Trials@uspto.gov
571-272-7822

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2017-01395
Patent 8,805,948 B2

Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FISHMAN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

I. INTRODUCTION

Intel Corporation ("Petitioner") requests *inter partes* review of claims 1, 3, 6–9, 11, 14–17, 19, 21, and 22 of U.S. Patent No. 8,805,948 B2 ("the '948 patent," Ex. 1001) pursuant to 35 U.S.C. §§ 311 *et seq*. Paper 2 ("Pet."). Alacritech, Inc. ("Patent Owner") filed a preliminary response. Paper 7 ("Prelim. Resp."). Institution of an *inter partes* review is authorized by statute when "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition, Preliminary Response, and the evidence of record, we conclude the information presented fails to show that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of claims 1, 3, 6–9, 11, 14–17, 19, 21, and 22 of the '948 patent.

A. Related Matters

We are informed that the '948 patent is presently related to the following: *Alacritech, Inc. v. CenturyLink, Inc.,* Case No. 2:16-cv-00693-JRG-RSP (E.D. Tex.); *Alacritech, Inc. v. Wistron Corp.,* Case No. 2:16-cv-00692-JRG-RSP (E.D. Tex.); and *Alacritech, Inc. v. Dell Inc.,* Case No. 2:16-cv-00695-RWS-RSP (E.D. Tex.). Pet. 3; Paper 3, 1.

B. The '948 Patent (Ex. 1001)

The '948 patent describes a system and method for "fast-path" protocol processing of communicated information in computer networks. *See* Ex. 1001, 3:53–4:5.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

C. Illustrative Claim

Independent claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A method for network communication by a host computer having a network interface that is connected to the host by an input/output bus, the method comprising:
>
> running, on the host computer, a protocol processing stack including an Internet Protocol (IP) layer and a Transmission Control Protocol (TCP) layer, with an application layer running above the TCP layer;
>
> initializing, by the host computer, a TCP connection that is defined by source and destination IP addresses and source and destination TCP ports;
>
> receiving, by the network interface, first and second packets, wherein the first packet has a first TCP header and contains first payload data for the application, and the second packet has a second TCP header and contains second payload data for the application;
>
> checking, by the network interface, whether the packets have certain exception conditions, including checking whether the packets are IP fragmented, checking whether the packets have a FIN flag set, and checking whether the packets are out of order;
>
> if the first packet has any of the exception conditions, then protocol processing the first TCP header by the protocol processing stack;
>
> if the second packet has any of the exception conditions, then protocol processing the second TCP header by the protocol processing stack;
>
> if the packets do not have any of the exception conditions, then bypassing host protocol processing of the TCP headers and storing the first pay load data and the second payload data together in a buffer of the host computer, such that the payload data is stored in the buffer in order and without any TCP header stored between the first payload data and the second payload data.

Id. at 19:42–20:7.

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

D. Asserted Grounds of Unpatentability

Petitioner asserts that claims 1, 3, 6–9, 11, 14–17, 19, 21, and 22 are unpatentable under 35 U.S.C. 103(a) over the combined disclosures of Thia,[1] Tanenbaum96,[2] and Stevens2.[3] Pet. 15.

II. DISCUSSION

A. Prior Art Printed Publication

Before reaching the merits of Petitioner's obviousness contentions, all of which are based, in part, on Stevens2, we must determine as a threshold issue whether Stevens2 is a prior art printed publication under 35 U.S.C. § 311(b). It is Petitioner's burden to prove that it is, as Petitioner bears the burden of proving unpatentability by a preponderance of the evidence. *See* 35 U.S.C. § 316(e). Petitioner argues Stevens2 was published "no later than April 7, 1995," antedating the 1997 priority date of the '948 patent, and, thus, is prior art under 35 U.S.C. § 102(b). Pet. 45 n.9 (citing Ex. 1063 the "Stansbury Declaration").

Patent Owner argues Stevens2 is not properly available as prior art in this preliminary proceeding. Prelim. Resp. 26–33. Specifically, Patent Owner argues the Stansbury Declaration is insufficient to show that Stevens2 is a printed publication available as a reference in this proceeding. *Id.* at 28–30. Patent Owner contends the Stansbury Declaration fails to

---

[1] Y.H. Thia and C.M. Woodside, *A Reduced Operation Protocol Engine (ROPE) for a Multiple-Layer Bypass Architecture*, 1995 ("Thia," Ex. 1015).
[2] Andrew S. Tanenbaum, *Computer Networks*, Third Edition, 1996 ("Tanenbaum96," Ex. 1006).
[3] W. Richard Stevens *et al.*, *TCP/IP Illustrated, Volume 2*, 1995 ("Stevens2," Ex. 1013).

Find authenticated court documents without watermarks at docketalarm.com.

evidence any personal knowledge that Stevens2 was publicly available and fails to explain any "methodology" by which she determined its public availability. *Id.* at 29. Patent Owner particularly notes Ms. Stansbury's "hedging language" that her opinion is "[a]s best [she] can determine." *Id.*

The determination of whether a document is a "printed publication" under 35 U.S.C. § 102 "involves a case-by-case inquiry into the facts and circumstances surrounding the reference's disclosure to members of the public." *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). "Because there are many ways in which a reference may be disseminated to the interested public, 'public accessibility' has been called the touchstone in determining whether a reference constitutes a 'printed publication' bar under 35 U.S.C. § 102(b)." *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016) (quoting *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986)).

Other than the above-identified statement (Pet. 45 n.9) and the Stansbury Declaration (Ex. 1063), Petitioner provides no other explanation or evidence in support of the contention that Stevens2 is available as a prior art printed publication in this proceeding. An image of Exhibit 1063 is reproduced below in its entirety:

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

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.

WHAT WILL YOU BUILD? | sales@docketalarm.com | 1-866-77-FASTCASE

fastcase®
Smarter legal research.