

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIPTELA, INC.,
Petitioner,

v.

FATPIPE NETWORKS INDIA LIMITED,
Patent Owner.

Case IPR2017-00680
Patent 7,406,048 B2

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

WHITE, *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 1–24 of U.S. Patent No. 7,406,048 B2 (Ex. 1003, “the ’048 patent”) pursuant to 35 U.S.C. §§ 311–319. FatPipe Networks India Limited¹ (“Patent Owner”) filed a Preliminary Response. (Paper 6, “Prelim. Resp.”). We have jurisdiction 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. §§ 102 and 103 on the following specific grounds (Pet. 10–60):

Reference(s)	Basis	Claims Challenged
Karol ²	§ 102	1, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, and 24
Karol and Stallings ³	§ 103	1–5, 7–11, 13–17, and 19–23
Karol	§ 103	1–24

¹ The panel takes notice that the caption in Patent Owner’s Preliminary Response (Paper 6) reads “FATPIPE NETWORKS PRIVATE LIMITED,” which is a change from what Patent Owner stated as the Real Party-In-Interest in its Mandatory Notices (Paper 5, 1). The panel reminds Patent Owner that pursuant to 37 C.F.R. § 42.8(a)(3), new mandatory notices must be filed within 21 days if there are any changes to the information required under 37 C.F.R. § 42.8(b).

² U.S. Patent No. 6,628,617 B1 (“Karol,” Ex. 1006).

³ William Stallings, *Data and Computer Communications*, Prentice-Hall, 5th Ed., 1997, ISBN-81-203-1240-6 (“Stallings,” Ex. 1011).

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For reasons discussed below, we decline to institute *inter partes* review of claims 1–24 of the '048 patent.

B. Related Proceedings

The parties inform us *FatPipe, Inc. v. Viptela, Inc.*, No. 1:16-CV-182 (D. Del.), may be impacted by this proceeding. Pet. 1; Paper 5, 1–2. In addition, Petitioner seeks *inter partes* review of a related patent, U.S. Patent No. 6,775,235 B2 (IPR2017-00684). *Id.* We also note that Talari Networks, Inc. and Patent Owner are involved in *inter partes* reviews regarding both the '048 patent (IPR2016-00977) and the related 6,775,235 patent (IPR2016-00976). Pet. 2; Paper 5, 2.

C. The '048 Patent

The '048 patent describes a system and method for communicating using two or more disparate networks in parallel. Ex. 1003, 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.

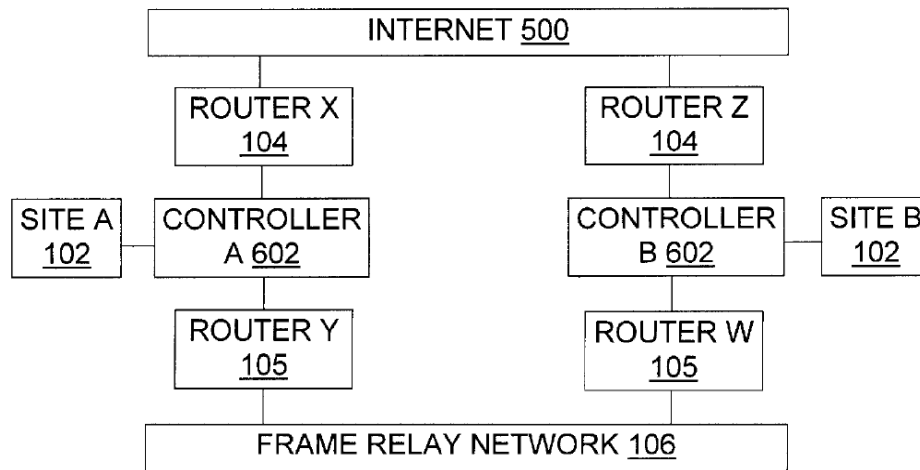


Fig. 10

Figure 10 depicts an example of the network topology described in the '048 patent. *Id.* at 8:22–23. 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 8:23–26. “Access to the disparate networks at site A and site B is through an inventive controller 602 at each site.” *Id.* at 6:30–31. 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 frame relay/point-to-point router according to the criteria.” *Id.* at 9:4–9.

Figure 7 of the '048 patent is reproduced below.

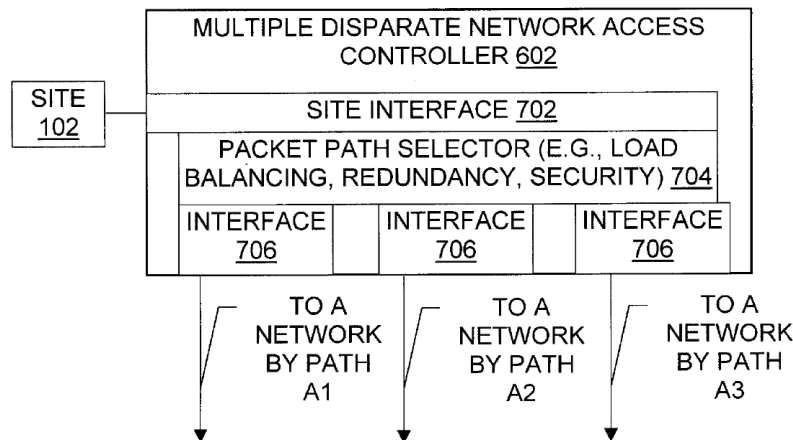


Fig. 7

Figure 7 depicts controller 602. *Id.* at 10:48–49. Controller 602 is connected to site 102 via site interface 702. *Id.* at 10:49–51. Packet path selector 704 is hardware or software that determines which path a given packet is to travel. *Id.* at 10:54–57. The criteria used to determine which path a packet travels may be based on concerns such as redundancy, load-balancing, or security. *Id.* at 10:61–11:50. Controller 602 also has two or more network interfaces 706 (at least one per each network for which controller 602 controls access). *Id.* at 11:51–53.

D. Illustrative Claims

As noted above, Petitioner challenges claims 1–24 of the '048 patent, of which claims 1, 7, 13, and 19 are independent. Claims 1 and 7 are illustrative of the challenged claims and are reproduced below:

1. A controller which controls access to multiple independent disparate networks in a parallel network configuration, the disparate networks comprising at least one private network and at least one network based on the Internet, the controller comprising:
a site interface connecting the controller to a site;
at least two network interfaces which send packets toward the disparate networks; and

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