

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUEST TEK INTERACTIVE ENTERTAINMENT LTD.,
Petitioner,

v.

NOMADIX, INC.,
Patent Owner.

Case IPR2019-00211
Patent 7,953,857 B2

Before SALLY C. MEDLEY, DANIEL J. GALLIGAN, and
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

DECISION
Instituting *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Guest Tek Interactive Entertainment Ltd. (“Petitioner”) filed a Petition for *inter partes* review of claims 1 and 9 of U.S. Patent No. 7,953,857 B2 (Ex. 1001, “the ’857 patent”). Paper 1 (“Pet.”). Nomadix, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 5 (“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). Upon consideration of the Petition and Preliminary Response, we conclude the information presented shows that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claims 1 and 9 of the ’857 patent. We, therefore, institute *inter partes* review of the challenged claims of the ’857 patent in this proceeding.

A. RELATED MATTERS

Petitioner indicates that Patent Owner is asserting the ’857 patent against Petitioner in claims for a breach of a license agreement in *Nomadix, Inc. v. Guest Tek Interactive Entertainment Ltd.*, Case No. 2:16-cv-08033-AB-FFM, pending in the United States District Court for the Central District of California. Pet. 2; *see also* Paper 3, 1.

B. THE ’857 PATENT

The specification of the ’857 patent describes a “method and device for dynamic bandwidth management on a per subscriber basis.” Ex. 1001, 3:30–31. A user/subscriber may set and adjust uplink and downlink bandwidths of their network access service. *Id.* at 3:32–34. “[T]he

user/subscriber can increase or decrease the bandwidth of the uplink connection so the user/subscriber only purchases the amount of bandwidth appropriate for their network activity.” *Id.* at 3:45–48. Figures 2 and 3 of the ’857 patent are reproduced below.

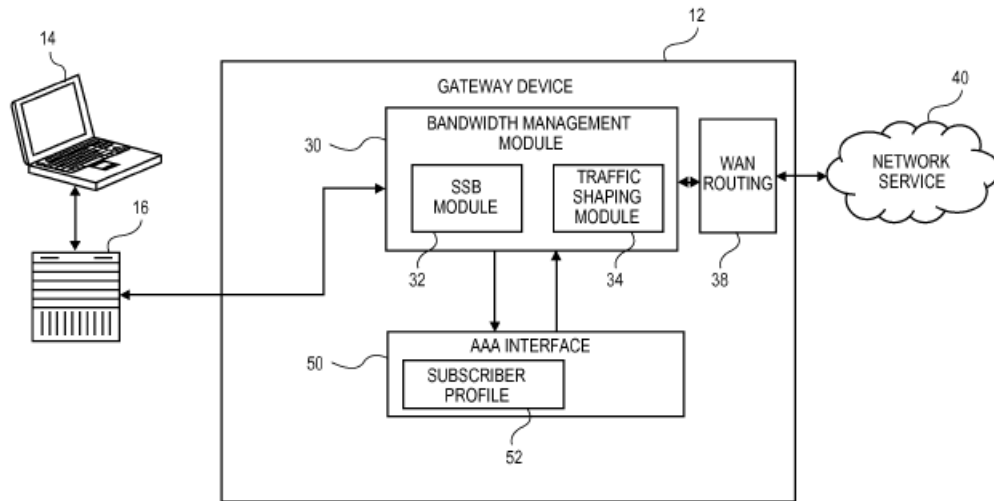


FIG. 2

Figure 2 of the ’857 patent is a block diagram of a communications network implementing subscriber bandwidth management within a gateway device. Ex. 1001, 4:20–23.

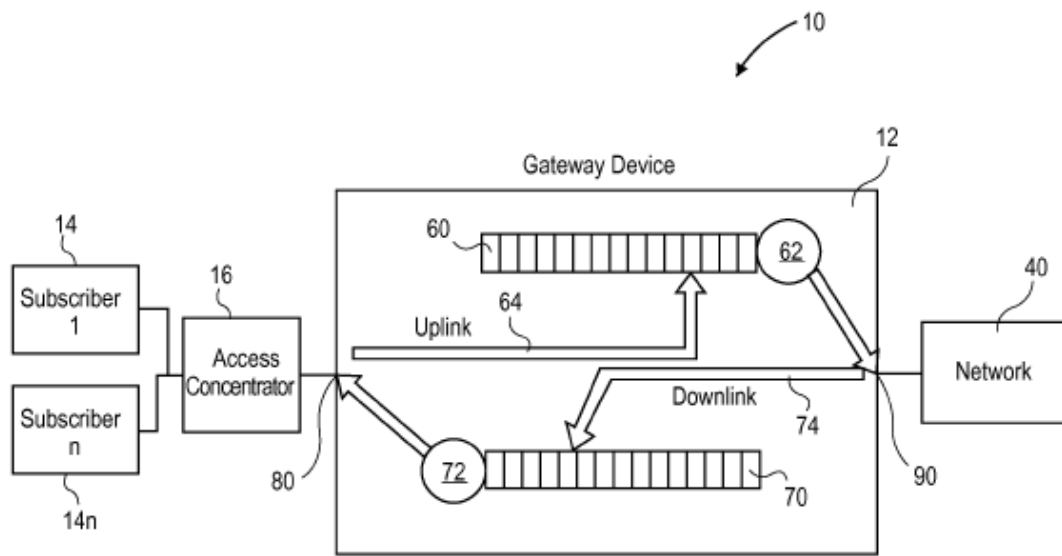


FIG. 3

Figure 3 of the '857 patent is a block diagram of a communications network implementing uplink and downlink virtual queues in a gateway device. Ex. 1001, 4:24–27.

As seen from the above figures, a plurality of hosts 14, 14n communicate data packets through communication network 10. *Id.* at 8:56–58. Data packets are routed through an access concentrator 16 that multiplexes data packets received from the plurality of hosts. *Id.* at 8:58–64. Gateway 12 receives data packets at port 80 and communicates to uplink queue 60 via uplink path 64. *Id.* at 8:60–63. Gateway 12 includes bandwidth manager 30, which comprises subscriber selectable bandwidth module (“SSB module”) 32 and traffic shaping module 34. *Id.* at 7:63–8:22. SSB module 32 “limits the upstream and downstream bandwidths on each virtual channel through the gateway device 10 to that which the respective user/subscribers selected.” *Id.* at 8:22–26. SSB module 32 communicates with subscriber management interface 50 to retrieve subscriber profiles 52,

which include user/subscriber selected bandwidth for uplink and downlink data transfer. *Id.* at 8:29–34. SSB module 32 determines whether to reschedule delivery of a packet at a later point in time to prevent the user/subscriber from achieving a bandwidth greater than that which the user/subscriber selected. *Id.* at 8:34–38. SSB module 32 calculates “the appropriate delay, if any, using the size (in bytes) of the current data packet, and the size and time of the previous packet delivered from the subscriber.” *Id.* at 8:39–42. If it is determined that a packet should be delayed, SSB module 32 places the packet in memory in a virtual queue for later delivery. *Id.* at 8:49–51.

C. CHALLENGED CLAIMS

Challenged claims 1 and 9 are independent. Claim 1 is illustrative and is reproduced below:

1. A system for allowing a user to dynamically control an amount of bandwidth available to the user in a network, the system comprising:
 - a first network interface for communicating over a communication link with a user device during a network session;
 - a second network interface for communicating with one or more computer networks;
 - a data storage system including an indication of a network communication bandwidth associated with the user device and selected by the user; and
 - a processor configured to calculate a delay period associated with a received packet based on the network communication bandwidth associated with the user, and the processor further configured to delay transmission of the packet based on the delay period to prevent the user device from achieving a bandwidth greater than the

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