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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS INC., Requester,

v.

VIRNETX INC., Patent Owner.

Appeal 2017-010954
Reexamination Control 95/001,851
Patent 7,418,504 B2
Technology Center 3900


SIU, Administrative Patent Judge

DECISION
In an earlier Decision, Appeal No. 2016-004575, mailed September 12, 2016 ("Decision"), we reversed the Examiner's decision favorable to the patentability of claim 11 as unpatentable over the combination of Martin\(^1\) and any one of Aziz\(^2\) or the combination of Lundenmann\(^3\) and Gaspoz\(^4\). Decision 31. Our reversal of the Examiner's decision not to reject claim 11 was designated as a new ground of rejection pursuant to 37 C.F.R. § 41.77(b). Id. Patent Owner filed a “Declaration of Fabian Monrose, Ph.D.,” dated October 11, 2016 (“Monrose Decl.” or “Monrose Declaration”) and elected to reopen prosecution under 37 C.F.R. § 41.77(b)(1) (“Request to Reopen Prosecution” filed October 12, 2016, “PO Request”). Requester filed comments pursuant to 37 C.F.R. § 41.77(c) in response to Patent Owner's request to reopen prosecution (“Third Party Comments To Patent Owner’s Request to Reopen Prosecution,” filed November 14, 2016 (“3PR Comments”)).

In accordance with 37 C.F.R. § 41.77(e), the Examiner “does not consider claim 11 to be patentable over the applied prior art of record.” “Examiner's Determination Under 37 C.F.R. § 41.77(d),” dated March 9, 2017.

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\(^2\) US Patent 6,119,234, issued September 12, 2000 ("Aziz").


2017 ("Examiner's Determination"), 3. Hence, the Examiner rejects claim 11 as unpatentable over the combination of Martin and any one of Aziz or the combination of Lendenmann and Gaspoz.


Pursuant to 37 C.F.R. § 41.77(f), the proceeding has been returned to the Board so that we may reconsider the matter and issue a new decision.

Claim 11 recites:

11. The system of claim 8, wherein the virtual private network is based on a network address hopping regime that is used to pseudorandomly change network addresses in packets transmitted between a first device and a second device.

Patent Owner argues that Martin fails to disclose this feature. PO Request 6. In particular, Patent Owner and Patent Owner’s expert (Dr. Fabian Monrose) argue that the network address hopping regime, as recited in claim 11, “allows, for example, ‘an eavesdropper [to] see[] apparently continuously random IP address pairs (source and destination) for packets transmitted between the pair.’” PO Request 5 (citing Monrose Decl. ¶ 19, Spec. 5:63-67, 6:66–7:6). Hence, Patent Owner argues that Martin fails to disclose an eavesdropper seeing apparently continuously random IP address pairs (source and destination) for packets transmitted between the pair.
As noted above, claim 11 recites that a network address hopping regime is used to pseudorandomly change network addresses in packets transmitted between a first device and a second device. We do not observe, nor does Patent Owner demonstrate persuasively, that claim 11 also recites an “eavesdropper [] see[ing] apparently *continuously* random IP address pairs (source and destination) for packets transmitted between the pair.” PO Request 5. We additionally need not consider whether or not Martin discloses this unclaimed feature. *Id.* at 6.

Patent Owner also argues that Martin discloses the following examples:

1) an example in which “options for providing anonymous IP service” are described and evaluated (PO Request 6 (citing Monrose Decl. ¶ 17)),
2) an example describing “methods to determine the set of anonymous address that can be used in a lanon” (*id.*),
3) an example in which “lanon members” “choose addresses . . . using techniques from § 4.4,” (*id.*),
4) an example involving “indirect connection addressing” in which a “lanon client” “select[s] its source address/port pair from ATCP at random subject to lanon uniqueness and application-specific constraints” (*id.* (citing Monrose Decl. ¶ 18),
5) an example in which “the source address/port pair is not changed for packets transmitted over the TCP connection” (*id.* at 7 (citing Monrose Dec. ¶ 18)).

Based on these examples that Patent Owner and Patent Owner’s expert (Dr. Monrose) allege Martin discloses, Patent Owner argues that Martin fails to disclose a network address hopping regime that is used to pseudorandomly change network addresses in packets transmitted between a first device and a second device, as recited in claim 11. *Id.* at 7. However,
even assuming Patent Owner and Patent Owner’s expert to be correct that Martin discloses the alleged examples enumerated by Patent Owner, neither Patent Owner nor Patent Owner’s expert demonstrate persuasively that the disclosure of any or all of the alleged examples indicate the failure of Martin to disclose the virtual private network is based on a network address hopping regime that is used to pseudorandomly change network addresses in packets transmitted between a first device and a second device, as recited in claim 11. As previously discussed in the record, the cited prior art discloses the claimed features. See, e.g., Decision 29–30; see also, e.g., Examiner’s Determination 4–5.

Patent Owner argues that “Martin does not ‘pseudorandomly change network addresses in packets’ . . . but rather randomly chooses a source label once for a particular TCP connection.” PO Request 7 (citing Monrose Decl. ¶ 20). This argument was previously raised and addressed. See, e.g., Decision 30. We remain unpersuaded by Patent Owner for at least the previously stated reasons of record and for reasons set forth by Requester. 3PR Comments 2–3.

Patent Owner further argues that the Examiner’s Determination “fails to give due consideration to Patent Owner’s submission in response to the Board’s new ground of rejection,” “incorrectly characterizes [the Monrose Declaration as being] premised on reading . . . unclaimed features . . . into claim 11,” implies “that the Decision improperly addressed unclaimed features, rather than the claimed features,” “glosses over the claimed features of the network address hopping regime,” “failed to consider all of the positions raised in the Request,” “misconstrues Patent Owner’s
arguments,” erroneously states that “Patent Owner . . . argued that the network address hopping regime is required to be used within a single packet,” and “misconstrues the claim language.” PO Comments on Exr’s Determ. 2–6.

We are not persuaded by Patent Owner’s arguments at least because, even assuming Patent Owner’s characterizations of the Examiner’s Determination to be correct, none of Patent Owner’s allegations support the contention that the cited prior art references fail to disclose or suggest that the virtual private network is based on a network address hopping regime that is used to pseudorandomly change network addresses in packets transmitted between a first device and a second device, as recited in claim 11. Hence, at least for reasons previously discussed above, throughout the record, and set forth by Requester, we are not persuaded by Patent Owner’s arguments that Martin supposedly fails to teach this feature. See e.g., 3PR Comments on Exr’s Determ. 2–3.

DECISION

We affirm the Examiner’s rejection of claim 11 under 35 U.S.C. § 103(a) as unpatentable over the combination of Martin and any one of Aziz or the combination of Lendenmann and Gaspoz.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Requests for extensions of time in this inter partes reexamination proceeding are governed by 37 C.F.R. § 1.956. See 37 C.F.R. § 41.79.
In the event neither party files a request for rehearing within the time provided in 37 C.F.R. § 41.79, and this Decision becomes final and appealable under 37 C.F.R. § 41.81, a party seeking judicial review must timely serve notice on the Director of the United States Patent and Trademark Office. See 37 C.F.R. §§ 90.1 and 1.983.

AFFIRMED

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