UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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PALO ALTO NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

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

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

BOUCHER, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 C.F.R. § 42.42.71(d)

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[1] These proceedings have been consolidated.

Patent Owner requests rehearing of our Decision (Paper 10,[2] "Dec.") instituting *inter partes* review of claims 1, 3–7, 9, 12–16, 18, 19, 20–23, 29, and 35 of U.S. Patent No. 8,225,408 B2. Paper 12 ("Req. Reh'g").[3] On rehearing, the burden of showing that the Decision should be modified lies with Patent Owner, the party challenging the Decision. 37 C.F.R. 42.71(d). "The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." *Id.* Patent Owner contends that: (1) "the Board overlooked Patent Owner's argument that Chandnani does not disclose the 'dynamically detecting . . . ' feature of the challenged claims"; and (2) "the Board failed to provide any analysis of Walls [i.e., U.S. Patent No. 7,284,274 B1], leaving Patent Owner to guess at the reasons that trial was instituted." Req. Reh'g 2, 4.

Independent claim 1 recites "dynamically detecting, by the computer while said dynamically building builds the parse tree, combinations of nodes in the parse tree which are indicators of potential exploits, based on the analyzer rules." A similar limitation is recited in each of challenged independent claims 9, 22, 23, 29, and 35. In its Petitions, Petitioner contended that "Chandnani [i.e., U.S. Patent No. 7,636,945 B2] discloses dynamic detection because its tokenizer and analyzer operate 'continuously and simultaneously' on the incoming data stream, supporting its position with testimony by Dr. [Aviel] Rubin." Dec. 18 (citing Pet. 2001, 33–34

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[2] Unless otherwise indicated, citations are to IPR2016-00157.
[3] Patent Owner represents that the Requests for Rehearing filed in the two proceedings are "word-for-word identical." Paper 9, 1, n.1.

(citing Ex. 1003, col. 8, ll. 50–52, col. 9, ll. 12–16; Ex. 1002 ¶¶ 183–85));
See Paper 2 ("Pet. 157"), 35–36. Petitioner's contention was grounded on its observation that Chandnani discloses a detection stage "operat[ing] on a ***stream*** of tokens in the same way the tokenizer operates on the incoming stream of computer code." Pet. 157 (citing Ex. 1003, col. 8, ll. 50–52 ("If the check is a pattern match, the token stream is analyzed lexically using the pattern match detection data and language description data (step 44).").

In its Request for Rehearing, Patent Owner draws our attention to the following argument presented in its Preliminary Response for IPR2016-00157, with a similar argument presented in its Preliminary Response for IPR2015-02001:

> In fact, Chandnani's lexical analyzer (notably, tokenizer is not mentioned anywhere in the reference) does not operate 'continuously and simultaneously,' but rather discloses a sequential, disjointed process for tokenizing a data stream and processing the tokens. Once the data stream is generated on the computer, **Chandnani discloses performing a two stage process for detecting viruses that first 'tokenize[s] the data stream' and then 'process[es] the tokens using the detection data.'** *Id.* at 7:56–59. **Notably, as a result of this two-stage process, the processing of the tokens does not occur until after the data stream is fully tokenized**. *Id.; see also id.* at 8:50–53 ('If the check [to be performed] is a pattern match, the token stream is analyzed lexically using the pattern match detection data . . . . ').

Req. Reh'g 2–3 (citing Paper 9 ("Prelim. Resp. 157"), 29; IPR2015-02001, Paper 6, 19–20, n.6) (emphasis and alterations by Patent Owner). Patent Owner contends that "[t]hese arguments, which were explicitly presented in the [Preliminary Responses], and which were not addressed by the Petition

or the Board, fully rebut the unsupported argument presented in the Petitions upon which the Board relied in its decisions to institute trial in the instant cases." Req. Reh'g 3.

> The two-stage process described by Chandnani is not unambiguous:

> The data stream, in an embodiment in which the target script languages are defined by pattern matching rules and the patterns are associated with output tokens (described above), may be converted to a stream of tokens. The tokens may correspond to respective language constructs, and each token may be a corresponding unique number, symbol, etc. A detection process in that embodiment has two stages: (i) tokenize the data stream; and (ii) process the tokens using the detection data.

Ex. 1003, col. 7, ll. 51–59. That is, it is not apparent from this description that the two stages identified by Chandnani occur, as Patent Owner contends, as a "sequential, disjointed process," rather than as interleaved stages. At this stage of the proceeding, we credit the testimony of Dr. Rubin that "[i]n the context of the Chandnani + Kolawa combination, [operation on a stream of tokens] means that at any given time, the continuous data stream will intersect with both the tokenizer (which feeds nodes from the stream to the parse tree for storage) and the analyzer (which searches the nodes['] output by the parsing stage for patterns that represent potential exploits)." Ex. 1002 ¶ 190. Such testimony regarding what one of skill in the art would understand from Chandnani and Kolawa is not unambiguously contradicted by the disclosure identified by Patent Owner, and Patent Owner provides insufficient reason for us to discount it at this stage of the proceedings.

> With respect to Patent Owner's argument regarding Walls, Petitioner contended, in its Petitions, that the combination of Chandnani, Kolawa, and

Walls provides "an alternative ground for finding that two limitations in the independent claims . . . —the 'dynamically building' and 'dynamically detecting' elements common to every Petitioned Claim—would have been obvious to a [person of ordinary skill in the art] at the time of the alleged invention claimed in the '408 patent." Pet. 157, 54 (citation omitted). Petitioner relied on (1) Walls's disclosure of "a pipelined approach for certifying software wherein distinct components are assembled into a pipeline such that the results of one component are used as input for the next component," and; (2) Walls's disclosure of building an abstract syntax tree (which Petitioner identified as the "parse tree" recited in the claims) to feed a first pipeline stage at the same time upstream portions of code have not yet been received. Dec. 21; *see* Pet. 157, 55–56.

Patent Owner responded that such reliance was "both irrelevant and unsupported by any evidence." Prelim. Resp. 157, 36. We disagree with Patent Owner's argument that "Petitioner does not explain where [Walls] teaches (1) parsing and analyzing one part of a data stream or (2) while other parts of the stream are still being received." *Id.* Petitioner specifically identifies Figure 2 of Walls as showing building of an abstract syntax tree to feed a first pipeline stage at the same time upstream portions of code have not yet been received, and supports that reasoning with testimony by Dr. Rubin. Pet. 157 (citing Ex. 1005, col. 7, ll. 25–31, Fig. 2; Ex. 1002 ¶ 176). Petitioner makes that argument in its Petitions, and, to the degree the argument is supported by testimony of Dr. Rubin, our Institution Decision rejected Patent Owner's broad contention that Petitioner's reliance on Dr.

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