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Paper No. 11
Entered: November 17, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDVINE CORPORATION and SANDVINE INCORPORATED ULC,
Petitioner,

v.

PACKET INTELLIGENCE, LLC,
Patent Owner.

Case IPR2017-00769 (Patent 6,651,099 B1)[1]
Case IPR2017-00862 (Patent 6,665,725 B1)
Case IPR2017-00450 (Patent 6,771,646 B1)
Case IPR2017-00451 (Patent 6,839,751 B1)
Case IPR2017-00629 (Patent 6,954,789 B2)
Case IPR2017-00630 (Patent 6,954,789 B2)

Before ELENI MANTIS MERCADER, JUSTIN T. ARBES, and WILLIAM M. FINK, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Requests for Rehearing
37 C.F.R. § 42.71(d)

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[1] We enter one Decision on Rehearing for the above identified proceedings because of the presence of common issues and involvement of the same parties. The parties are not authorized to use this style heading for any subsequent papers.

Introduction

In each of the instant proceedings, Petitioner filed a Request for Rehearing of our Decision denying institution of an *inter partes* review and Patent Owner filed an Opposition, pursuant to our authorization provided to the parties by email on August 29, 2017.[2] The arguments made by the parties and the factual circumstances of each case are similar. For purposes of this Decision, we treat the Request for Rehearing in Case IPR2017-00769 as representative, and specifically discuss the circumstances of that request. For the reasons stated below, Petitioner's Requests for Rehearing are *denied*.

Analysis

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). The party requesting rehearing bears the burden of showing an abuse of discretion, and "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d).

Petitioner contends that we overlooked or misapprehended parts of the Engel Appendix VI source code relied upon to demonstrate

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[2] *See* IPR2017-00769, Papers 8 ("Decision" or "Dec."), 9 ("Req. Reh'g"), 10 ("Opp."); IPR2017-00862, Papers 8, 9, 10; IPR2017-00450, Papers 8, 9, 10; IPR2017-00451, Papers 8, 9, 10; IPR2017-00629, Papers 8, 9, 10; IPR2017-00630, Papers 8, 9, 10. Unless otherwise specified, we refer to papers filed in Case IPR2017-00769.

application-specific dialogs, which Petitioner argues meet the "conversational flow" limitations of the challenged claims. Req. Reh'g 1. Specifically, Petitioner asserts that "the Engel Appendix VI source code disclose[s] that (i) Application Level Dialogs are looked-up in an application-specific dialog hash table through application-specific processing routines and (ii) the hash look-up table includes *only* dialog records for the specific application." *Id.* at 1–2, 4–12. Petitioner similarly asserts that we "overlooked or misapprehended parts of the Engel Appendix VI source code demonstrating that (i) Application-Specific Server Statistics are looked-up in an application-specific server hash table through application-specific processing routines and (ii) the hash look-up table includes *only* server records for the specific application." *Id.* at 2, 12–15. Petitioner contends that it referred to Network File System (NFS) requests in the Petition as an "exemplary application activity," but further "noted that [the] Engel Appendix VI source code supported other expressly disclosed application activities (e.g., FTP, SMTP, Telnet) each of which included similar, if not identical, application-specific processing routines to those specifically discussed for NFS." *Id.* Petitioner asserts that "each supported application in Engel has its own code and own data structures for creating and tracking its own application-specific dialogs and server statistics." *Id.*

Petitioner further asserts that "[t]he determination of which application-specific routines will be executed on a particular packet is determined 'based on the program identified from the port to program

map.'" *Id.* at 10 (quoting Ex. 1006 ¶ 77 (cited at Pet. 19 n.3)). Petitioner cites the following example:

> If the program identified is FTP, the next layer's parse routine is rtp_ftp_parse. Engel Appendix VI at p. 132 of rtp_tcp_p.c. If the program identified is Telnet, the next layer's parse routine is rtp_telnet_parse. Engel Appendix VI at p. 132 of rtp_tcp_p.c. If the program identified is SMTP, the next layer's parse routine is rtp_smtp_parse. Engel Appendix VI at p. 132 of rtp_tcp_p.c. Finally, if the program identified is PortMapper, NFS, or NFS Mount, the next layer's parse routine is rtp_rpc_parse. Engel Appendix VI at p. 132 of rtp_tcp_p.c.

Id. (citing Ex. 1009, 132) (emphases omitted). Petitioner asserts that, "at a minimum, . . . it is at least reasonably likely that the Application Layer Dialogs in Engel are application specific." *Id.*

Patent Owner contends we did not misapprehend or overlook anything because Petitioner's hash table argument is a new argument inappropriate for a rehearing request because it was not raised or developed in the Petition. Opp. 2–3; *see Sophos Ltd. et al. v. Fortinet, Inc.*, Case IPR2015-00910, slip op. at 4–5 (PTAB Oct. 26, 2015) (Paper 10) ("A request for rehearing is not an opportunity to present new arguments or evidence that could have been presented and developed in the Petition . . . . [W]e could not have overlooked or misapprehended arguments or evidence not presented and developed by [Petitioner] in the Petition."); *Telit Wireless Solutions Inc. v. M2M Solutions LLC*, Case IPR2016-00055, slip op. at 3, 5 (PTAB May 24, 2016) (Paper 13) ("A request for rehearing is not an opportunity for a party to add new arguments, or bolster prior arguments that were found

unpersuasive. . . . Petitioner attempts, belatedly, to provide explanation we found lacking in the original Petition."); *Ericsson Inc. v. Intellectual Ventures II LLC*, Case IPR2015-01872, slip op. at 4 (PTAB April 19, 2016) (Paper 15) ("This argument was not presented in the Petition. A request for rehearing is not an opportunity for a party to introduce new argument, bolster insufficient argument, or mend gaps in the evidence relied on in the Petition.").

Patent Owner further contends that Petitioner's new arguments pertaining to application hash tables do not show how these hash tables allegedly satisfy our construction of the term "conversational flow," which we construed as

> the sequence of packets that are exchanged in any direction as a result of an activity (for instance, the running of an application on a server as requested by a client), where some conversational flows involve more than one connection, and some even involve more than one exchange of packets between a client and server.

Opp. 7 (citing Dec. 9). Patent Owner contends that Petitioner appears to conflate the terms "application" and "protocol" in the Request. *Id.* at 9. According to Patent Owner, a "protocol" is "an established rule for formatting data," *see* Paper 6, 4, whereas an "application" is "a software program that runs on a computer, for example, a web browser, word processor, Skype, etc." Opp. 9 (citing Ex. 1006 ¶ 37 ("[The] application layer is concerned with the application itself. Examples of application layer protocols include HTTP (for web browsing), SMTP (for emails), and FTP (for file transfers).")).

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