

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case IPR2014-00483
Patent 7,987,274 B2

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

TIERNEY, *Administrative Patent Judge.*

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

I. BACKGROUND

A. Introduction

Petitioner, Apple Inc., filed a Petition requesting *inter partes* review of claims 1–5, 7, 8, 10, 12, 13, 15, 17, and 18 of U.S. Patent No. 7,987,274 B2 (“the ’274 Patent,” Ex. 1027) pursuant to 35 U.S.C. §§ 311–319. Paper 1 (“Pet.”). Patent Owner, VirnetX Inc., filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not 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, 13, 15, 17, and 18.

Petitioner relies on the following prior art references:

U.S. Patent No. 6,557,037 B1 (Apr. 29, 2003) (Ex. 1003, “Provino”).

U.S. Patent No. 6,151,628 (Nov. 21, 2000) (Ex. 1007, “Xu”).

Dave Kosiur, *Building and Managing Virtual Private Networks* (Sept. 1, 1998) (Ex. 1006, “Kosiur”).

S. Kent et al., *Security Architecture for the Internet Protocol*, Network Working Group, Request For Comments: 2401 1–66 (Nov. 1998) (Ex. 1032, “RFC 2401”).

M. Handley et al., *SIP: Session Initiation Protocol*, Network Working Group, Request For Comments: 2543 1–153 (Mar. 1999) (Ex. 1033, “RFC 2543”).

H. Schulzrinne et al., *RTP: A Transport Protocol for Real-Time Applications*, Network Working Group, Request For Comments: 1889 1–75 (Jan. 1996) (Ex. 1034, “RFC 1889”).

M. Handley et al., *SDP: Session Description Protocol*, Network Working Group, Request For Comments: 2327 1–42 (Apr. 1998) (Ex. 1035, “RFC 2327”).

E. Wedlund & H. Schulzrinne, *Mobility Support Using SIP*, Wowmom '99 Proceedings of the 2nd ACM International Workshop Wireless Mobile Multimedia (Ex. 1075, “Mobility Support”).

Pet. 3.

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. §§ 102 and 103 based on the following grounds:

Reference(s)	Basis	Claims challenged
Provino	§ 102(e)	1, 7, 8, 10, 12, 13, 15, and 17
Provino and Kosiur	§ 103(a)	2–5
Provino and Xu	§ 103(a)	18
RFC 2543	§ 102(b)	1-5, 7, 8, 10, 12, 13, 15, and 17–18
RFC 2543, RFC 1889, RFC 2327, and RFC 2401	§ 103(a)	1-5, 7, 8, 10, 12, 13, 15, and 17–18
RFC 2543 and Mobility Support	§ 103(a)	18

See id.

B. Related District Court Proceeding and Inter Partes Reviews

Patent Owner asserted the '274 Patent in *VirnetX Inc. v. Microsoft Corp.*, No. 6:13-cv-00351-LED (E.D. Tex. filed 2013). *See* Pet. 1–2. The '274 Patent also is challenged in Cases IPR2014-00403, IPR2014-00404, and IPR2014-00484. Decisions to Institute were issued on July 31, 2014 in both IPR2014-00403 and IPR2014-00404. In particular, the Board instituted trial in IPR2014-00403 on claims 1–5, 7, 8, 10, 12, 13, 15, 17, and 18, and in IPR2014-00404 on claims 1–5, 7, 8, 10, 12, 15, and 17.

C. The '274 Patent

The '274 Patent discloses secure networks. For example, the '274 Patent describes creating a secure communication link in the form of a virtual private network (“VPN”) link. Ex. 1027, 46:64–67.

For purposes of the instant Decision to Institute (“Decision”), we adopt and rely upon our decision in *Microsoft Corp. v. VirnetX Inc.*, Case IPR2014-00403 (PTAB July 31, 2014) (Paper 13) (“the '403 Decision”), including the description of the '274 Patent in the '403 Decision at 3–5.

D. Illustrative Claim

Claim 1, the sole independent claim, 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.

II. ANALYSIS

A. *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).

Both Petitioner and Patent Owner propose several definitions for certain claim terms. The definitions and arguments in support thereof are the same as those presented in the related ’403 IPR. For purposes of this Decision, the Board adopts and relies upon the claim constructions outlined in the ’403 Decision at 6-11.

B. *Redundancy*

Patent Owner contends that the Board should not institute a trial in light of the Petition’s presentation of redundant grounds. Prelim. Resp. 8. Patent Owner states that redundant grounds place a significant burden on the Board and Patent Owner and cause unnecessary delay. *Id.*

According to Patent Owner, the Petition is redundant to the ’403 and ’404 Petitions, which challenge common claims of the ’274 Patent. *Id.* at 10. Patent Owner states that the Petitioner fails to articulate a meaningful distinction in terms of relative strengths and weaknesses with respect to the

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