

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMANTEC CORP.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01546
Patent 7,756,996

Before THOMAS L. GIANNETTI, RICHARD E. RICE, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 CFR § 42.71(d)

INTRODUCTION

Symantec Corporation (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–7 (all claims) of U.S. Patent No 7,756,996, issued on July 13, 2010 (Ex. 1001, “the ’996 patent”). Paper 1 (“Pet.”). Finjan, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). In our Decision dated January 14, 2016, we denied the Petition as to all claims. Paper 9 (“Decision”).

Petitioner requests “partial” reconsideration of our Decision. Paper 10 (“Req. Reh’g”). Petitioner limits its request to one of the two grounds of challenge stated in the Petition. Req. Reh’g 1. Identified in the Petition as “Ground 2,” this obviousness challenge relied on the combination of certain Admitted Prior Art (“APA”) and U.S. Patent No. 6,775,772 to Binding et al. (“Binding”). *Id.* Petitioner’s stated grounds for rehearing is the assertion that the Board erroneously based its denial on the absence of a teaching in Binding that was not relied upon in the Petition. *Id.* at 2.

For the reasons that follow, Petitioner’s request for rehearing is denied.

ANALYSIS

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.

1. Petitioner's Contentions

Petitioner contends that the Board misapprehended and overlooked Petitioner's argument concerning the combined teachings of the APA and Binding. Req. Reh'g 3. In particular, Petitioner asserts that its obviousness challenge to claims 1–7 of the '996 patent “relied predominantly” on the teachings of the APA. *Id.* Petitioner asserts that its “Ground 2” challenge “relies on the APA for virtually all of the claim limitations, and only relies on Binding for its HTTP piggy-backing feature.” *Id.* at 4.

According to Petitioner, the Board's Decision “initially appears to have properly framed Petitioner's combination of the APA and Binding.” *Id.* However, Petitioner asserts that the Board's “subsequent” analysis focused on a “completely different claim feature that it deemed missing from Binding.” *Id.* at 5. Petitioner contends that the Board, based on Patent Owner's “erroneous argument,” found that Binding does not teach the feature of the claims calling for “non-HTTP management data ‘intended for at least one client computer’.” *Id.* at 6–7.

For the reasons explained below, we are not persuaded that the Board's conclusion was erroneous or that anything was misapprehended or overlooked.

2. APA and Binding

As discussed in detail in our Decision (at pages 4–6), Figures 1 and 2 of the '996 patent illustrate the prior art and the preferred embodiment of invention, respectively. Ex. 1001, col. 3, ll. 4–7, col. 3, l. 66–col. 4, l. 2. The Petition relies on Figure 1 and related portions of the specification as “the APA.” Pet. 3.

The patent states that the figures, reproduced in the Decision, are numbered to clarify the description of the asserted improvements over the prior art. Ex. 1001, col. 4, ll. 2–7. These improvements include at least the following two features referred to in the Decision:

In Figure 1 (representing the APA), the management server and clients exchange management data directly. Decision 5. In contrast, in Figure 2, the gateway receives non-HTTP management information from the management server and forwards the management information to the clients. *Id.* at 4–6. This feature of Figure 2 is reflected in the claim language calling for “receiving non-HTTP management data intended for at least one client computer.”

A second difference between the APA and the invention of the ’996 patent is that in Figure 2, the management data is “embedded” within HTTP streams before it is sent to the clients. *Id.* at 4. In Figure 1 (APA) the management data is not so embedded. Petitioner refers to this “embedding” of non-HTTP management data in HTTP streams as “piggy-backing.” *See, e.g.,* Pet. 6–7, Req. Reh’g 3–4.

Binding also is discussed in the Decision at pages 20–22. The Board concluded that Binding discloses HTTP piggy-backing. The Board also concluded, however, that the piggy-backed security parameters in Binding, identified by Petitioner as management information, were not intended to reach the clients. Decision 23. Petitioner does not challenge this determination.

3. Asserted Obviousness of Claims 1–7

Petitioner’s rehearing request asserts that its reliance on Binding was limited to its teaching of “piggy-backing.” Petitioner denies that it relied on

Binding to disclose “non-HTTP management data intended for a client.”
Req. Reh’g 2. Petitioner does not dispute that it failed to show that, in Binding, the “piggy-backing” security parameters ever reach the client.
Decision 23. Petitioner argues, nevertheless, that the Board, by not instituting trial, erred in its Decision. Req. Reh’g 2. We disagree.

In the “Ground 2” obviousness challenge, the Petition applies the limitations of claims 1, 4, and 7 to the APA-Binding combination. One section specifically relates to the claim limitation “receiving non-HTTP management data intended for the client from a management server.” Pet. 36–39. In that section, the Petition states: “Although the APA does not explicitly teach that the non-HTTP management data *is received by the gateway computer*, this would have been obvious *based on the teachings in Binding*.” Pet. 37 (emphasis added) (citations omitted). The Petition goes on to state: “Binding further explains that this server or gateway computer includes an HTTP ‘communications protocol engine’ (*i.e.*, gateway communicator), *for communicating with the clients* by connecting to another ‘communications protocol engine’ *on each client*.” *Id.* at 37 (emphasis added). The Petition further states: “Binding also teaches that the server or gateway computer sends various non-HTTP management messages and data, such as security information and parameters *to the client* by piggy-backing the data within an HTTP message.” *Id.* at 38 (emphasis added). The Petition then states: “Binding further describes a “Second Preferred Embodiment,” in which the gateway computer communicates with a “Trusted Third Party” (TTP) in order to establish a secure communication session *with the client*.” *Id.* (emphasis added). The Petition also asserts that “Binding explains that security information, parameters and metadata is

piggy-backed (*i.e.*, inserted) within an HTTP message *being sent to the client.*” *Id.* at 39–40 (emphasis added).

We are, therefore, persuaded that the Petition’s reliance on Binding went beyond “piggy-backing.” Petitioner also relied on Binding for its asserted teaching of a gateway receiving piggy-backed non-HTTP management information intended for a client, a feature that is missing from the APA. We, therefore, are not persuaded that we misapprehended or overlooked anything in concluding that because Petitioner did not present sufficient evidence that Binding disclosed this feature, Petitioner had not carried its burden and we should not institute a trial.

We have considered Petitioner’s additional arguments and find them unpersuasive. As they are directed to the same alleged error by the Board as discussed above, we do not address them individually.

CONCLUSION

Petitioner has not carried its burden of demonstrating that our Decision denying institution of *inter partes* review of claims 1–7 of the ’996 patent misapprehended or overlooked any matters or that the Board abused its discretion. 37 C.F.R. § 42.71(d).

ORDER

For the foregoing reasons, Petitioner’s Request for Rehearing is *denied*.

IPR2015-01546
Patent 7,756,996

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