

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC. & PALO ALTO NETWORKS, INC.,

Petitioner,

v.

PACKET INTELLIGENCE LLC,

Patent Owner.

Case IPR2020-00337

U.S. Patent No. 6,771,646

**PETITIONER'S OPENING BRIEF ADDRESSING THE PROPER
CONSTRUCTION FOR "ACTIVITY" IN THE CONTEXT OF THE
CONSTRUCTION OF "CONVERSATIONAL FLOW"**

In the context of “conversational flow,” the Board should construe “activity” as “application program, service, or network protocol.” This is the ordinary and customary meaning of a network “activity” based on the intrinsic record.

I. The ’646 Patent Uses “Activity” Consistent With Its Ordinary Meaning.

The ’646 patent describes the field of the invention as including “classification according to *protocol and application program*.” ’646 at 1:38-39. The patent states that the purported invention associates those application programs and protocols, and related services, with conversational flows. For example, the Abstract of the incorporated ’099 patent refers to determining “the *application program* associated with the conversational flow.” As another example, the patent describes “*protocols* such as RPC, DCOMP, and SAP, which enable a *service*” leading to “disjointed conversational exchanges” or “disjointed flows.” ’099 at 2:45-3:22. The patent includes over 100 references to application programs, services, or network protocols when describing the “activity” that results in packet exchanges to form a conversational flow. *E.g., id.* at 3:52-59 (discussing exchanges “associated with a *print service*” as belonging to the “same conversational flow”), 4:51-56 (recognizing and classifying “into respective client/server *applications*,” and “at all *protocol* layer levels”), 13:29-30, 16:28-34, 34:52-58 (identifying “flow signature” based on *protocol*); *see also* ’646 at 6:12-16 (referring to “*application’s* conversational flow” and “*application program’s* conversational flow”), 6:43 (recognizing

“associated *application programs*”), 6:67-7:3 (identifying conversational flow based on “known patterns for the *protocol* and for the possible *applications*”), 25:15-44 (“tracking *applications*” based on *TCP or UDP protocol*), 26:15-63(using “*RPC protocol*” to associate flow with “*application program*”), 27:64-65 (“classif[y]ng] flows that relate to the particular *service* ‘program’”), 29:43-44 (recognizing packets “associated with the *application* ‘a2’.”).

From these disclosures, it would be understood that a conversational flow results from an application program, service, or network protocol. Accordingly, when defining “conversational flow” as “the sequence of packets that are exchanged in any direction as a result of *an activity*,” the ’646 patent uses “activity” to refer to an application program, service, or network protocol. ’099 at 2:37-39.

In the context of packet-based networks, the specification confirms the ordinary meaning of “activity” by explaining that “a conversational flow” involves an exchange “characteristic of” the application programs and network protocols:

Any network *activity* ... will produce an exchange of a sequence of packets, called a *conversational flow*, over network over 102 that is characteristic of the respective *programs* and of the *network protocols*.

’646 at 5:10-15; Ex. 1016 at 19. This passage focuses on identifying which programs or protocols produced the exchange of packets—not on particular clients/servers. And the ’646 treats “services” like application programs, confirming that a “service” is also “an activity.” *E.g.*, ’099 at 1:64, 12:37, 29:20, 31:48-50.

In its Reply, Petitioner explained that examples from PO’s patent disclosures (including the incorporated ’099 patent and ’903 Provisional) show that “activity” retains its ordinary meaning. For instance, Petitioner established that “activity” includes (a) the same SAP print *service* or application *program* used by different clients; (b) an RPC application *program* running on a second server; and (c) an FTP, PointCast, Skype, or web traffic application *program*. Reply at 3-6. And Petitioner emphasized that, “[a]s the Board correctly observed in its ID, and consistent with the SAP and RPC embodiments described above, multiple packet communications of the same service or application meet the ‘activity’ requirement for conversational flows, regardless of the particular client or clients.” *Id.* at 6.

II. No Lexicography, Disclaimer, or Example Alters Meaning of “Activity.”

The intrinsic record doesn’t provide any definition of “activity” departing from its ordinary meaning, or clearly and unmistakably disavow the full scope of “activity.” *Cf. Hill-Rom Services, Inc. v. Stryker Corp.*, 755 F.3d 1367, 1372 (Fed. Cir. 2014). Thus, it would be improper to restrict the construction of “activity” to a particular embodiment or example of the ’646 patent. *Id.*

In sum, in the context of “conversational flow, the Board should construe “activity” as “application program, service, or network protocol.”

Dated: June 22, 2021

Respectfully submitted,

/Scott McKeown/

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Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing PETITIONER’S OPENING BRIEF ADDRESSING THE PROPER CONSTRUCTION FOR “ACTIVITY” IN THE CONTEXT OF THE CONSTRUCTION OF “CONVERSATIONAL FLOW” was served in its entirety by filing through the Patent Trial and Appeal Board End to End (PTAB E2E), as well as providing a courtesy copy via e-mail to the following attorneys of record for Patent Owner listed below:

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