

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIPTELA, INC.,
Petitioner,

v.

FATPIPE NETWORKS PRIVATE LIMITED,
Patent Owner.

Case IPR2017-01125
Patent 6,775,235 B2

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

ZADO, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a) and 37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Viptela, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) seeking to institute an *inter partes* review of claims 4–15, 19, and 22–24 (the “Challenged Claims”) of U.S. Patent No. 6,775,235 B2 (Ex. 1001, the “’235 patent”) pursuant to 35 U.S.C. §§ 311–319. FatPipe Networks Private Limited (“Patent Owner”) filed a Preliminary Response. (Paper 7, “Prelim. Resp.”). We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Petitioner contends the Challenged Claims are unpatentable under 35 U.S.C. § 103 on the following specific grounds (Pet. 4):

| References | Basis | Claims Challenged |
|---|-------|---------------------|
| Karol ¹ and Zhang ² | § 103 | 5–11, 14, and 22–24 |
| Karol and Pearce ³ | § 103 | 4 and 19 |
| Karol, Zhang, and Pearce | § 103 | 9, 10, and 14 |
| Karol, Zhang, and McCullough ⁴ | § 103 | 6, 9–15, and 22–24 |

For reasons discussed below, we decline to institute *inter partes* review of the Challenged Claims of the ’235 patent.

¹ U.S. Patent No. 6,628,617 B1 (“Karol,” Ex. 1006).

² U.S. Patent No. 6,396,833 B1 (“Zhang,” Ex. 1019).

³ U.S. Patent No. 5,910,951 (“Pearce,” Ex. 1021).

⁴ U.S. Patent App. Publ. No. 2002/0010866 A1 (“McCullough,” Ex. 1020).

B. Related Proceedings

Prior to filing this Petition, Petitioner filed a petition for *inter partes* review challenging claims 4–15, 19, and 22–24 of the '235 patent (IPR2017-00684 (the “'684 IPR”)), and a petition for *inter partes* review of a related patent, U.S. Patent 7,406,048 (the “'048 patent”) (IPR2017-00680). We instituted review of claims 6 and 22–24 of the '235 patent on July 14, 2017, and we denied institution with respect to the '048 patent.

In addition, the '235 patent is the subject of a separate proceeding, IPR2016-00976 (the “'976 IPR”), filed by Talari Networks, Inc., for which a final written decision is due November 2, 2017.

Also, Petitioner informs us that the '235 and the '048 patents have been asserted against Petitioner in the following proceeding: *FatPipe, Inc. v. Viptela, Inc.*, No. 1:16-cv-182 (D. Del.). Pet. 1; *see also* Paper 6, 1. Patent Owner indicates that the '235 and '048 patents also are subject to additional district court proceedings and additional *inter partes* review proceedings. Paper 6, 1–2; Paper 8, 1–2.

C. The '235 Patent

The '235 patent describes a system and method for communicating using two or more disparate networks in parallel. Ex. 1001, Abstract. For example, an embodiment of this system could be composed of a virtual private network (“VPN”) in parallel with a frame relay network. *Id.* at 1:19–24. These parallel networks back each other up in case of failure and when both networks are operational their loads are balanced between the parallel networks. *Id.* at Abstract. An embodiment of this system is depicted in Figure 10, which is shown below.

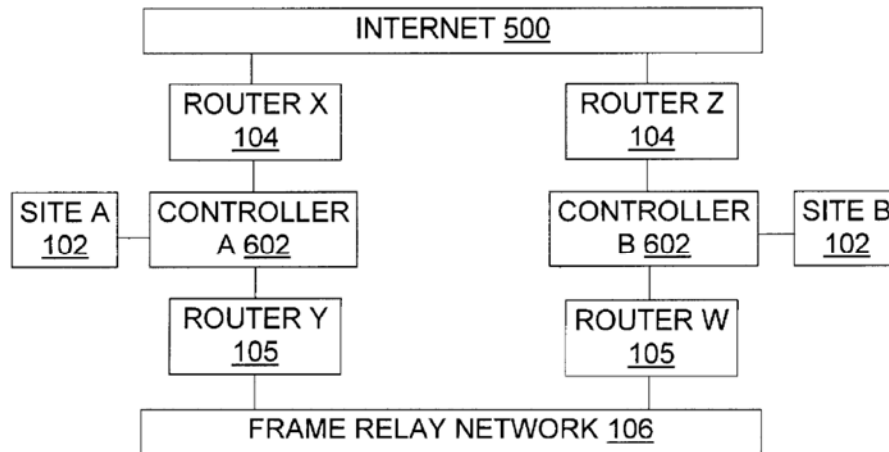


Fig. 10

Figure 10 depicts an example of the network topology described in the '235 patent. *Id.* at 8:29–30. Two sites 102 transmit and/or receive data from one another. *Id.* at 2:38–40. These sites are connected by two disparate networks, Internet 500 and frame relay network 106. *Id.* at 8:30–32. Each location has frame relay router 105 and Internet router 104. *Id.* at 8:32–33. “Access to the disparate networks at site A and site B is through an inventive controller 602 at each site.” *Id.* at 6:34–36. Controller 602 “allows load-balancing, redundancy, or other criteria to be used dynamically, on a granularity as fine as packet-by-packet, to direct packets to an Internet router and/or a frame relay/point-to-point router according to the criteria.” *Id.* at 9:12–17.

Figure 7 of the '235 patent is reproduced below.

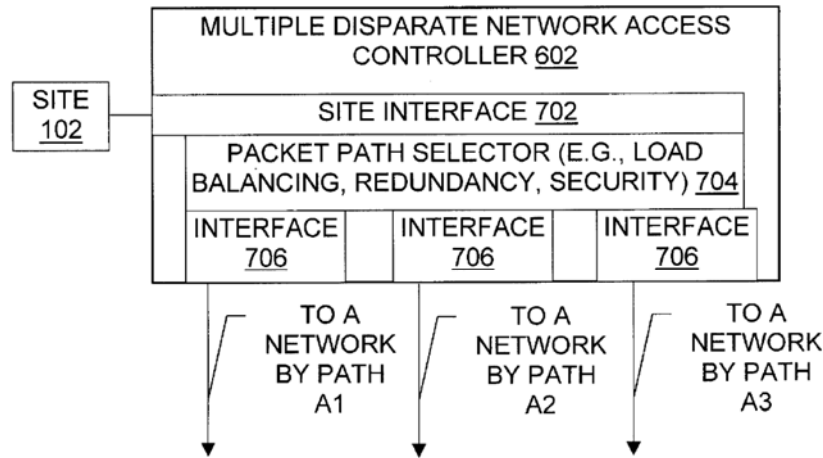


Fig. 7

Figure 7 depicts controller 602. *Id.* at 10:59–60. Controller 602 is connected to site 102 via site interface 702. *Id.* at 10:60–63. Packet path selector 704 is hardware or software that determines which path a given packet is to travel. *Id.* at 11:2–6. The criteria used to determine which path a packet travels may be based on concerns such as redundancy, load-balancing, or security. *Id.* at 11:6–63. Controller 602 also has two or more network interfaces 706 (at least one per each network for which controller 602 controls access). *Id.* at 11:64–67.

D. Illustrative Claim

As noted above, Petitioner challenges claims 4–15, 19, and 22–24 of the '235 patent, of which claims 4, 5, 19, and 22 are independent. Claim 22 is illustrative of the challenged claims and is reproduced below:

22. A computer storage medium having a configuration that represents data and instructions which will cause performance of a method for combining connections for access to multiple parallel disparate networks, the method comprising the steps of:

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.