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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HUNTS POINT VENTURES, INC.

Appeal 2015-004410
Reexamination Control 90/012,284
Patent 7,574,272 B2
Technology Center 3900

Before JOHN A. JEFFERY, ERIC B. CHEN, and
JEREMY J. CURCURI, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON REMAND

Patent 7,574,272 B2 (Gibbs) is under reexamination. Another panel of this Board[1] entered a decision on appeal affirming the Examiner's rejection of claims 1–10. *Ex parte Hunts Point Ventures, Inc.*, 2015 WL 2063308 (PTAB May 1, 2015). In that decision, the earlier panel affirmed the Examiner's obviousness rejection of claims 1–10 over the Birrell and Cunniff references cited below, but did not reach the other rejections. *Id.* at *4. The earlier panel also denied Appellant's request to rehear that decision. *Ex parte Hunts Point Ventures, Inc.*, 2015 WL 5451229 (PTAB Sept. 15, 2015). Appellant timely appealed from that decision to the U.S. Court of

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[1] Judge Chen replaces then-Judge Dillon on the current panel.

Appeals for the Federal Circuit. The Federal Circuit entered a decision, and issued a mandate, vacating the Board's decision and remanding for further proceedings consistent with the Federal Circuit's decision. *In re Schweickert*, 2017 WL 371374 (Fed. Cir. Jan. 26, 2017) (unpublished). The appeal is now before the Board for further consideration consistent with the Federal Circuit's remand.

Claims 1–10 are rejected under 35 U.S.C. § 103(a) as obvious over Maeda (US 5,699,336; issued Dec. 16, 1997) and Okumura (JP 8-129454; published May 21, 1996). Final Act. 2–7, Ans. 5–17.

Claims 1–10 are rejected under 35 U.S.C. § 103(a) as obvious over Maeda and Cunniff (US 5,842,015; issued Nov. 24, 1998). Final Act. 7–13, Ans. 17–19.

Claims 1–10 are rejected under 35 U.S.C. § 103(a) as obvious over Maeda and Derr (US 6,453,375 B1; issued Sept. 17, 2002). Final Act. 13–18, Ans. 19–21.

Claims 1–10 are rejected under 35 U.S.C. § 103(a) as obvious over Birrell (US 6,332,175 B1; issued Dec. 18, 2001) and Okumura. Final Act. 18–23, Ans. 21–24.

Claims 1–10 are rejected under 35 U.S.C. § 103(a) as obvious over Birrell and Cunniff. Final Act. 24–30, Ans. 24–25.

Claims 1–10 are rejected under 35 U.S.C. § 103(a) as obvious over Birrell and Derr. Final Act. 30–35, Ans. 24–25.

Claims 1, 2, and 7–10 are rejected under 35 U.S.C. § 103(a) as obvious over Okumura and Akiyama (JP 6-318359; published Nov. 15, 1994). Final Act. 36, Ans. 25–28.

We reverse.

STATEMENT OF THE CASE

Appellant's invention relates to "optimizing data transfer from a spinning media in a portable audio device." Gibbs, col. 1, ll. 18–19. Claim 1 is illustrative and reproduced below:

> 1. A portable media player comprising:
> a processor that executes commands;
> a random-access-memory component that stores compressed data in more than two different random-access-memory buffer areas, each random-access-memory buffer lockable and unlockable by the processor;
> a codec component, controlled by the processor, that reads compressed data from a locked random-access-memory buffer, the locked random-access-memory buffer selected from among the more than two different random-access-memory buffer areas and locked by the processor to prevent writing of the locked random-access-memory buffer by another component, and that generates a decompressed signal from the read compressed data that is rendered by a data-rendering component;
> a non-volatile, mass-storage component that stores compressed data and that writes compressed data, under control of the processor, to unlocked random-access-memory buffers; and
> a battery power supply to provide electrical power to the processor, random-access memory component, codec component, data-rendering component, and non-volatile, mass-storage component.

PRINCIPLES OF LAW

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [*v. Ag Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock*[, *Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 417 (2007).

ANALYSIS

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER BIRRELL AND CUNNIFF

The Examiner finds Birrell and Cunniff teach all limitations of claims 1–10. Final Act. 24–30 (incorporating by reference Request 92–113), Ans. 24–25. The Examiner reasons:

> Birrell discloses the limitations of claim 1 with the exception of locking/unlocking memory management. However, it would have been obvious to a person of the ordinary skill in the art to modify the system of ***Birrell*** with the teachings of ***Cunniff*** of using a "semaphore locking mechanism" for restricting access to an audio shared memory buffer *for preventing overwriting* from other applications programs or other components (Cunniff, Fig.

> 4, Col. 2, ll. 63-66) because it was a known technique that [] would yield predictable results.

Final Act. 29–30 (emphasis added); *see also* Request 109–111.

Appellant presents the following principal argument: "[I]n Maeda's recording and reproducing apparatus, only the memory controller accesses the RAM buffer. For this reason, there is no need for the introduction of a locking mechanism, since the RAM buffer is not a shared resource." App. Br. 20. "The Examiner has failed to even make a cursory attempt to justify introduction of locking in Maeda's data-storage section." App. Br. 21. *See also* Reply Br. 7–46.

In response, the Examiner explains that the Examiner assumes Appellant refers to Birrell. Ans. 21. The Examiner further explains that

> Birrell needs some type of logic to prevent overwriting and Cunniff or Derr teach[es] a method of using a "semaphore locking mechanism" to prevent overwriting. Thus, by using the known method of "semaphore locking mechanism" of Cunniff or Derr in Birrell's system it would yield predictable results such as *to prevent overwriting*.

Ans. 24–25 (emphasis added).

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in the legal conclusion of obviousness.

Birrell (Figure 1) discloses a portable audio player. Birrell (Abstract) discloses playing, with the audio player, data stored in RAM, and when appropriate, copying additional data from the disk drive to the RAM. Cunniff (col. 2, ll. 63–66) discloses the use of a semaphore mechanism. Appellant admits that a semaphore is a type of lock. *See* Reply Br. 20.

Nonetheless, on the record before us, we do not see, in Birrell, competition for access to RAM that creates a problem for a skilled artisan to resolve with a semaphore. Put another way, the record before us does not sufficiently establish that Birrell has a problem with overwriting in RAM that would give a skilled artisan a reason to modify Birrell to prevent overwriting.

Thus, we conclude the Examiner's legal conclusion of obviousness lacks the required rational underpinning because the Examiner's articulated reason to combine the references, namely to prevent overwriting, is not a sufficient reason for a skilled artisan to combine Birrell and Cunniff.

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Birrell and Cunniff.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER BIRRELL AND DERR

The Examiner finds Birrell and Derr teach all limitations of claims 1–10. Final Act. 30–35 (incorporating by reference Request 113–133), Ans. 24–25. The Examiner reasons:

> Birrell discloses the limitations of claim 1 with the exception of locking/unlocking technique. However, it would have been obvious to a person of the ordinary skill in the art to modify the system of ***Birrell*** with the teachings of ***Derr*** such as using a semaphore locking *to prevent overwriting* of other components (Derr, Co[l]. 1, ll. 30–34; Col. 4, ll. 53–55; Figs. 2–4) because it was a known technique that [] would yield predictable results.

Final Act. 35 (emphasis added); *see also* Request 129–131.

Appellant presents the following principal argument: "[I]n Maeda's recording and reproducing apparatus, only the memory controller accesses the RAM buffer. For this reason, there is no need for the introduction of a

locking mechanism, since the RAM buffer is not a shared resource." App. Br. 22. "The Examiner has failed to even make a cursory attempt to justify introduction of locking in Maeda's data-storage section." App. Br. 22. *See also* Reply Br. 7–46.

In response, the Examiner explains that the Examiner assumes Appellant refers to Birrell. Ans. 21. The Examiner further explains that

> Birrell needs some type of logic to prevent overwriting and Cunniff or Derr teach[es] a method of using a "semaphore locking mechanism" to prevent overwriting. Thus, by using the known method of "semaphore locking mechanism" of Cunniff or Derr in Birrell's system it would yield predictable results such as *to prevent overwriting*.

Ans. 24–25 (emphasis added).

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in the legal conclusion of obviousness.

Birrell (Figure 1) discloses a portable audio player. Birrell (Abstract) discloses playing, with the audio player, data stored in RAM, and when appropriate, copying additional data from the disk drive to the RAM. Derr (col. 1, ll. 30–34; col. 4, ll. 53–55; Figs. 2–4) discloses the use of a semaphore mechanism. Appellant admits that a semaphore is a type of lock. *See* Reply Br. 20.

Nonetheless, on the record before us, we do not see, in Birrell, competition for access to RAM that creates a problem for a skilled artisan to resolve with a semaphore. Put another way, the record before us does not sufficiently establish that Birrell has a problem with overwriting in RAM

that would give a skilled artisan a reason to modify Birrell to prevent overwriting.

Thus, we conclude the Examiner's legal conclusion of obviousness lacks the required rational underpinning because the Examiner's articulated reason to combine the references, namely to prevent overwriting, is not a sufficient reason for a skilled artisan to combine Birrell and Derr.

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Birrell and Derr.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER MAEDA AND CUNNIFF

The Examiner finds Maeda and Cunniff teach all limitations of claims 1–10. Final Act. 7–13 (incorporating by reference Request 31–52), Ans. 17–19. The Examiner reasons:

> Maeda discloses the limitations of claim 1 with the exception of locking/unlocking memory management. However, it would have been obvious to a person of the ordinary skill in the art to modify the system of Maeda with the teachings of Cunniff of using a "semaphore locking mechanism" for restricting access to an audio shared memory buffer *for preventing overwriting* from other applications programs or other components (Cunniff, Fig. 4, Col. 2, ll. 63-66) because it was a known technique that [] would yield predictable results.

Final Act. 12–13 (emphasis added); *see also* Request 48–51.

Appellant presents the following principal argument: "[I]n Maeda's recording and reproducing apparatus, only the memory controller accesses the RAM buffer. For this reason, there is no need for the introduction of a locking mechanism, since the RAM buffer is not a shared resource." App. Br. 17. "The Examiner has failed to even make a cursory attempt to justify

introduction of locking in Maeda's data-storage section." App. Br. 17. *See also* Reply Br. 7–46.

In response, the Examiner further explains that

> Maeda needs some type of logic to prevent overwriting and Cunniff teaches a method of using a "semaphore locking mechanism" to prevent overwriting. Thus, by using the known method of "semaphore locking mechanism" of Cunniff in Maeda's system it would yield predictable results such as *to prevent overwriting*.

Ans. 19 (emphasis added).

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in the legal conclusion of obviousness.

Maeda (Figure 1) discloses a recording and reproducing apparatus. Maeda (Abstract) discloses:

> A reproducing apparatus in which a reproduction signal reproduced from a recording medium is temporarily stored in a memory and is thereafter read out, and in which, when the amount of accumulation of the reproduction signal stored in the memory becomes equal to or larger than a predetennined value, a function of at least one section of the reproducing apparatus is inhibited.

Cunniff (col. 2, ll. 63–66) discloses the use of a semaphore mechanism. Appellant admits that a semaphore is a type of lock. *See* Reply Br. 20.

Nonetheless, on the record before us, we do not see, in Maeda, competition for access to memory that creates a problem for a skilled artisan to resolve with a semaphore. Put another way, the record before us does not sufficiently establish that Maeda has a problem with overwriting in memory

that would give a skilled artisan a reason to modify Maeda to prevent overwriting.

Thus, we conclude the Examiner's legal conclusion of obviousness lacks the required rational underpinning because the Examiner's articulated reason to combine the references, namely to prevent overwriting, is not a sufficient reason for a skilled artisan to combine Maeda and Cunniff.

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Maeda and Cunniff.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER MAEDA AND DERR

The Examiner finds Maeda and Derr teach all limitations of claims 1–10. Final Act. 13–18 (incorporating by reference Request 52–72), Ans. 19–21. The Examiner reasons:

> Maeda discloses the limitations of claim 1 with the exception of locking/unlocking technique. However, it would have been obvious to a person of the ordinary skill in the art to modify the system of Maeda with the teachings of Derr such as using a semaphore locking mechanism *to prevent overwriting* of other components (Derr, Co[l]. 1, ll. 30–34; Col. 4, ll. 53-55; Figs. 2-4) because it was a known technique that [] would yield predictable results.

Final Act. 17–18 (emphasis added); *see also* Request 68–71.

Appellant presents the following principal argument: "[I]n Maeda's recording and reproducing apparatus, only the memory controller accesses the RAM buffer. For this reason, there is no need for the introduction of a locking mechanism, since the RAM buffer is not a shared resource." App. Br. 18. "The Examiner has failed to even make a cursory attempt to justify

introduction of locking in Maeda's data-storage section." App. Br. 18. *See also* Reply Br. 7–46.

In response, the Examiner further explains that

> Maeda needs some type of logic to prevent overwriting and Derr teaches a method of using a "semaphore locking" mechanism to prevent overwriting. Thus, by using the known method of "semaphore locking" mechanism of Derr in Maeda's system it would yield predictable results such as *to prevent overwriting*.

Ans. 21 (emphasis added).

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in the legal conclusion of obviousness.

Maeda (Figure 1) discloses a recording and reproducing apparatus. Maeda (Abstract) discloses:

> A reproducing apparatus in which a reproduction signal reproduced from a recording medium is temporarily stored in a memory and is thereafter read out, and in which, when the amount of accumulation of the reproduction signal stored in the memory becomes equal to or larger than a predetennined value, a function of at least one section of the reproducing apparatus is inhibited.

Derr (col. 1, ll. 30–34; col. 4, ll. 53–55; Figs. 2–4) discloses the use of a semaphore mechanism. Appellant admits that a semaphore is a type of lock. *See* Reply Br. 20.

Nonetheless, on the record before us, we do not see, in Maeda, competition for access to memory that creates a problem for a skilled artisan to resolve with a semaphore. Put another way, the record before us does not sufficiently establish that Maeda has a problem with overwriting in memory

that would give a skilled artisan a reason to modify Maeda to prevent overwriting.

Thus, we conclude the Examiner's legal conclusion of obviousness lacks the required rational underpinning because the Examiner's articulated reason to combine the references, namely to prevent overwriting, is not a sufficient reason for a skilled artisan to combine Maeda and Derr.

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Maeda and Derr.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER MAEDA AND OKUMURA

The Examiner finds Maeda and Okumura teach all limitations of claims 1–10. Final Act. 2–7 (incorporating by reference Request 9–30), Ans. 5–17. The Examiner reasons:

> Maeda discloses the limitations of claim 1 with the exception of locking/unlocking memory management. However, it would have been obvious to a person of the ordinary skill in the art to modify the system of Maeda with the teachings of Okumura of using flags to lock blocks of the memory buffer *to prevent writing* by another component (Okumura, [0049]) because it was a known technique that [] would yield predictable results.

Final Act. 7 (emphasis added); *see also* Request 27–29.

Appellant presents the following principal arguments:

i. Okumura teaches flags; Okumura does not teach locks. *See* App. Br. 9–12; *see also* Reply Br. 7–46.

ii. " [I]n the case of Maeda's recording and reproducing apparatus, as discussed above, as clearly stated by Maeda throughout the specification, and as clearly shown in Figure 1 of Maeda, only memory controller 12 in the data-storage section 40 accesses the RAM buffer 13. RAM buffer 13 is not a

shared resource." App. Br. 15. "The Examiner has failed to make even a cursory attempt to show how locking would be introduced into Maeda's recording and reproducing apparatus, to discuss why locking would be introduced and what benefits that it would provide, or to discuss, in any way, how Maeda's memory controller could be modified in order to use locking." App. Br. 15. *See also* Reply Br. 7–46.

In response, the Examiner explains that "according to the definition in the prosecution history the term 'locked' means **'a memory in which access is prevented by certain components'**." Ans. 5. The Examiner further explains that "Okumura teaches that controller 26 disables each block in which data is stored for write protection by using a flag to lock some blocks of the buffer memory 25 to prevent overwriting." Ans. 9.

The Examiner further explains that

> [i]t is noted that there is a need of a logic in Maeda to prevent overwriting, *i.e.*, when the write pointer W catches up the address designated by the read pointer R, then R=x. Likewise, Okumura teaches using 'flags' or "locking" to prevent overwriting. Maeda needs some type of logic to prevent overwriting and Okumura teaches a method of using flags [or 'locking'] to prevent overwriting. Thus, by using the method of flags of Okumura in Maeda's system it would yield predictable results such as *to prevent overwriting* by using the known method of flags as taught by Okumura ([0049]).

Ans. 16–17 (emphasis added).

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in finding Okumura teaches the recited limitation (claim 1) "each random-access-memory buffer lockable and unlockable by the processor" and in the legal conclusion of obviousness.

Regarding argument (i), first, we must construe the term "lockable" (memory buffer) as recited in claim 1. *See In re Geerdes*, 491 F.2d 1260, 1262 (CCPA 1974) ("Before considering the rejections . . ., we must first [determine the scope of] the claims").

In this regard, Appellant's Specification discloses the following:

> Part of the efficiency provided by the buffering techniques of the system 100 is that only one buffer is "Locked" for a reading to the CODEC 114 while the other buffers are available for read/write operations. In the examples illustrated in FIGS. 4-9, sixteen buffers are allocated as part of the buffer 124. Thus, only 1/16 of the total buffer space is locked for data transfer to the CODEC 114 and is thus unavailable for other read/write operations. However, the remaining 15/16 of the total buffer space are available to be filled each time the storage device 126 is activated. Such operation is in sharp contrast to a typical buffering operation in which a buffer is allocated into two portions with only one-half of the buffer space available for read/write operations while the other half of the buffer space is locked for data transfer operations to the CODEC.

Spec. col. 10, ll. 42–56 (emphasis omitted).

The plain meaning of "lockout" in the computer context is: "The act of denying access to a given resource (file, memory location, I/O port), usually to ensure that only one program at a time uses that resource." MICROSOFT COMPUTER DICTIONARY 316 (5th ed. 2002).

Thus, we construe "lockable" (memory buffer) as (a memory buffer) capable of denying access to a given resource (file, memory location, I/O port). This construction is consistent with Appellant's Specification and is consistent with the Examiner's explanation that "according to the definition in the prosecution history the term 'locked' means **'a memory in which access is prevented by certain components'**." Ans. 5.

Given our construction, we review the Examiner's finding (*see* Final Act. 4–7) that Okumura teaches the recited (claim 1) "each random-access-memory buffer lockable and unlockable by the processor."

Okumura (¶ 49) discloses "when a certain block is judged as one for which writing should be disabled, the controller 26 sets a write protection judgment flag that corresponds to this block into 'write disabled' in the memory management table 27 so that no data can be stored into this block." Emphasis omitted.

We do not see Okumura disclosing (claim 1) "each random-access-memory buffer lockable and unlockable by the processor" because we agree with Appellant that Okumura's flag is not a lock; rather, Okumura's flag is stored information. In particular, Okumura's flag, which is stored information in the memory management table, does not deny access to a given resource (certain block) (when there is competition for access). *See* App. Br. 9–12; *see also* Reply Br. 7–46.

In reaching our conclusion, we note that Appellant admits that a semaphore is a type of lock. *See* Reply Br. 20. Further, we note that a semaphore may *include* a flag. *See* Reply Br. 20–21. That said, this does not mean that a flag is a lock because a flag does not deny access to a given resource (when there is competition for access); rather, the flag is stored information.

Thus, we are persuaded the Examiner erred in finding Okumura teaches the recited (claim 1) "each random-access-memory buffer lockable and unlockable by the processor."

Regarding argument (ii), Maeda (Figure 1) discloses a recording and reproducing apparatus. Maeda (Abstract) discloses:

> A reproducing apparatus in which a reproduction signal reproduced from a recording medium is temporarily stored in a memory and is thereafter read out, and in which, when the amount of accumulation of the reproduction signal stored in the memory becomes equal to or larger than a predetennined value, a function of at least one section of the reproducing apparatus is inhibited.

In addition, on the record before us, we do not see, in Maeda, competition for access to memory that creates a problem for a skilled artisan to resolve with a lock. Put another way, the record before us does not sufficiently establish that Maeda has a problem with overwriting in memory that would give a skilled artisan a reason to modify Maeda to prevent overwriting.

Thus, we conclude the Examiner's legal conclusion of obviousness lacks the required rational underpinning because the Examiner's articulated reason to combine the references, namely to prevent overwriting, is not a sufficient reason for a skilled artisan to combine Maeda and Okumura.

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Maeda and Okumura.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER BIRRELL AND OKUMURA

The Examiner finds Birrell and Okumura teach all limitations of claims 1–10. Final Act. 18–23 (incorporating by reference Request 72–92), Ans. 21–24. The Examiner reasons:

> Birrell discloses the limitations of claim 1 with the exception of locking/unlocking memory management. However, it would have been obvious to a person of the ordinary skill in the art to modify the system of ***Birrell*** with the teachings of ***Okumura*** of using flags to lock blocks of the memory buffer *to prevent writing* by another component (Okumura, [0049]) because it was a known technique that [] would yield predictable results.

Final Act. 23 (emphasis added); *see also* Request 89–91.

Appellant presents the following principal argument: "[I]n Maeda's recording and reproducing apparatus, only the memory controller accesses the RAM buffer. For this reason, there is no need for the introduction of a locking mechanism, since the RAM buffer is not a shared resource." App. Br. 19. The Examiner does not show how or why locking would be introduced into Maeda's recording and reproducing apparatus. *See* App. Br. 19–20. *See also* Reply Br. 7–46.

In response, the Examiner explains that the Examiner assumes Appellant refers to Birrell. Ans. 21. The Examiner further explains that

> Birrell needs some type of logic to prevent overwriting and Okumura teaches a method of using flags [or 'locking'] to prevent overwriting. Thus, by using the method of flags of Okumura in Birrell's system it would yield predictable results such as *to prevent overwriting* by using the known method of flags as taught by Okumura ([0049]).

Ans. 24 (emphasis added).

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in the legal conclusion of obviousness.

Birrell (Figure 1) discloses a portable audio player. Birrell (Abstract) discloses playing, with the audio player, data stored in RAM, and when appropriate, copying additional data from the disk drive to the RAM.

Okumura (¶ 49) discloses "when a certain block is judged as one for which writing should be disabled, the controller 26 sets a write protection judgment flag that corresponds to this block into 'write disabled' in the memory management table 27 so that no data can be stored into this block." Emphasis omitted.

Nonetheless, on the record before us, we do not see, in Birrell, competition for access to RAM that creates a problem for a skilled artisan to resolve with a lock. Put another way, the record before us does not sufficiently establish that Birrell has a problem with overwriting in RAM that would give a skilled artisan a reason to modify Birrell to prevent overwriting.

Thus, we conclude the Examiner's legal conclusion of obviousness lacks the required rational underpinning because the Examiner's articulated reason to combine the references, namely to prevent overwriting, is not a sufficient reason for a skilled artisan to combine Birrell and Okumura.

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Birrell and Okumura.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–10 OVER OKUMURA AND AKIYAMA

The Examiner finds Okumura and Akiyama teach all limitations of claims 1, 2, and 7–10. Final Act. 36 (incorporating by reference Request 135–147), Ans. 25–28.

Appellant presents, among other arguments, the following principal argument: Okumura teaches flags; Okumura does not teach locks. *See* App. Br. 22–23; *see also* Reply Br. 7–46.

Based upon our review of the record before us, including the Federal Circuit's remand, we conclude the Examiner erred in finding Okumura teaches the recited (claim 1) "each random-access-memory buffer lockable and unlockable by the processor."

For the reasons discussed above, we construe "lockable" (memory buffer) as (a memory buffer) capable of denying access to a given resource (file, memory location, I/O port). Given our construction, for the reasons discussed above, we are persuaded the Examiner erred in finding Okumura teaches the recited (claim 1) "each random-access-memory buffer lockable and unlockable by the processor."

We, therefore, do not sustain the Examiner's rejection of claims 1–10 as obvious over Okumura and Akiyama.

ORDER

The Examiner's decision rejecting claims 1–10 is reversed.

REVERSED

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cc: Third Party Requester

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