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 RESPONSIVE BRIEF ADDRESSING THE PROPER CONSTRUCTION FOR "ACTIVITY" IN THE CONTEXT OF THE CONSTRUCTION OF "CONVERSATIONAL FLOW"

PO's proposed construction of "the flows or packet exchanges resulting from a particular client running an application" equates "activity" with "flows or packet exchanges." PO Br. at 3. But this is illogical, as it would result in a "conversational flow" being defined confusingly as "the sequence of *packets that are exchanged* in any direction as a result of [*the flows or packet exchanges* resulting from a particular client running an application]." PO's construction also distorts the specification and improperly limits the claims to an embodiment. It should therefore be rejected, and Petitioner's proposal adopted.[1]

I. Network "Activity" Refers To An Application, Service, Or Network Protocol Communication—Not Actions Of "A Particular Client."

In support of its construction, PO quotes the specification: "an activity—for instance, the running of an application on a server as requested by a client." But this quote doesn't define "activity" and is facially non-limiting given its use of the exemplary language "for instance." *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d 801, 811 (Fed. Cir. 2002). PO's citation to *Vitronics*'s lexicography discussion is unavailing because the specification never uses "activity" inconsistently with or contrary to its plain and ordinary meaning.

PO's proposal re-writes the non-limiting language it seeks to incorporate—

---

[1] Under either party's "activity" construction, the trial grounds render obvious the "conversational flow" elements. Pet. at 20-22, 49-56, 80-95; Reply at 8-14, 21-27.

changing "the running of an application on a server as requested by a client" to "a

particular client running an application." This further supports that PO's construction is incorrect. Indeed, the '646 patent and incorporated '099 patent use the word "particular" over 100 times, but never recite "particular client."

PO's other specification cites are equally unavailing. PO quotes a background discussion of what a network monitor "should" determine, including protocol, application, and "an end user's pattern of use within each application." PO Br. at 1. But the specification doesn't equate "end user's pattern" with "activity," or otherwise limit or define "activity" as actions of a particular client. Rather, the same background discussion refers to "*network activity*"—not "particular client" activity. '646 at 1:62-63. And the specification's other use of "network activity" refers to "*an application program*" that produces an exchange of packets characteristic of the programs and protocols involved. *Id.* at 5:10-15.

Further, PO's assertion that "[e]very time, the specification teaches that an activity stems from the actions of a particular client" (PO Br. at 2) is incorrect because the patent describes certain activities that don't involve any client action. For example, the '646 discloses "'server announcement' type exchanges" in which "messages are sent on the network, in either a broadcast or multicast approach, to announce a server and application." '646 at 24:43-55; *id.* at 26:8-17, 27:56-59 (describing a server's RPC portMapper announcements as activity initiating packet

exchanges). Thus, it isn't necessary that a client invokes an activity.

Accordingly, the Board should reject PO's proposal limiting "activity" to "a particular client" running an application because it would exclude specification embodiments, such as server announcements resulting in conversational flows.

II. PO Ignores That An Application, Service, Or Network Protocol Results In The Conversational Flow, Regardless Of Any Particular Client.

PO argues that two clients using the same service results in two activities, while "activity" must be limited to a particular client running an application to avoid being "unreasonably broad." PO Br. at 2-3. But PO ignores that the specification teaches that it is the service (or related application or protocol) that gives rise to a sequence of packets identified as a conversational flow. In the print-service example of the '099 patent, the SAP protocol and the server application's print request procedure result in disjointed flows. '099 at 2:49-3:6; *see* incorporated '903 Prov'l at 3:9-4:2. Likewise, RPC is another "protocol[] that may lead to disjointed flows." '099 at 3:7-8. A server sends an RPC message that associates a port with a program or service. *Id.* at 31:10-15, 26-41. The monitor creates a signature from this information that "may be used to identify packets associated with the server" and stores the program's states "for later classification of flows that relate to the particular service 'program'" or "application." *Id.* at 32:1-9, 32:27-29, 34:8-13, 34:42-44. In both examples, the particular client or clients involved aren't at issue because the application, service, or protocol is the same for all clients.

Respectfully submitted,

/Joseph F. Edell/

Joseph F. Edell
Counsel for Petitioner

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.