

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,
Petitioner,

v.

CISCO SYSTEMS, INC.,
Patent Owner.

Case IPR2016-00304
Patent 7,023,853 B1

Before, BRYAN F. MOORE, MIRIAM L. QUINN, and
MATTHEW R. CLEMENTS *Administrative Patent Judges*.

QUINN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108; 35 U.S.C. § 325 (d)

Arista Networks, Inc. (“Petitioner”) filed a Petition to institute *inter partes* review of claim 63 of U.S. Patent No. 7,023,853 B1 (“the ’853 patent”) pursuant to 35 U.S.C. § 311–319. Paper 1 (“Pet.”). Cisco Systems, Inc. (“Patent Owner”) timely filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

For the reasons that follow, we *deny* the Petition.

I. BACKGROUND

A. RELATED MATTERS

Petitioner identifies the patent-at-issue as the subject matter of a district court action filed, on December 5, 2014, in the Northern District of California (Civ. No. 4:14-cv-5343-JSW). Pet. 1. The ’853 patent is also involved in an International Trade Commission Investigation, instituted on January 20, 2015 (No. 337-TA-945). *Id.*

More importantly, the ’853 patent has been the subject of multiple petitions for *inter partes* review filed by Petitioner. *Id.* The following proceedings have been identified: IPR2015-00976, IPR2015-01050, and IPR2016-00306. *Id.*; PO Notice, Paper 6.

B. THE ’853 PATENT (EX. 1001)

The ’853 patent is titled, “Access Control List Processing in Hardware,” and relates generally to a method for performing access control list processing in hardware using an associative memory. Ex. 1001, 1:5–8. Data packets transmitted between network devices can be restricted using a technique known as “access control.” *Id.* at 1:14–20. One access control technique is to use access control lists or “ACLs” to determine whether to

permit or deny transmission of a packet to a particular destination. *Id.* at 1:23–25 (“[T]he ACL describes which selected source devices are permitted (and which denied) to send packets to which selected destination devices.”).

The Specification provides an example of a known ACL format, where each ACL includes “access control specifiers.” *Id.* at 1:26–27. These specifiers contain information to match with incoming packets, and then based on a match, specify a particular access result (e.g., whether transmission of a packet is “specifically permitted or specifically denied”). *Id.* at 1:27–34. Figure 1 of the ’853 patent is reproduced below.

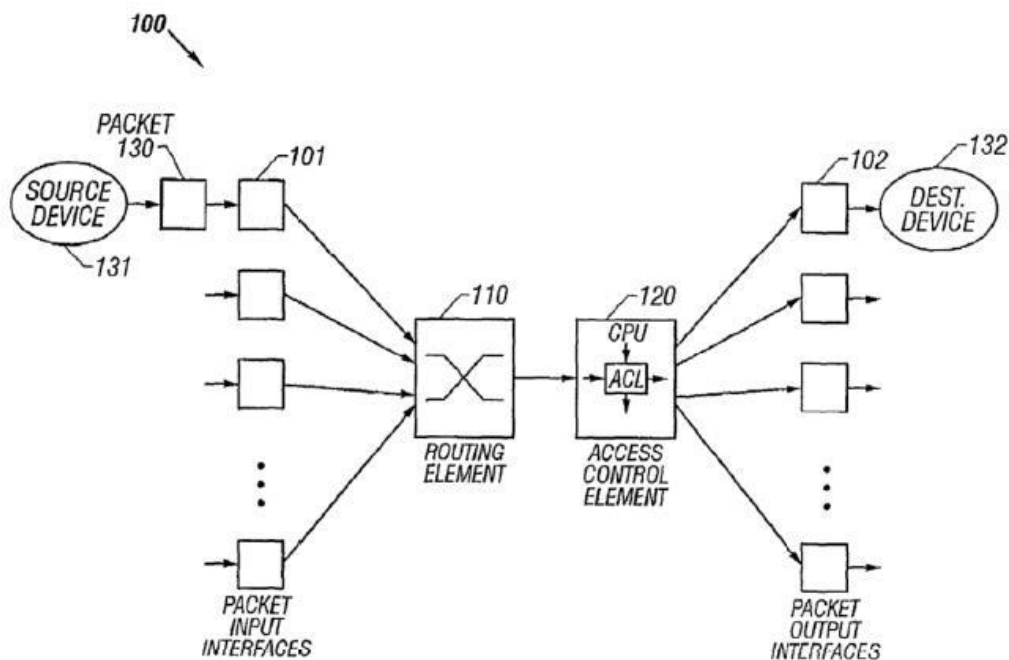


FIG. 1

Figure 1 is a block diagram of a system for performing access control in accordance with the ’853 patent. Ex. 1001, 3:22–23, 43–44. As shown in Figure 1, packet 130 arrives at one of the system’s packet interfaces 101. *Id.* at 3:47–48. Routing element 110 then selects one or more of the output

interfaces to which the packet should be forwarded. *Id.* at 3:50–53. Prior to forwarding, access control element 120 determines whether to allow transmission of the packet. *Id.* at 3:53–57.

Figure 2 of the '853 patent is reproduced below.

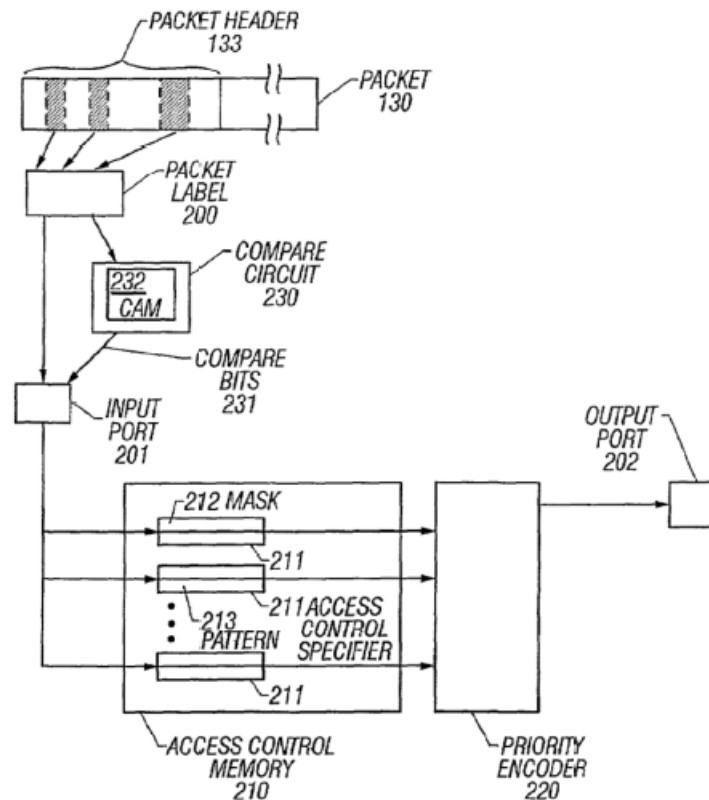


FIG. 2

Figure 2 is a block diagram of an access control element, which contains access control patterns. *Id.* at 4:17–18. When packet 130 arrives at access control element 120, packet label 200 is created based on information derived from packet header 133 of packet 130. *Id.* at 4:19–22. The information in packet label 200 is compared to label match mask 212 and label match pattern 213 of each access control specifier 211. *Id.* at 4:56–58. If a match is found with a particular access control pattern, priority encoder

220 selects the corresponding access control specifier 211 with the highest priority and provides an indicator of that access control specifier 211 to output port 202. *Id.* at 4:5–56, 5:10–14. The indicator specifies an access control result, which specifies if the packet should be transmitted. *Id.* at 5:1–9.

C. CHALLENGED CLAIM

Challenged claim 63 is the only claim-at-issue:

63. A method of processing a packet comprising:
selecting an output interface to which to forward the packet;
determining forwarding permission for the packet, wherein
 the determining comprises
 matching one or more characteristics of said packet
 with one or more access control specifiers in at
 least one access control element;
processing said packet based on said forwarding
 permission;
wherein,
 the selecting step is performed in parallel with the
 determining step.

D. ASSERTED GROUND OF UNPATENTABILITY

Petitioner challenges claim 63 on a single ground of unpatentability based on 35 U.S.C. § 103 over the combination of Hendel and Radia.

In addition to the supporting argument for this ground in the Petition, Petitioner also presents expert testimony. Ex. 1002, Declaration of Dr. H. Jonathan Chao (“Chao Decl.”).

II. ANALYSIS

Section 325(d) of Title 35 states that “[i]n determining whether to institute . . . the Director may take into account whether . . . the same or substantially the same prior art or arguments previously were presented to

the Office.” The instant Petition relies on Hendel as disclosing all the limitations of the ’853 patent. Pet. 12–18. Although the Petition also relies on Radia, this reliance appears to be as an alternative challenge. See Pet. 15 (“Hendel teaches determining a packet’s forwarding permission, in accordance with the requirements of the present limitation. Further, Hendel in combination with Radia provides an even more extensive demonstration of determining a packet’s forwarding permission.”). That is, Hendel is relied upon as teaching all the limitations, with an alternative contention that Radia also teaches the “determining limitation.”*

Hendel, however, was asserted as disclosing all the limitations of claim 63 in a previous *inter partes* review petition. In particular, Petitioner asserted Hendel, alone, in challenging the unpatentability of claim 63 in IPR2015-00976 (“the ’976 IPR”). The Board denied institution of *inter partes* review in the ’976 IPR on October 19, 2015, stating that “[n]either Petitioner, nor Petitioner’s Declarant, has tied the matching in Hendel to a decision whether or not to forward a packet.” *Arista v. Cisco*, ’976 IPR, Paper 9, slip op at 15 (PTAB Oct. 19, 2015). The instant Petition does not explain how Petitioner’s contentions are different from those presented previously in the ’976 IPR. Nor does Petitioner provide any cogent rationale for why the Board should undertake a second Petition asserting substantially similar prior art Petitioner previously presented.

Furthermore, in determining whether to exercise our discretion to deny institution under § 325(d), we have reviewed the timeline of the

* The limitation in its entirety is “determining forwarding permission for the packet, wherein the determining comprises matching one or more characteristics of said packet with one or more access specifiers in at least one access control element.”

Petitioner's filing. Petitioner filed the instant Petition on December 9, 2015, two months after the Board issued the '976 IPR Decision denying institution. The reliance on Radia in the instant Petition is, therefore, an attempt to bolster the unsuccessful challenge previously presented regarding Hendel's alleged disclosure of the determining limitation. Under § 325(d), our determination here rests on whether the same or substantially the same prior art was presented previously. Finding that Hendel was presented previously in the '976 IPR, and that the instant Petition relies on bolstering Hendel guided by our Decision in the '976 IPR, we exercise our discretion under § 325(d) and deny institution of *inter partes* review.

III. CONCLUSION

For the foregoing reasons, we conclude that the instant Petition raises the same or substantially the same prior art or arguments as those previously presented to the Office. In light of the circumstances of the present case, we exercise our discretion not to institute *inter partes* review of the '853 patent.

IV. ORDER

It is ORDERED that the Petition is *denied*, and no trial is instituted.

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Patent 7,023,853 B1

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