sweat discloses a “[m]ethod and apparatus for drawing collaboration on a network” (EX1006, Title), and more specifically “a project hosting service that a user can access with a web browser” (EX1006-1:44-45), with which the user “can communicate and collaborate with the members of a design team or construction project” (EX006-:46-47) and “share CAD drawing files (DWG DWF, etc.), document files, or any other type of file.” EX1006-1:47-48.

117. A POSITA would have understood from the teachings of Sweat that, in order for the user to retrieve a previous version of a file, the user must perform the following three steps: (1) “the user selects the desired version” (EX1006-10:55-56), (2) the user “clicks a ‘Download’ button” (EX1006-10:60-61); and (3) “the user identifies/selects the target location to save the selected file” (EX1006-10:61-62) so that “[t]he file is then copied to the location specified.” EX1006-10:62-63.

118. However, a POSITA would also know that these steps do not ensure that the retrieved version is the current version, as the term “current version” is properly understood in the context of the claims of the ’850 Patent. That is, after

the “download” step referenced above, the version of the file present on the user’s PC will not have a corresponding version on Sweat’s server system, such that each of these files (remote and local) correspond to the other and are the most recent versions in time of such files.

119. In Sweat, to ensure that the version on the local computer and the remote server both correspond to each other and are the most recent versions in time, a POSITA would know that a user in Sweat would have to perform an additional, manual, “Update File” step, which Sweat discloses is used “to complete the editing process. As a result, a new version is stored with the user’s updates.” EX1006-6:52-54. Only after this “Update File” step would the versions on both the local storage location and remote storage location be the most recent versions in time for these files, as required in limitations 1.4, 10.4, and 18.5.

120. Sweat, therefore, does not teach or suggest “*responsive to a selection to restore the selected previous version*, retrieving the restorable representation of the selected previous version from the remote storage location *and storing the selected previous version [by the computational machine] as the current version on the local storage location*,” as required by independent claims 1, 10, and 18. Sweat’s “Update File” step is not “responsive to a selection to restore the selected previous version,” but, instead, is a separate and manual step.

B. Sweat does not teach or suggest “restoring selected another revision of said file following said previewing step” of claim 19

121. Properly construed, a POSITA would understand that the step in claim 19 of “restoring a file to a previous version of the file, a current version of the file being available at a local storage location” means that the “selected another revision of said file” is now the most recent version in time on both the “local storage location” and the “Internet storage area network.”

122. As set forth above in connection with claims 1, 10, and 18, Sweat does not disclose this feature. In Sweat, a POSITA would know that after the user clicks the “Download” button, as noted above, the resultant downloaded file would not be the most recent version in time on both the user’s computer and Sweat’s server system.

V. GROUND 4: CLAIMS 9 AND 17 ARE NOT OBVIOUS OVER SWEAT IN VIEW OF SCHNEIDER

123. With respect to Ground 4, the Petition states that “Sweat discloses all limitations of claims 1 and 10....” Petition 72. However, as I outline above, this is incorrect. Since the combination of Sweat in view of Schneider proposed in the Petition does nothing to alleviate the deficiencies of Sweat, claims 9 and 17 are also not obvious over Sweat in view of Schneider.

VI. CONCLUSION

124. For the foregoing reasons, in my opinion, the claims of the '850 Patent are not obvious in view of Schneider, not obvious in view of Schneider and Crawford, not obvious in view of Sweat, and not obvious in view of Sweat and Schneider.

125. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

August 2, 2024
Date



Zaydoon ("Jay") Jawadi