UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEALS BOARD

INTERNATIONAL BUSINESS MACHINES CORPORATION and
ORACLE AMERICA, INC.,
Petitioners,

v.

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH INSTITUTE,
Patent Owner.

Case No. IPR2014-00976
Patent 6,978,346 B2

**PETITIONERS' REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. §§ 42.71(c) AND (d)**

TABLE OF CONTENTS

Pursuant to 37 C.F.R. §§ 42.71(c)–(d), Petitioners International Business Machines Corporation and Oracle America, Inc. ("Petitioners") request rehearing of the Board's December 11, 2014 Decision (Paper 14) denying institution of *inter partes* review of U.S. Patent No. 6,978,346 ("the '346 patent").

I. INTRODUCTION

Petitioners respectfully submit that the Board abused its discretion in declining to institute *inter partes* review of the '346 patent as anticipated by U.S. Patent No. 6,070,251 and its counterpart Japanese Patent No. JP-H11-120092A (collectively, "Chong"). In declining institution, the Board accepted Patent Owner's assertion that Chong does not disclose a "RAID," dismissing the opinions of Petitioners' expert Dr. Katz as "not credible" and entitled to "little weight." These conclusions in turn rested on two findings regarding Chong's disclosures: (1) that Chong does not disclose "data mirroring," *i.e.*, identical data being written to the two data storage devices; and (2) that Chong does not disclose fail-over of data storage devices. But both of these findings were erroneous, misapprehending and/or overlooking pertinent disclosures—identified by Petitioners in the Petition and Dr. Katz in his Declaration—demonstrating Chong's use of a "RAID."

First, in finding that "the Chong controllers do not write identical data to both data storage devices," the Board accepted Patent Owner's description of the data flow, and its identification of a purported "missing write" between the cache

in one controller and the data storage device associated with the other controller that would allegedly be "necessary for Dr. Katz's assertion that '[data] is written identically to both storage devices 124 and 125.'" (Prelim. Resp. at 34; Decision at 8.) But Patent Owner's "missing write" theory was misleading, misrepresenting Chong's disclosures, and Petitioners' reliance on them. As shown in the Petition and Dr. Katz's declaration, Chong's "data mirroring" does not rely on this "missing write" at all, but rather is achieved through an entirely different data flow.

As shown in the Petition, *and as Patent Owner conceded*, Chong discloses identical data sent from *each* host to the caches on *both* controllers via primary and secondary network interface controllers (GBIC/PSOCs). (Petition at 10-11, 13-15, 17-18, 28-30, 32-36, 41-44, 50-56; Ex. 1001, ¶¶ 36, 40, 50, 57, 60, 63, 93, 95; Ex. 1005 at 3:45-48 ("Since both primary and secondary controllers **16** and **22** receive the same data, both caches **66** and **82** are filled at the same time in response to write commands from the host"); 4:26-28 ("[E]ach of controllers **116** and **122** is equivalent to the combination of primary and secondary controllers **16** and **22** in FIG. 1"), Fig. 3; Prelim. Resp. at 31 (Patent Owner's annotated figure 3 showing data from both hosts sent to both caches).) And Chong further discloses that the cached data in each controller is transferred to the data storage device directly associated with that controller. (Petition at 10-11, 13-15, 17-18, 28-30, 32-35, 41-42, 50-56; Ex. 1001, ¶ 36, 42, 48, 50, 93, 95; Ex. 1005 at 3:34-40 ("Fiber channel

frames supplied from the host are sent to primary controller **16**, which then responds on the loop by returning status information, etc. Frames addressed to data storage device **24** are passed through PSOC **62** via cache **66**. In the normal operation, the data on the loop is also received by secondary controller **22** and data storage device **24**."), 4:26-28 ("[E]ach of controllers **116** and **122** is equivalent to the combination of primary and secondary controllers **16** and **22** in FIG. 1."), Fig. 3; *see also* Prelim. Resp. at 33 (Patent Owner's annotated figure 3 excerpt showing free transfer of data from caches to data storage devices).)

Petitioners and Dr. Katz cited to these disclosures in pointing out that "[t]he Chong Reference discloses two data storage devices, where identical data is written to each." (Petition at 13; *id.* at 15 ("The Chong Reference discloses the preamble by describing a system having multiple hosts connected redundantly to a set of data storage device, where identical data is written to each storage device for data mirroring") (citations omitted); Ex. 1001, ¶ 36 ("The Chong Reference discloses a system with a RAID configuration. Data is written identically to both storage devices 124 and 125 in the system.") (citations omitted).)

As shown in Chong's Figure 3, therefore, the *identical* data in each cache—received from *each* host—is transferred to *both* data storage devices, **124** and **125**, resulting in "data mirroring." (*See, e.g.*, Petition at 13, 15, 32-33; Ex. 1001, ¶ 36; Ex. 1005 at 3:34-40, 4:26-28, Fig. 3.) Because the identical data is

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