

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUEST TEK INTERACTIVE ENTERTAINMENT LTD.,
Petitioner,

v.

NOMADIX, INC.,
Patent Owner.

IPR2019-01191
Patent 8,606,917 B2

Before SALLY C. MEDLEY, AMBER L. HAGY, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

HAGY, *Administrative Patent Judge*.

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

I. INTRODUCTION

Guest Tek Interactive Entertainment Ltd. (“Petitioner”) filed a Petition under 35 U.S.C. § 311 requesting *inter partes* review of claims 1 and 11 (“the challenged claims”) of U.S. Patent No. 8,606,917 B2 (“the ’917 patent”). Paper 1 (“Pet.”). Nomadix, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 5 (“Prelim. Resp.”). With the Board’s authorization (Paper 6), Petitioner filed a Reply (Paper 7 (“Reply”)) and Patent Owner filed a Sur-Reply (Paper 8 (“Sur-Reply”)), both addressing whether the challenged claims of the ’917 patent are entitled to claim priority to the filing date the ’060 application. *See* Paper 6, 4 (authorizing limited briefing).

We denied institution of the Petition based, in part, on our determination that the ’917 patent is entitled to the filing date of the ’060 application. Paper 9 (“Inst. Dec.”), 17–29. Petitioner now files a Request for Rehearing, arguing that “the Board misapprehended disclosures of the ’060 application” in reaching its decision. Paper 10 (“Req. Reh’g”), 1. For the following reasons, we deny Petitioner’s Request for Rehearing.

II. STANDARD OF REVIEW

The party requesting rehearing has the burden to show that the decision should be modified. 37 C.F.R. § 42.71(d). In particular, the requesting party must identify “all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed.” *Id.* When rehearing a decision on a petition, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may arise if a decision is based on an erroneous

interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

III. ANALYSIS

In the Institution Decision, we determined that Petitioner failed to demonstrate a reasonable likelihood of prevailing on its challenge of claims 1 and 11 on Grounds 1 and 2, which are both based on Trudeau '578, because Petitioner had not demonstrated a reasonable likelihood of showing that Trudeau '578 qualifies as prior art to the '917 patent. Inst. Dec. 28.¹ In particular, we determined that Patent Owner had demonstrated sufficiently that the challenged claims of the '917 are entitled to the filing date of the '060 priority application, which antedates Trudeau '578, and Petitioner had not rebutted that showing. *Id.* at 13–28.

Petitioner contends the Board should reconsider its decision denying institution in this proceeding because “the Board misapprehended the disclosures of the '060 application” in determining that the '060 application provides written description support for the challenged claims of the '917 patent. Req. Reh'g 1. For the reasons that follow, we are not persuaded that we have misapprehended any disclosures of the '060 application, and we, therefore, deny Petitioner's Request for Rehearing.

¹ We also determined Petitioner had failed to demonstrate a reasonable likelihood of prevailing on Ground 3. Inst. Dec. 29–38. Petitioner does not seek reconsideration of that determination, although Petitioner expresses disagreement with it. Req. Reh'g 1, n.1.

In the Petition, Petitioner argues the '060 application fails to provide written description support for the following limitations of claim 1 of the '917 patent, alone or in combination (using the reference numbers provided by Petitioner and also adopted by Patent Owner):

[1.C] comparing the source IP address with profiles of authorized source devices, each profile including an IP address, wherein if the source IP address is included in a profile of an authorized source device, the source device is granted access without further authorization, and

[1.D] if the source IP address is not included in a profile associated with an authorized source device, then determining whether the destination IP address is included in a plurality of destination IP addresses associated with the access controller, wherein if the destination IP address is included in the plurality of destination IP addresses, the source device is granted access without further authorization[.]

Pet. 11–18. Petitioner raises the same contentions against similar limitations 11[C] and 11[D]. *See id.* (arguing claims 1 and 11 collectively). Patent Owner disputes these contentions. Prelim. Resp. 11–28 (also arguing claims 1 and 11 collectively).

Central to our analysis in the Institution Decision, and to Petitioner's arguments in its Request for Rehearing, is Figure 2 of the '060 application (repeated identically in the '917 patent), which is reproduced below:

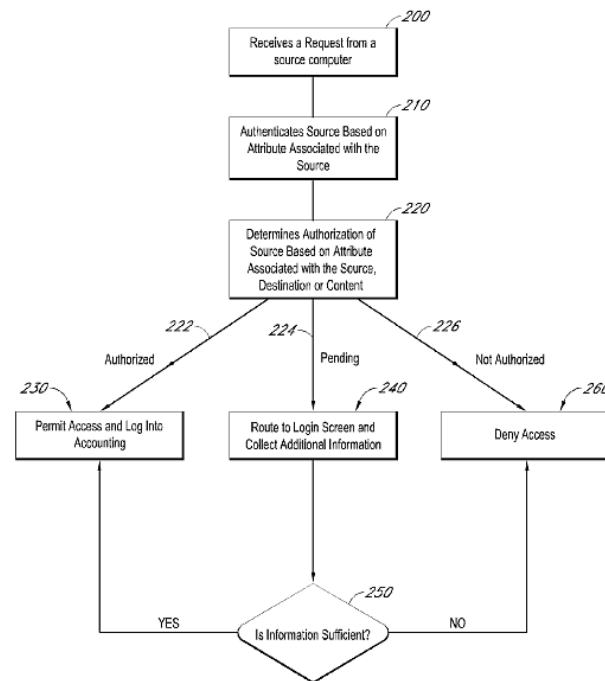


FIG. 2

Figure 2 of the '060 application and '917 patent, reproduced above, “is a flow chart of a method in which a AAA server performs authentication, authorization, and accounting, according to one aspect of the invention.” Ex. 1003, 8²; Ex. 1001, 5:28–30.

Petitioner argues the Board “misapprehended what Figure 2 of the '060 application discloses.” Req. Reh’g 5. In particular, Petitioner argues

[s]teps 210 and 220 of Figure 2 do not disclose the combination of limitations [C] and [D], i.e., (1) comparing a source IP address with profiles of authorized source devices, and (2) if the source IP address is not included in a profile associated with an authorized device, then comparing the destination IP address against a plurality of authorized destination IP addresses.

² As in the Institution Decision, references herein to the page numbers of Exhibit 1003 are to the numbers added by Petitioner to the document in the lower left hand corner of each page, not to the original page numbers.

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