

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDVINE CORPORATION and SANDVINE INCORPORATED ULC,
Petitioner,

v.

PACKET INTELLIGENCE, LLC,
Patent Owner.

Case IPR2017-00862
Patent 6,665,725 B1

Before ELENI MANTIS MERCADER, JUSTIN T. ARBES, and
WILLIAM M. FINK, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner filed a Petition for *inter partes* review of claims 10, 12, 13, and 15–17 of U.S. Patent No. 6,665,725 B1 (Ex. 1033, “the ’725 patent”). Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). By statute, institution of an *inter partes* review may not be authorized “unless . . . 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 also* 37 C.F.R. § 42.108.

Upon consideration of the Petition and the Preliminary Response, we are not persuaded Petitioner demonstrated a reasonable likelihood of prevailing in establishing unpatentability of at least one claim of the ’725 patent. Accordingly, we do not institute an *inter partes* review.

A. Related Matters

Patent Owner submits that the ’725 patent is the subject of a patent infringement lawsuit in the United States District Court for the Eastern District of Texas: (1) *Packet Intelligence, LLC v. Sandvine Corp.*, Case No. 2:16-cv-00147, which was consolidated for pretrial matters (except venue) with co-pending *Packet Intelligence, LLC v. NetScout Systems, Inc.*, Case No. 2:16-cv-00230. Paper 4. Petitioner filed a petition challenging claims 1 and 2 of the ’725 patent in Case IPR2017-00863. Petitioner also filed petitions for *inter partes* review of United States Patent Nos. 6,839,751 B1 (IPR2017-00451); 6,771,646 B1 (IPR2017-00450); 6,954,789 B2 (IPR2017-00629 and IPR2017-00630); and 6,651,099 B1 (IPR2017-00769). *Id.*

B. The '725 Patent

The '725 patent relates to examining packets passing through a connection point on a computer network to determine whether a packet is of a conversational flow associated with an application program. Ex. 1033, 7:12–26. Figure 3 of the '725 patent is reproduced below.

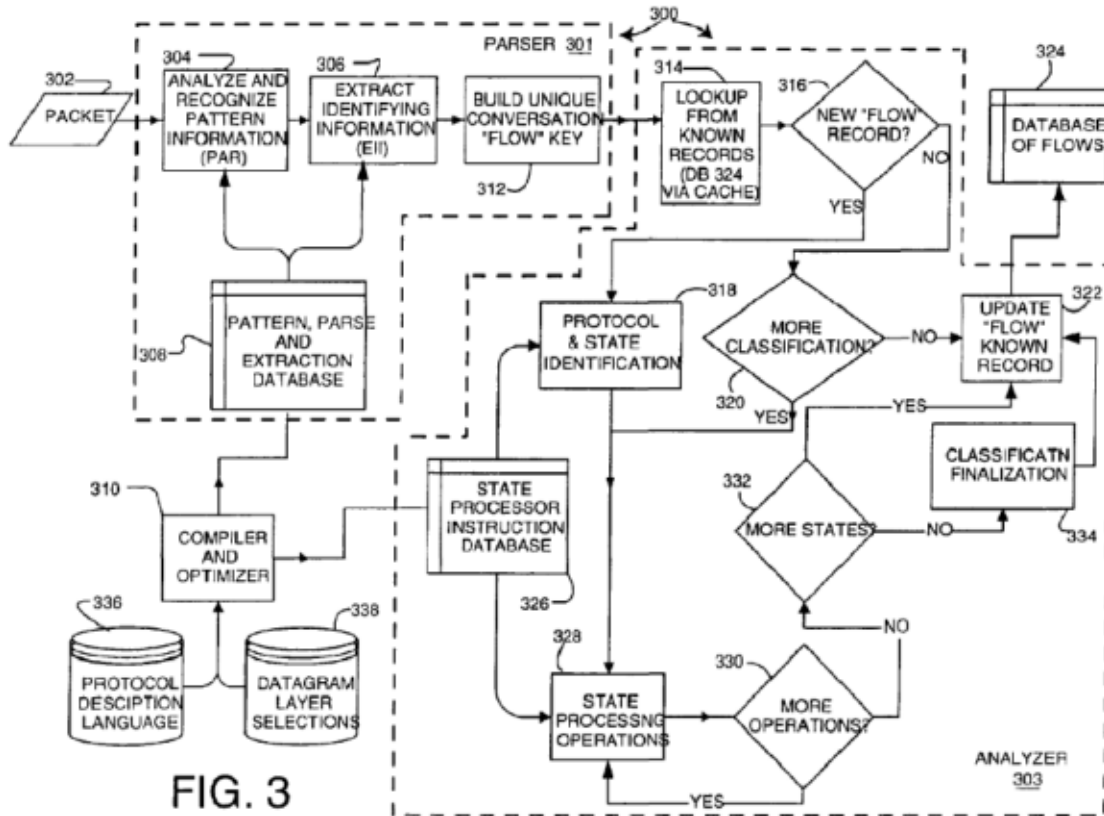


Figure 3 above shows network packet monitor 300. *Id.* at 8:48–13:50.

Packet 302 is examined and evaluated by network 300 to determine its characteristics, such as all the protocol information in a multilevel model, including what server application produced the packet. *Id.* at 8:51–57. Initialization of the monitor to generate what operations need to occur on packets of different types is accomplished by compiler and optimizer 310, parsing and extraction of selected portions of packets to generate an

identifying signature is accomplished by parser subsystem 301, and analysis of the packets is accomplished by analyzer 303. *Id.* at 8:64–9:3.

Parser subsystem 301 examines the packets using pattern recognition process 304 that parses the packet and determines the protocol types and associated headers for each protocol layer that exists in packet 302. *Id.* at 9:17–20. Protocol description language (PDL) files 336 “describe[] both patterns and states of all protocols that . . . occur at any layer, including how to interpret header information, how to determine from the packet header information the protocols at the next layer, and what information to extract for the purpose of identifying a flow, and ultimately, applications and services.” *Id.* at 9:29–35.

The ’725 patent states that it incorporates by reference U.S. Patent Application No. 09/608,237, issued as U.S. Patent 6,651,099 B1 (Ex. 1003, “the ’099 patent”), which discloses “protocol specific operations on individual packets including extracting information from header fields in the packet used for building a signature for identifying the conversational flow of the packet and for recognizing future packets as belonging to a previously encountered flow.” *Id.* at 2:21–30. The parser recognizes different patterns in the packet identifying the protocols used. *Id.* at 2:30–32. For each protocol recognized, packet elements are extracted to form the flow signature (also called a “key”). *Id.* at 2:32–34.

Compiler/optimizer 310 generates two sets of internal data structures. *Id.* at 9:42–43, Fig. 3. The first is the set of parsing/extraction operations 308 wherein “database 308 of parsing/extraction operations includes information describing how to determine a set of one or more protocol dependent extraction operations from data in the packet that indicate a protocol used in

the packet.” *Id.* at 9:43–52. “The other internal data structure that is built by compiler 310 is the set of state patterns and processes 326.” *Id.* at 9:53–54. “These are the different states and state transitions that occur in different conversational flows, and the state operations that need to be performed (e.g., patterns that need to be examined and new signatures that need to be built) during any state of a conversational flow to further the task of analyzing a conversational flow.” *Id.* at 9:54–60.

Input to compiler/optimizer 310 “includes a set of files that describe each of the protocols that can occur.” *Id.* at 41:24–25. “These files are in a convenient protocol description language (PDL) which is a high level language.” *Id.* at 41:25–27. “The PDL file for a protocol provides the information needed by compilation process 310 to generate the database 308.” *Id.* at 41:57–59. “That database in turn tells parser 301 how to parse and/or extract information, including one or more of what protocol-specific components of the packet to extract for the flow signature, how to use the components to build the flow signature, where in the packet to look for these components, where to look for any child protocols, and what child recognition patterns to look for.” *Id.* at 41:59–65.

C. Illustrative Claim

Claim 10 of the challenged claims of the ’725 patent is independent. Claim 10 is illustrative of the claimed subject matter:

10. A method of performing protocol specific operations on a packet passing through a connection point on a computer network, the method comprising:

(a) receiving the packet;

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