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Paper 13
Date: July 31, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case IPR2014-00404
Patent 7,987,274 B2

Before MICHAEL P. TIERNEY, KARL D. EASTHOM, and STEPHEN C. SIU, *Administrative Patent Judges.*

SIU, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. BACKGROUND

A. Background

Microsoft Corp. ("Petitioner") requests *inter partes* review of claims 1-5, 7, 8, 10, 12, 15, and 17 of U.S. Patent No. 7,987,274 B2 ("the '274 Patent," Ex. 1001) pursuant to 35 U.S.C. §§ 311 *et seq*.[1] VirnetX Inc. ("Patent Owner") filed a Preliminary Response ("Prelim. Resp.") on May 19, 2014. Paper No. 9.

We have jurisdiction under 35 U.S.C. § 314. The standard for instituting *inter partes* review is set forth in 35 U.S.C. § 314 (a) which provides:

> THRESHOLD -- The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

We determine based on the record that Petitioner has demonstrated, under 35 U.S.C. § 314(a), that there is a reasonable likelihood of unpatentability with respect to all of the challenged claims, claims 1–5, 7, 8, 10, 12, 15, and 17.

Petitioner relies on the following prior art:

US 6,225,993 B1 (Lindblad)	May 1, 2001	(Ex. 1009)
US 8,200,837 B1 (Bhatti)	June 12, 2012	(Ex. 1010)

Takahiro Kiuchi and Shigekoto Kaihara, "*C-HTTP – The Development of a Secure, Closed HTTP-based Network on the Internet*," PROCEEDINGS OF THE SYMPOSIUM ON NETWORK AND DISTRIBUTED SYSTEM SECURITY, IEEE, 1996 (Ex. 1004, "Kiuchi").

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[1] We cite to Petitioner's Revised Petition for *Inter Partes* Review, filed February 20, 2014, Paper 4.

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 102 and/or § 103 based on the following specific grounds (Pet. 4, 15-60):

Reference(s)	**Basis**	**Claims challenged**
Kiuchi	§ 102	1-4, 7, 8, 10, 12, 15, and 17
Kiuchi and Lindblad	§ 103	5
Kiuchi and Bhatti	§ 103	1-4, 7, 8, 10, 12, 15, and 17
Kiuchi, Bhatti and Lindblad	§ 103	5

B. The '274 Patent

The '274 Patent describes a system and method for establishing a secure communication link between a first computer and a second computer over a computer network. Ex. 1001, 6:40-42, 45:8-10. A user obtains a URL for a secure top-level domain name by querying a secure domain name service that contains a cross-reference database of secure domain names and corresponding secure network addresses. Ex. 1001, 46:44-47, 47:15-16. When the user queries the secure domain name service for a secure computer network address, the secure domain name service determines the particular secure computer network address and returns the network address corresponding to the request. Ex. 1001, 39:29-33, 38:66-39:3, 47:33-37.

Claim 1, the sole independent claims, follows:

> 1. A method of accessing a secure network address, comprising:
>
> sending a query message from a first network device to a secure domain service, the query message requesting from the secure domain service a secure network address for a second network device;
>
> receiving at the first network device a response message from the secure domain name service containing the secure network address for the second network device; and
>
> sending an access request message from the first network device to the secure network address using a virtual private network communication link.

We note that the '274 Patent is presently the subject of a co-pending case, *VirnetX Inc. v. Microsoft Corporation*, Docket No. 6:13cv351 (E.D. Tex.). *See* Pet. 1-2.

C. Claim Interpretation

Consistent with the statute and the legislative history of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (Sept. 16, 2011) ("AIA"), the Board interprets claim terms by applying the broadest reasonable interpretation in the context of the specification in which the claims appears. 37 C.F.R. § 42.100(b); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012).

Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and

precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Claim terms typically do not include limitations from embodiments described in a patent specification if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

1. *Access Request Message*

The parties do not propose a construction for this term, and it appears only in the claims of the '274 Patent. Claim 1 recites "sending an access request message from the first network device to the secure network address using a virtual private network communication link." This step appears after the first-listed step of "sending a query message" for a "secure network address." In other words, "sending an access request message" reasonably appears to be a query to communicate for information, services, or otherwise, which may occur after an initial step of sending a query for address information.

The '274 Patent supports this construction, for example, disclosing that "software module 3309 accesses secure server 3320 through VPN communication link 3321" at step 3411. Ex. 1001, 47:66–67. Here, access refers to further communication using a hopping regime with the desired server, for example, a securities trading website, server 3320. *See id*. at 47:26–29, 38–41; 48:4–6.

Patent Owner's citation implicitly refers to what appears to be a step that occurs relatively early in the disclosed process, step 3409, cited in a related portion of the '274 Patent as an example of an access request message. Prelim. Resp. 10 (citing Ex. 1001, 47:37–51). In that step, "SDNS 3313 accesses VPN gatekeeper 3314 for establishing a VPN communication link." Ex. 1001, 47:38–39. It is not clear how that passage relates to the recited access request message, which the first

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