

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMANTEC CORP.
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01892
Patent 8,677,494

**PATENT OWNER'S PARTIAL REQUEST FOR
REHEARING PURSUANT TO 37 C.F.R. §§ 42.71(c) and 42.71(d)**

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Patent Owner, Finjan, Inc., (“Finjan” or “Patent Owner”) respectfully requests partial rehearing of the Board’s Decision on Institution (Paper No. 9) (“Institution Decision”) under 37 C.F.R. § 42.71(d). In particular, Finjan respectfully requests reconsideration of the decision to institute trial on Ground 3 of the Petition, which proposes that claims 1, 2, 5, 6, 10, 11, 14, and 15 of U.S. Patent No. 8,677,494 are unpatentable under 35 U.S.C. § 103(a) in view of Swimmer et al., *Dynamic Detection and Classification of Computer Viruses Using General Behaviour Patterns* (Ex. 1005, “Swimmer”).

I. INTRODUCTION

On March 18, 2016, the Board decided to institute *inter partes* review as to Ground 3 which asserts that claims 1, 2, 5, 6, 10, 11, 14, and 15 of the ‘494 Patent is unpatentable over Swimmer under 35 U.S.C. § 103(a). Finjan requests reconsideration because the Board “misapprehended or overlooked” arguments presented in Patent Owner’s Preliminary Response (Paper No. 7) (“POPR”). *See* 37 C.F.R. § 42.71(d). The matters misapprehended or overlooked by the Board amount to an abuse of discretion resulting in a decision that is based on an erroneous interpretation of law. *See Star Fruits S.N.C. v. U.S.*, 393 F. 3d 1277, 1281 (Fed. Cir. 2005) (“An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported

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