

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TALARI NETWORKS, INC.,

Petitioner,

v.

FATPIPE NETWORKS PRIVATE LIMITED,

Patent Owner.

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Case IPR2016-00976  
Patent U.S. 6,775,235

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**PATENT OWNER'S REQUEST FOR REHEARING**

## INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Patent Owner FatPipe Networks Private Limited and exclusive licensee FatPipe, Inc. (collectively, “FatPipe” or “Patent Owner”), respectfully request rehearing of the Board’s Final Written Decision of November 1, 2017. (Paper 32, “Decision”) for the following matters relevant to claims 4 and 9:

First, in determining “that it would have been obvious to modify Karol by *limiting the routing decision to an analysis of the packet’s source address*,” the Decision overlooks the fact that claim 4 of the ’235 patent expressly requires “select[ion] between network interfaces on a per-packet basis according to at least: a *destination* of the packet.” (Decision, pp. 19-20, emphasis added).

Second, in determining that dependent claim 9 is obvious for the same reason as claim 4, the Decision similarly overlooks that claim 9 depends from claim 5, which requires analysis of the “destination location” and “destination address.”

Third, the Decision overlooked or misapprehended the passages of the ’235 patent that describe path section based on the origin of the

packet as “coarse” and that distinguish such per-department and per-router methods from per-packet and per-session path selection. (See Ex. 1001, col. 4:15-23, 7:38-42, 11:33-38).

Fourth, the Decision overlooked and/or misapprehended that routing based on the source address will forward all packets from the same source to the same network, which is similar to the flow-based routing that the Board correctly distinguished from per-packet selection in claims 4 and 9. (Ex. 1001, col. 6:62–7:5, 7:38-42, 11:33-38).

## ARGUMENT

### **A. If Karol is modified to analyze only the source address of a packet, then the modified system excludes the subject matter of claim 4, which requires selection based on “a destination address.”**

Patent Owner argued in its response that “Karol does not disclose or render obvious ‘a packet path selector which selects between network interfaces on a per-packet basis according to at least: a *destination* of the packet ....” (PO Resp., pp. 23, 27, emphasis added). The Decision overlooked this limitation when it relied upon Petitioner’s assertion “that it would have been obvious to modify Karol by *limiting the routing*

*decision to an analysis of the packet's source address.*" (Decision, pp.19-20, emphasis added).

Claim 4 of the '235 patent requires "a packet path selector which selects between network interfaces on a per-packet basis according to at least: *a destination of the packet*, an optional presence of alternate paths to that destination, and at least one specified criterion for selecting between alternate paths when such alternate paths are present." The Board agreed with Patent Owner that "per-" packet means "selecting a network path/interface for each packet" (Decision, p. 9) and subsequently concluded that Karol does not disclose the per-packet selection required in claim 4 (Decision, p. 18-19). But, the Decision adopted Petitioner's fallback position that "that it would have been obvious to modify Karol by limiting the routing decision to an analysis of the packet's source address." (Decision, pp. 19-20).

This fallback position was conditioned on a claim construction that neither party advocated and that the Board did not adopt, namely, that per-packet basis means "regardless of the session with which the packet is associated." (Petition, p. 45). Nonetheless, Patent Owner was concerned by that possibility and urged that, if such a claim

construction was adopted (which it wasn't), a "POSITA would have found substituting [a] the packet-by-packet path selection process that considers multiple criteria including associated flows as explicitly disclosed in Karol with [b] a much simpler and known packet path selection process that considers only *source* address regardless of the session to yield a highly successful and predictable result" because it was an obvious substitution of one known element for another and obvious to try. (Petition, p. 46, citing Ex. 1005, ¶¶ 194-196, emphasis added). In any case, the Board didn't adopt that construction, and thus, "a packet path selector which selects between network interfaces on a per-packet basis according to at least: a *destination* of the packet ..." remains a limiting element of claim 4.

Because claim 4 requires that the destination of the packet is used to select between network interfaces on a per-packet basis, modifying Karol to limit the routing decision to an analysis of the packet's source address excludes the first of the three criteria specified in claim 4 for selecting a network—the destination of the packet.

Neither the Petition nor the Decision addresses how this new deficiency

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