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

v.

FATPIPE PRIVATE NETWORKS LIMITED[1],
Patent Owner.
_____

Case IPR2016-00976
Patent 6,775,235 B2
_____

Before STACEY G. WHITE, MICHELLE N. WORMMEESTER, and
CHRISTA P. ZADO, *Administrative Patent Judges*.

WHITE, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

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[1] We note that Patent Owner's Updated Mandatory Notice changed the name
of the Patent Owner. Paper 30.

I. INTRODUCTION

Talari Networks, Inc. ("Petitioner") seeks rehearing (Paper 34, "Request" or "Req. Reh'g") of our determination in the Final Written Decision (Paper 32, "Decision" or "Dec.") that Petitioner had not met its burden to establish the unpatentability of claim 19 of U.S. Patent No. 6,775,235 B2 (Ex. 1001, "the '235 patent"). Petitioner contends that we erred in our determination that Karol did not anticipate or render obvious the limitation of claim 19, which recites that "the controller sends different packets of a given message to different parallel networks." Req. Reh'g 1.

"The burden of showing a decision should be modified lies with the party challenging the decision." 37 C.F.R. § 42.71(d). When requesting rehearing of a decision, the challenging party must identify specifically all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in the record. *Id.* We have considered Petitioner's Request, but for reasons that follow, we decline to modify our Decision.

II. DISCUSSION

Petitioner's contentions are directed to claim 19, which recites, in relevant part, "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." In the Decision, we found that Petitioner did not establish that Karol disclosed sending different packets of a given message to different parallel networks. Dec. 37. Petitioner contends that we "overlooked the teachings of the '235 patent regarding a 'message,' misinterpreted the scope of claim 19, and misapprehended [Petitioner's] argument regarding Karol, in finding that

Karol does not also anticipate or render obvious claim 19." Req. Reh'g 1.
According to Petitioner, our analysis as to Karol's usage of the terms
"packet," "datagram," and "message" was in error because we
misapprehended the meaning of a message in the context of the '235 patent.
Id. at 1–2. All of Petitioner's arguments are premised on its assertion that a
session is an example of a message. *See generally id.* For reasons stated
below, we disagree with Petitioner's assertion and thus, we are not
persuaded of error as to claim 19.

 Petitioner argues that we overlooked the '235 patent's teaching as to
what a "message" is. *Id.* at 3. As an initial matter, we note that at no point
during the proceeding did Petitioner assert that "message" had been defined
by the Patentee. *See* Pet. 7–8; Reply 1. Now, Petitioner contends that, "the
'235 patent expressly states that a 'session' is a 'message.'" *Id.* Petitioner
relies on the following passage from the '235 patent to support that
assertion:

> 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, 11:40–43.

 As an initial matter, we note that Petitioner did not discuss this
passage of the '235 patent in its Petition or Reply Brief. Petitioner's
declarant, Dr. Kevin Negus, mentioned it once as part of the overview of the

patent (Ex. 1005 ¶ 60[2]), however, Petitioner did not reference or otherwise discuss this passage in its discussion of claim 19. Thus, we could not have overlooked or misapprehended Petitioner's argument because it was not made during the trial.

Further, we disagree with Petitioner's reading of this portion of the Specification. In this portion of the '235 patent, the Specification is describing "criteria [that] may be used to select a path for a given packet, for a given set of packets, and/or for packets during a particular time period." *Id.* at 11:8–10. This passage discusses path selection to address redundancy, load-balancing, and security. *Id.* at 11:11–63. Petitioner focuses on the portion that describes path selection to address security concerns. The patent describes improving security by dividing "the packet of a given message (session, file, web page, etc.)." *Id.* at 11:40–43. According to Petitioner this parenthetical, "(session, file, web page, etc.)," describes other examples of a message. Req. Reh'g at 4. We are not persuaded that this parenthetical phrase should be construed in that manner. For example, "etc." is listed in that parenthetical phrase and that indicates this is a listing of alternatives and not necessarily equivalents. In other words, the passage describes enhancing security by dividing packets from a message *or* other source such as a session, file, web page, etc. Thus, we are not persuaded

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[2] Petitioner cites this portion of Dr. Negus's report as part of its general discussion of the '235 patent. Pet. 5–6. That paragraph, however, was cited to support its description of the '235 patent as teaching "that secure routing paths were used to route to 'Internet-based communication solutions such as VPNs and Secure Sockets Layer (SSL).' (*See, e.g.*, Ex. 1001 at 4:5-10; Ex. 1005 at ¶¶ 60, 115.)" *Id.* This portion of the Petition provided background for Petitioner's general understanding of the '235 patent, but it did not address Petitioner's specific contentions as to claim 19.

that the cited passage supports Petitioner's argument that the Patentee
viewed sessions, files, and web pages to be examples of messages.

Petitioner's arguments as to claim 19 are premised on its assertion that
the '235 patent defines a session as a type of message. *See* Reh'g Req. at 4
("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."); *id* at 5 ("In view of the '235
patent's teaching that a 'session' is a 'message,' Karol discloses sending
different packets of a given message (*i.e.*, session) to different parallel
networks."); *id.* at 6 ("Talari's argument is not based on the use of the term
'message' *in Karol* (*see* Decision at 37), but rather, the use of the term
'message' as set forth in the '235 patent."). We are not persuaded that the
Specification of the '235 patent supports Petitioner's argument that a session
is a message. Thus, we are not persuaded that Petitioner has shown that we
have overlooked or misapprehended its arguments concerning claim 19.
Therefore, we are not persuaded of error in our determination that Petitioner
had not proven by a preponderance of the evidence the unpatentability of
claim 19.

III. CONCLUSION

Having considered Petitioner's Request, Petitioner has not persuaded
us, for the reasons discussed, that our Decision should be modified.

IV. ORDER

Accordingly, it is:

ORDERED that Petitioner's Request for Rehearing is *denied*.

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