UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TALARI NETWORKS, INC.
Petitioner

v.

FATPIPE NETWORKS INDIA LIMITED,
Patent Owner

Case No. IPR2016-00976
Patent 6,775,235 B2

PETITIONER'S REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71(d)

I. SUMMARY OF ISSUE FOR REHEARING

Petitioner Talari Networks ("Talari") respectfully requests rehearing under 37 C.F.R. Section 42.71(d) of the Board's Final Written Decision ("Decision," Paper 32) finding, *inter alia,* that Talari had not shown that Karol anticipates or renders obvious claim 19 of U.S. Patent No. 6,775,235 ("the '235 patent").

The Board correctly held that Karol anticipates or renders obvious challenged claims 4, 5, and 7–15 of the '235 patent. With respect to claim 19, the Board found that, like claim 5, claim 19 "is directed to combining connections for access to parallel networks" and Talari's contentions for claim 19 are similar to the contentions regarding claims 4 and 5. (Decision at 36.) The Board focused on a single limitation in claim 19 which recites, "wherein the step of sending a packet to the controller site interface is repeated as multiple packets are sent, and ***the controller sends different packets of a given message to different parallel networks***." (*See* Ex. 1001, Claim 19 (emphasis added); Decision at 36.) But the Board overlooked the teachings of the '235 patent regarding a "message," misinterpreted the scope of claim 19, and misapprehended Talari's argument regarding Karol, in finding that Karol does not also anticipate or render obvious claim 19.

In reaching its Decision, the Board focused on the use of the terms "datagram," "packet," and "message" in Karol. The issue, however, is not how

Karol uses those terms or whether Karol uses the terms "datagram" and "message" in an interchangeable manner or whether Karol interchanges the terms "packet" and "datagram." (Decision at 37.) Rather, the issue is whether Karol discloses sending different packets of a given "message" to different parallel networks as the term "message" is used in the '235 patent. The Board overlooked what constitutes a "message" in the context of the '235 patent and the scope of claim 19—namely, the '235 patent's teaching that a "session" is a "message." (Ex. 1001 at 11:40–43.) Indeed, the Board determined that Karol discloses a "session" (Decision at 33–34), which is by definition a "message" pursuant to the '235 patent.

In light of the '235 patent's teachings, the Board misapprehended Talari's argument regarding claim 19 and Karol's disclosure of sending different datagrams or packets carrying UDP segments of a given UDP session (*i.e.*, message) to different parallel networks—the CL network and the CO network. (*See* Decision at 36-37.) In Karol, the UDP *session* constitutes the "message" of claim 19, and different datagrams or packets carrying the UDP segments of the same given UDP *session* are sent to different parallel networks.

Talari respectfully requests that the Board grant rehearing and modify its Decision to find that Talari has shown, by a preponderance of the evidence, that Karol anticipates or renders obvious claim 19 of the '235 patent.

II. LEGAL STANDARDS

"A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board." 37 C.F.R. § 42.71(d). "The burden of showing a decision should be modified lies with the party challenging the decision" and "[t]he 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*.

III. ARGUMENT

A. The Board overlooked the '235 patent's teaching that a "session" constitutes a "message" as required by claim 19, and there is no dispute that Karol discloses a "session."

In finding that Karol does not render claim 19 unpatentable, the Board overlooked the '235 patent's teaching of what constitutes a "message" and misapprehended the literal scope of claim 19. In the Decision regarding claim 19, the Board focused on how Karol uses the terms "datagram," "packet," and "message"—but failed to consider what a "message" is in the context of the '235 patent. (Decision at 37.) The Board overlooked the fact that the '235 patent expressly states that a "session" is a "message":

> Security: divide the packets of ***a given message (session, file, web page, etc.)*** so they travel over two or more disparate networks, so that unauthorized interception of packets on fewer than all of the networks

> used to carry the message will not provide the total content of the message.

(Ex. 1001 at 11:40–43.) In addition to a "session," the '235 patent describes other examples of a "message," including a "file" or a "web page." (*Id.*) Talari and its expert, Dr. Negus, reiterated this point in describing the '235 patent: "The third of these enumerated criteria is 'Security', which the '235 Patent specification describes as 'divide the packets of a given message (session, file, Web page, etc.) so they travel over two or more disparate networks' (see, for example Ex. 1001 at 11:41-43)." (Ex. 1005 at ¶ 60; Paper 1 ("Pet.") at 5–6.) As such, in the context of the '235 patent, a "session" is within the literal scope of a "message" as required by claim 19.

Karol describes a "logical grouping of datagrams into ***a message***" (*compare* Decision at 37 (emphasis added)) because a "session" is a "message" in the context of the '235 patent. As Talari argued, and the Board correctly found, Karol discloses a logical grouping of a number of packets or datagrams, *i.e.*, a "flow" or a "session" as recited in the '235 patent:

> As discussed above in the context of claim 4, we determine that Petitioner has established that Karol discloses selecting a network for a flow of packets. *See supra* § III.A.2. We find that the selection per flow discloses the recited selection on a per session basis. A flow

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