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Paper 10
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-02001
Case IPR2016-00157
Patent 8,225,408 B2[1]

Before THOMAS L. GIANNETTI, MIRIAM L. QUINN, and PATRICK M. BOUCHER, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge.*

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

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[1] We consolidate the proceedings under 35 U.S.C. § 314(d). The parties are directed to use a similar caption that identifies both proceedings in subsequently filed papers.

On September 30, 2015, Palo Alto Networks, Inc. ("Petitioner") filed a Petition (IPR2015-02001, Paper 2 ("Pet. 2001")) pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of certain claims (claims 1, 9, 22, 23, 29, and 35) of U.S. Patent No. 8,225,408 B2 ("the '408 patent"). On November 6, 2015, Petitioner filed a second Petition (IPR2016-00157, Paper 2 ("Pet. 157")) to institute an *inter partes* review of certain additional claims (claims 3–7, 12–16, and 18–21) of the '408 patent. Finjan, Inc. ("Patent Owner") filed Preliminary Responses (IPR2015-02001, Paper 6 ("Prelim. Resp. 2001"); IPR2016-00157, Paper 9 ("Prelim. Resp. 157")) on January 6, 2016, and February 17, 2016, respectively.

Claims 3–7 depend from independent claim 1, and claims 12–16 and 18–21 depend (directly or indirectly) from independent claim 9. Therefore, much of Petitioner's analysis in its Petition for IPR2016-00157, particularly as it relates to underlying independent claims 1 and 9 (which are specifically challenged in IPR2015-02001), duplicates the analysis presented in the Petition for IPR2015-02001. Similarly, Patent Owner's Preliminary Response in IPR2016-00157 largely reproduces the Preliminary Response filed in IPR2015-02001, relying principally on its arguments for underlying independent claims 1 and 9 in each of the challenges rather than directly addressing challenged dependent claims 3–7, 12–16, and 18–21. *See* Prelim. Resp. 157, 22, 27, 30, 32, 37, 39.

Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we consider these Petitions together, institute *inter partes* review of claims 1, 3–7, 9, 12–16, 18–23, 29, and 35,

and consolidate the trial proceedings. In subsequent briefing, the parties shall file consolidated briefs that collectively address the issues in both proceedings, subject to the usual page limits. The Board has not made a final determination of the patentability of any claim.

I. BACKGROUND

A. *The '408 Patent*

The '408 patent relates to network security, including scanning content that includes "mobile code" to produce a diagnostic analysis of potential exploits, such as viruses, within the code. Ex. 1001,[2] col. 1, ll. 19–20, col. 1, ll. 59–64. Figure 2 of the '408 patent is reproduced below.

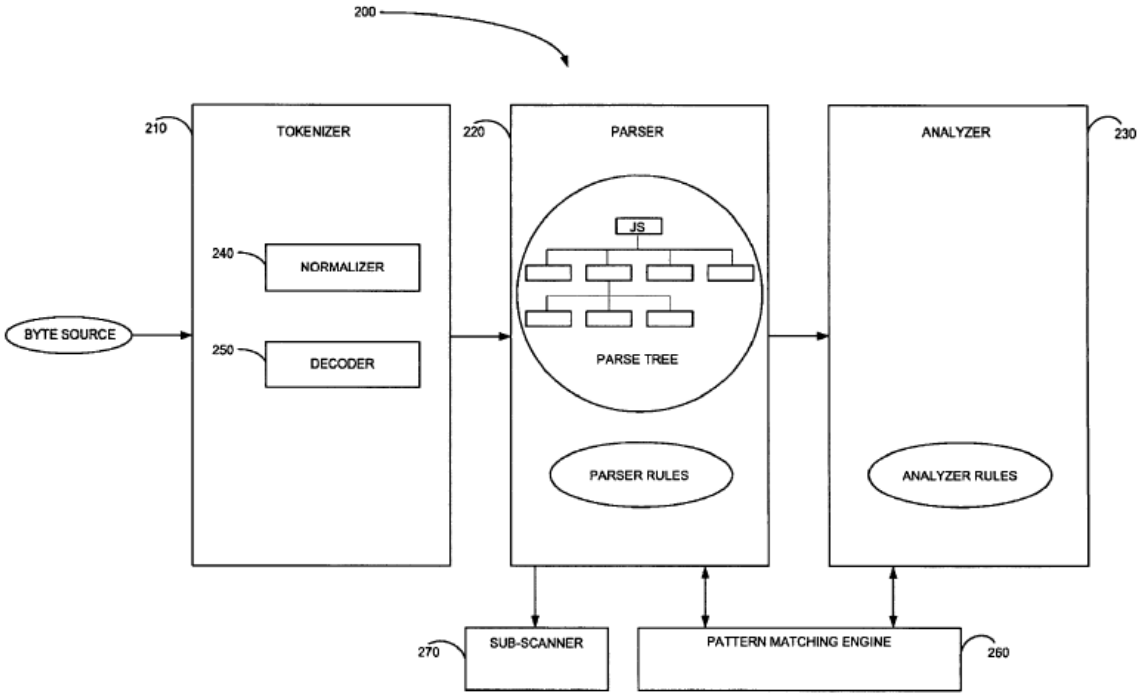

FIG. 2

[2] Unless otherwise noted, citations to exhibits are to IPR2015-02001.

Figure 2 provides a simplified block diagram of an adaptive rule-based content scanner system. *Id.* at col. 6, ll. 14–17.

The '408 patent explains that the adaptive rule-based scanner of Figure 2 "is preferably designed as a generic architecture that is language-independent, and is customized for a specific language through use of a set of language-specific rules." *Id.* at col. 6, ll. 17–20. In addition, "security violations, referred to as exploits, are described using a generic syntax, which is also language-independent." *Id.* at col. 6, ll. 28–30. Adaptive rule-based scanner 200 includes three main components: (1) tokenizer 210, which recognizes and identifies constructs (i.e., "tokens") within a byte source code; (2) parser 220, which controls the process of scanning incoming content, such as with a parse tree data structure that represents the incoming content; and (3) analyzer 230, which checks for exploits by searching for specific patterns of content that indicate an exploit. *Id.* at col. 6, ll. 50–54, col. 8, ll. 18–27, col. 9, ll. 19–22. Sub-scanner 270 is another adaptive rule-based scanner used to scan a subsection of input being processed by scanner 200. *Id.* at col. 9, ll. 7–8. Pattern matching engine 260 performs pattern matching for both parser 220 and analyzer 230, such as by accepting an input list of regular-expression elements describing a pattern of interest and an input list of nodes from the parse tree to be matched against the pattern of interest, and outputting a Boolean flag indicating whether a pattern is matched. *Id.* at col. 9, ll. 44–58.

Using a "scanner factory," such adaptive rule-based scanners may be produced "on demand" for different types of content. *Id.* at col. 15, ll. 15–16. The scanner factory "instantiates" a scanner repository, which produces

a single instance of multiple scanners, such as "a scanner for HTML content, a scanner for JavaScript content, and a scanner for URI content," each "able to initialize itself and populate itself with the requisite data." *Id.* at col. 15, ll. 31–41. When content is downloaded, a pool of thread objects is created and stores the scanner-factory instance as member data. *Id.* at col. 15, ll. 53–55. When a thread object has content to parse, it requests an appropriate scanner from its scanner-factory object; when the thread finishes scanning the content, it returns the scanner instance to its scanner factory, "to enable pooling the [adaptive rule-based] scanner for later use." *Id.* at col. 15, ll. 56–63.

B. Illustrative Claim

Independent claim 1 of the '408 patent is illustrative of the claims at issue.

> 1. A computer processor-based multi-lingual method for scanning incoming program code, comprising:
>
> receiving, by a computer, an incoming stream of program code;
>
> determining, by the computer, any specific one of a plurality of programming languages in which the incoming stream is written;
>
> instantiating, by the computer, a scanner for the specific programming language, in response to said determining, the scanner comprising parser rules and analyzer rules for the specific programming language, wherein the parser rules define certain patterns in terms of tokens, tokens being lexical constructs for the specific programming language, and wherein the analyzer rules identify certain combinations of tokens and patters as being indicators of potential exploits, exploits being portions of program code that are malicious;

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