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Paper No. 9
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2019-00060
Patent 7,647,633 B2

Before THOMAS L. GIANNETTI, MIRIAM L. QUINN, and PATRICK M. BOUCHER, *Administrative Patent Judges.*

QUINN, Administrative Patent Judge.

DECISION
Petitioner's Request for Rehearing
*37 C.F.R. § 4.71(d)*

## I. INTRODUCTION

On April 29, 2019, we issued a Decision Denying Institution. Paper 7 ("Dec. on Inst."). The panel concluded that Petitioner had not shown a reasonable likelihood of prevailing in the asserted obviousness grounds because, for a particular ground, Petitioner failed to demonstrate sufficiently that Jensen[1] teaches "mobile protection code." Dec. on Inst. 11–12.[2] Petitioner has filed a Request for Rehearing. Paper 8 ("Req. Reh'g"). Petitioner argues that the scope for the claim term "mobile protection code" was in dispute, and that we "failed to resolve the key claim construction dispute between the parties." *Id.* at 1. According to Petitioner, rehearing is warranted to resolve the claim construction dispute and "fix the plain error in the Institution Decision." *Id.* We are persuaded that in failing to address Petitioner's construction, we overlooked the matter raised in Petitioner's Request for Rehearing. Nevertheless, for the reasons discussed *infra*, after giving due consideration to Petitioner's argument, we are persuaded that our decision to deny institution was correct, and therefore we deny the request insofar as it calls upon us to institute trial.

In our Decision on Institution we noted the difference between Petitioner's and Patent Owner's claim constructions. Dec. on Inst. 5. We

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[1] *Protection Wrappers: A Simple and Portable Sandbox for Untrusted Applications*, Proceedings on the 8th ACM SIGOPS European Workshop on Support for Composing Distributed Applications, filed in the record as Exhibit 1006.

[2] We also exercised our discretion under 35 U.S.C. §§ 314(a) and 325(d) and denied institution. Petitioner does not challenge the exercise of discretion in this request for rehearing.

stated, however, that "[w]e need not resolve the dispute whether mobile protection code includes the limitation of not modifying the executable code, at a minimum because claims 1 and 8 do not recite transmitting the executable code or executing the mobile protection code." *Id.* at 5–6. We adopted the construction for the term "mobile protection code" to mean "code that, at runtime, monitors or intercepts actually or potentially malicious operations," as an agreed construction. *Id.*

Petitioner argues that it proposed a different construction—that the "mobile protection code" is "code *for causing* one or more predetermined malicious operations . . . to be monitored or otherwise intercepted." Req. Reh'g 3 (emphasis added). Petitioner also argues that Patent Owner "implicitly disputed" this construction. *Id.* Petitioner asserts Patent Owner argued that the "mobile protection code" must *itself* monitor or intercept operations, rather than just *causing* the operations to be monitored or intercepted. *Id.* at 4. Because we did not directly address this particular nuance of their proposed constructions, raised "implicitly" by Patent Owner's argument, we agree that we overlooked the distinction Petitioner now makes. Nevertheless, as explained below, the outcome of our Decision on Institution does not change, and we accordingly deny Petitioner's Request for Rehearing.

Petitioner argues that the Petition explains "the practical import" of the "for causing" language in its proposed construction: that the "mobile protection code" does not "itself have to monitor or intercept operations but rather may work in conjunction with other software, such as the operating system, in order to cause monitoring or intercept to occur." *Id.* at 3 (citing

Pet. 9–10). In the Petition, Petitioner cites excerpts from Patent Owner's arguments made during claim construction briefing in district court. *Id.* (citing Exs. 1011, 1012). More significantly, Petitioner relies on Patent Owner's arguments made in district court concerning whether the Specification of the '633 patent provides a "definition": "The sandboxed package includes mobile protection code ("MPC") for causing one or more predetermined malicious operations or operation combination of Downloadable to be monitored or otherwise intercepted." *Id.* at 9 (citing Ex. 1001, 3:7–11; Exs. 1015, 1016, 1017).

We do not agree that the statement in the Specification is a definition of "mobile protection code." The Specification, in the portion cited, refers to a "sandbox package according to an embodiment of the invention." Ex. 1001, 3:5–11. The statement describes *an embodiment* of the sandbox package; it does not define "mobile protection code."

Regarding Patent Owner's arguments made in district court, we are not persuaded that those arguments present sufficient reason for us to adopt Petitioner's contentions here, especially in light of Patent Owner's express arguments in the Preliminary Response *in this proceeding*. *See* Prelim. Resp. 6–7. Patent Owner presented a claim construction for "mobile protection code" that has been adopted by two different district court judges. *Id.* at 6 (citing Exs. 2001, 2002). We adopted that construction in our Decision on Institution: code that, at runtime, monitors or intercepts actually or potentially malicious operations. Dec. on Inst. 6.

We are not persuaded that we erred in adopting Patent Owner's construction over Petitioner's proposal. Patent Owner presented two district

court orders, each including analysis of the term "mobile protection code" (*see* Ex. 2001, 5–6; Ex. 2002, 3–4), and both addressing the alleged "explicit definition" in Patent Owner's argument. However, Patent Owner, contrary to Petitioner's assertions, did not propose the alleged "definition" as the proper construction of the term. Significantly, Petitioner's arguments, which focus on Patent Owner's alleged positions in district court, have no merit given that Patent Owner's arguments did not persuade the district court to adopt the so-called "definition." *See* Prelim. Resp. 7 (arguing that "Finjan lost this argument in favor of the construction it proposes herein").

We are persuaded that, for purposes of deciding whether to institute, it was proper for us to adopt the construction "mobile protection code" that aligns with the twice-issued district court construction. Based on that construction, which we applied in our Decision on Institution, our determination that Jensen does not teach "mobile protection code" was correct. Dec. on Inst. 10–12. Consequently, we do not modify the result reached in our Decision on Institution or its reasoning, except by incorporating the claim construction analysis stated above.

## II. CONCLUSION

In sum, Petitioner showed that we overlooked the differences in the parties' claim construction positions of the term "mobile protection code." Therefore, we hereby modify our Decision on Institution to incorporate our claim construction analysis above. But we do not modify the Decision further. The Petition is *denied*.

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