UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Juniper Networks, Inc. & Palo Alto Networks, Inc.
Petitioners,

v.

Packet Intelligence LLC,
Patent Owner.

Case IPR2020-00337
U.S. Patent No. 6,771,646

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

The Panel's decision defies fairness, logic, legal sufficiency, and is a prime example of why the Supreme Court mandated Director oversight of PTAB decisions. If this case is not selected for review and overturned, then patentees can assume that the PTO has decided to ignore the Supreme Court's directive regarding the unsupervised, unlawful taking of property by APJs without proper oversight.

First, the challenged patent family has been tested in *multiple district court litigations*, including an *appeal to the Federal Circuit*, as well as *seven inter partes reviews*. Indeed, the same prior art references raised here were also raised in the prior litigations. The Panel's findings directly contradict the findings by a previous panel addressing the same patents. Despite that extensive history, the Panel reversed course to invalidate the patents. In each prior proceeding, the adopted construction of "conversational flow" matched that proposed by the Patent Owner ("PO"). Yet this Panel ignored the specification's definition of "conversational flow," and instead relied on a hand-picked excerpt from that definition to support its unreasonable unpatentability findings.

Second, the Panel compounded this error by determining that a network "activity" includes ***all*** packet exchanges *related to a specific type of network activity*, ***regardless*** of whether those exchanges form part of the same "conversation" involving the same client and server. This second error stems from the failure to

account for the specification's express teachings about flows and effectively rewrites the claims to remove the "conversational" aspect of "conversational flows."

Third, the Panel justified its faulty analyses of conversational flows and network activities based on a misinterpretation of an SAP example included in the specification. In shoehorning the SAP example to fit within its unreasonably broad interpretation of conversational flows and network activities, the Panel ignored conditional language in the SAP example that illustrated the difference between (1) ***recognizing*** the type of a network activity to which a packet exchange relates and (2) ***identifying*** disjointed packet exchanges, involving the same client and same instance of a network activity, as belonging to the same conversational flow.

II. THE PANEL DEVIATED FROM EVERY PRIOR TRIBUNAL

The analysis and reasoning of the panel in the prior IPRs is instructive; it adopted the specification's full definition even under the less restrictive "broadest reasonable interpretation" claim construction standard, stating as follows:

> we observe that the specification of the '099 patent explicitly supports this construction. *See* Ex. 1003, 2:34–45. Accordingly, for purposes of this Decision, we agree that Patent Owner's proposed construction, which ***mirrors the definition in the specification***, is the broadest reasonable construction consistent with the specification.

IPR2017-00862, Paper 8 at 9-10 (all emphases added unless otherwise noted).

Indeed, **every** tribunal to have considered the proper construction for "conversational flow" has adopted the same construction, including two district

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