

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

TAASERA LICENSING LLC,
Patent Owner.

IPR2023-00443
Patent 6,842,796 B2

Before WILLIAM V. SAINDON, ARTHUR M. PESLAK, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background and Summary*

Palo Alto Networks, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–25 of U.S. Patent No. 6,842,796 B2 (Ex. 1001, “the ’796 patent”). Taasera Licensing LLC (“Patent Owner”), filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

We have authority to enter this decision denying institution of *inter partes* review (“Decision”) under 35 U.S.C. § 314(b) and 37 C.F.R. § 42.4(a) (2020). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons provided below, we determine that Petitioner has not satisfied the threshold requirement set forth in 35 U.S.C. § 314(a). Because Petitioner has not demonstrated a reasonable likelihood that at least one claim of the ’796 patent is unpatentable, we do not institute an *inter partes* review of any challenged claim based on any ground raised in the Petition. 37 C.F.R. § 42.108(a).

B. *Real Parties in Interest*

The parties each only identify themselves as real parties in interest. Pet. 71; Paper 4 (Patent Owner’s Mandatory Notices).

C. *Related Matters*

Petitioner states that the ’796 patent has been asserted against it and other entities in the following district court litigations: *Taasera Licensing*

LLC v. Trend Micro Inc., No. 2-21-cv-00441 (E.D. Tex.); *Taasera Licensing LLC v. Palo Alto Networks, Inc.*, No. 2-22-cv-00062 (E.D. Tex.) (“the ’62 action”); *Taasera Licensing LLC v. Check Point Software Techs. Ltd.*, No. 2-22-cv-00063 (E.D. Tex.); *Trend Micro Inc. v. Taasera Licensing LLC*, No. 3-22-cv-00477 (N.D. Tex.); *Trend Micro, Inc. v. Taasera Licensing LLC*, No. 3-22-cv-00518 (N.D. Tex.); *Palo Alto Networks, Inc. v. Taasera Licensing LLC*, No. 1-22-cv-02306 (S.D.N.Y.); *In re: Taasera Licensing LLC Patent Litig.*, No. 2-22-md-03042 (E.D. Tex.); *Trend Micro Inc v. Taasera Licensing LLC*, No. 2-22-cv-00303 (E.D. Tex.); *Palo Alto Networks, Inc. v. Taasera Licensing LLC*, No. 2-22-cv-00314 (E.D. Tex.).
Pet. 71–72.

Patent Owner provides a similar list, but omits the ’62 action. Paper 4, 2–3. This omission is presumed to be a clerical error.

D. Prior Art and Asserted Grounds

Petitioner’s grounds rely on the following prior art references:

Name	Reference	Exhibit No.
Madnick	US 5,913,214, iss. June 15, 1999	1006
Richardson	US 6,278,996 B1, iss. Aug. 21, 2001	1005
Sheth	US 6,311,194 B1, iss. Oct. 30, 2001	1004
Groner	US 6,507,643 B1, iss. Jan. 14, 2003	1007

Petitioner asserts that claims 1–25 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–10, 12–21, 23, 25	103	Sheth
1–10, 12–21, 23, 25	103	Richardson, Madnick
11, 22, 24	103	Richardson, Madnick, Groner

E. Technical Background and Overview of the '796 Patent

The '796 patent is directed to extracting information from documents by matching regular expressions. A “regular expression” is an old and well-known term of art in computer science, referring to a sequence of characters that specify a pattern to match in text. *See, e.g.,* Michael Fitzgerald, *Introducing Regular Expressions*, 1 (Simon St. Laurent, ed., 2012) (Ex. 3001) (defining regular expressions and noting they have been used in computer programs since the 1970s). In this way, a regular expression is a tool for matching patterns of letters, numbers, and symbols. The requirements of a regular expression are specified using an abstract encoding scheme, e.g., using “###-###-####” to represent the pattern used by a phone number, or [a-zA-Z]@*.* to represent a pattern used in many email addresses. Ex. 1005, 8:58–67 (noting that, e.g., “[a-z]” specifies one or more lowercase letters from a to z); *see also* Ex. 1006, 13:1–7 (examples of other commands, such as using “\d” to represent a single digit and “\s+” to mean one or more spaces).

At times the '796 patent uses the phrase *regular expression* somewhat differently from this established meaning in the art. The '796 patent characterizes a regular expression as being an expression used regularly, i.e., a common turn of phrase, rather than a tool to match text. In particular, the '796 patent states:

the present invention provides techniques for enumerating *regularly identifiable or stereotypical phrases that people commonly use to convey particular information*, and where exactly in these phrases the particular information is to be found. In one embodiment, *such phrases are referred to as “regular expressions.”* Using such enumerated phrases, the invention is able to automatically identify them . . . and extract the particular information associated with the phrase.

Ex. 1001, 2:11–17 (emphases added). Examples of this “stereotypical phrase” characterization of “regular expression” include phrases such as “call me back at” or “my phone number is.” *Id.* at 7:6, 7:39.

However, the ’796 patent then uses the term *regular expression* more conventionally, when it states that

the [stereotypical] phrases are readily expressible as regular expressions, and this allows them to be stored in one of several common programming languages, e.g., as a “flex” or “perl” program. Both these languages have built-in support for regular expressions. Secondly, the use of regular-expression technology enables extremely fast pattern matching and information extraction with highly optimized standard programs.

Id. at 2:23–30 (emphasis added). Here, the ’796 patent notes that the “regularly identifiable or stereotypical phrases,” which it had just said “are referred to as ‘regular expressions,’” could then in turn be *expressed* as “regular expressions.” *See id.* Thus, the ’796 patent uses the term “regular expression” in a general lay sense as well as its common technical sense.¹

The ’796 patent performs regular expression matching to extract information. *Id.* at code (54). For example, the patent explains that:

One skilled in the art will realize various applications for the invention. By way of example only, such enumerated phrases may be automatically identified in a transcribed voice mail message, and the important information in the message, e.g., a

¹ We do not wish to imply that the term “regularly identifiable expression” in claim 1 of the ’796 patent is not clear or is a lexicographical re-definition. We need not analyze the scope of that limitation for the purposes of determining whether to institute an *inter partes* review. Instead, we are pointing out how the ’796 patent uses that term in order to provide background information useful to understanding our analysis, which instead turns on the two “identifying” limitations of claim 1.

phone number or caller's name, may be automatically extracted and presented to the user or stored for subsequent use.

Id. at 2:40–46.

F. Challenged Claims

Claims 1–25 are challenged. Claims 1, 12 and 23 are independent. Claim 1 is reproduced below.

1. A method of automatically processing an input sequence of data symbols, the method comprising the steps of:

identifying at least one regularly identifiable expression in the input sequence of data symbols, wherein the at least one regularly identifiable expression represents a pattern that is matchable in accordance with a programming language that supports such a regularly identifiable expression;

identifying at least a portion of information associated with the at least one regularly identifiable expression; and

extracting the portion of information.

II. DISCRETIONARY ANALYSIS

Patent Owner asserts that we should deny institution under *Fintiv*. Prelim. Resp. 2–10; *see Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 11–12 (PTAB Mar. 20, 2020) (precedential). Our analysis under *Fintiv* is guided by the USPTO Director's Memorandum issued on June 21, 2022, titled "Interim Procedure for Discretionary Denials in AIA Post Grant Proceedings with Parallel District Court Litigation" ("Director's Memo"). Pursuant to the Director's Memo, we "will not discretionarily deny institution . . . where a petitioner presents a [*Sotera*] stipulation." Director's Memo at 3 (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential as to § II.A)). Because Petitioner has offered a stipulation like in *Sotera*, i.e., to "not pursue in

parallel district court proceedings the same grounds as in the Petition or any grounds that could have reasonably been raised in the petition” (Pet. 71), we do not discretionarily deny institution under *Fintiv*.

III. MERITS ANALYSIS

A. Burdens of Proof

“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)); *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review). At the institution phase of an *inter partes* review, Petitioner’s burden is to show that “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

B. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art:

would have had a bachelor’s degree in computer science, computer engineering or an equivalent, as well as four years of industry experience, and would have had working knowledge of data extraction methods and programming languages including perl and flex. EX1003 ¶23. Additional graduate education could substitute for professional experience, or significant experience in the field could substitute for formal education. *Id.*

Pet. 4.

Patent Owner uses Petitioner’s proposed level of skill. Prelim. Resp. 21. We adopt Petitioner’s definition for purposes of this Decision.

C. Claim Construction

The parties do not offer competing views on claim construction. Pet. 8–9; Prelim. Resp. 20–21. That said, our Decision turns on claim construction. Under 37 C.F.R. § 42.100(b), we apply the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). That is, “the words of a claim ‘are generally given their ordinary and customary meaning’ . . . that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1312–13. “[T]he specification is always highly relevant to the claim construction analysis . . . it is the single best guide to the meaning of a disputed term.” *Id.* at 1315 (internal quotation omitted). “[T]he specification aids in ascertaining the scope and meaning of the claims inasmuch as the words of the claims must be based on the description.” *Id.* “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

Our Decision turns on the differences between the two “identifying” steps of claim 1. The first identifying step identifies “at least one regularly identifiable expression in the input sequence of data symbols.” The second identifying step identifies “at least a portion of information associated with the at least one regularly identifiable expression.” Then the claim recites a step of “extracting the portion of information.” Examining the claim

language itself, in view of the written description of the '796 patent, it is our opinion that the two “identifying” steps are looking for different things. We review the claim language first, then the written description.

Reviewing the claim language, the first “identifying” step finds an *expression* in data symbols. The second step finds information *associated with* the expression found in the first step. Because the information is “associated with” the expression, it is not the expression. In other words, what is found in the first “identifying” step (an expression) is not the same as what is found in the second “identifying” step (a portion of information associated with the expression). *See CAE Screenplates, Inc. v. Heinrich Fiedler GmbH & Co.*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (holding there is a presumption that when different words are used to describe different elements they have different meanings).

This reading of the claim is supported by the specification of the '796 patent. In particular, the specification gives an example of what it means when it says the information is “associated with” a regularly identifiable expression:

Thus, by way of example, if the voice message input to the methodology 10 contains the phrase “call me back at 555-1234,” the above program determines that the phrase “call me back at” matches one of the enumerated expressions. Then, the information associated with the phrase “call me back at,” namely, “555-1234,” is identified as the information-bearing portion of the expression, and extracted.

Ex. 1001, 11:27–34. The above example illustrates the delineation of the two “identifying” steps and how they are “associated.” Here, the program searches for the expression “call me back at” in order to then find a phone number. The phone number is associated with the phrase “call me back at”

because it is the phone number at which the person requests a return call. But the passage makes clear the associated information (the phone number) is not the regularly identifiable expression (“call me back at”).² The second “identifying” step finds something different from, but related to, what is found in the first “identifying” step.³

Our analysis below proceeds with this understanding of the claims.

² It is possible that a proper construction of the claims permits the *information* found in the second step to be a subset of the *expression* found in the first step; we need not resolve that issue. Our claim construction need not go any further than saying that two items are searched for and that the two searched-for items are not the same. The regularly identifiable expression here possibly could be “call me back at 555-1234” or “call me back at,” but in either case those strings are different from the information to extract, “555-1234.”

³ We recognize that there are circumstances where the same structure in the prior art can satisfy multiple claim limitations. *See, e.g., Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 653 F.3d 1296, 1303 (Fed. Cir. 2011) (“The claims and the specifications indicate that the ‘needle holder’ and ‘retainer member’ need not be separately molded pieces.”); *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1264 (“the use of two terms in a claim requires that they connote different *meanings*, not that they necessarily refer to two different *structures*”) (Fed. Cir. 2010). However, as we just discussed, the two “identifying” limitations, properly construed, have two different meanings because they perform two different actions. *Engel Indus., Inc. v. Lockformer Co.*, 96 F.3d 1398, 1404–05 (Fed. Cir. 1996) (concluding that where a claim provides for two separate elements, these two elements “logically cannot be one and the same”). Thus, a prior art method still would have to disclose both steps.

*D. Asserted Obviousness in View of Sheth
(Claims 1–10, 12–21, 23, and 25)*

Petitioner asserts that claims 1–10, 12–21, 23, and 25 would have been obvious in view of Sheth. Pet. 18–36. We focus our analysis on claim 1, and begin with an overview of the ground before turning to our analysis.

According to Petitioner, Sheth discloses “a method for creating a database of metadata (metabase) of a variety of digital media content.” Pet. 18. An extractor program takes HTML pages and uses extraction rules to retrieve metadata. *Id.* at 18. As to the first “identifying” limitation, Petitioner asserts that Sheth scans for pieces of text that match a pattern specified by the extraction rules. *Id.* at 19–20 (citing Ex. 1004, 11:50–52, 11:64–66). As to the second “identifying” limitation, Petitioner asserts that Sheth locates a value for an attribute using a matchable pattern in the text. *Id.* at 20–21 (citing Ex. 1004, 11:18–20, 12:30–32). Petitioner identifies the same disclosure in Sheth for teaching the “extracting” limitation. *Id.* at 21–22.

Patent Owner argues that the claims are not unpatentable in view of Sheth. Prelim. Resp. 23–29. In particular, Patent Owner argues that Petitioner “sidesteps actually showing where Sheth discloses” the second “identifying” limitation. *Id.* at 29. For the reasons that follow, we agree with Patent Owner that Petitioner has not shown how Sheth teaches the second “identifying” limitation.

According to Sheth, programs called *extractors* are used to find information on a webpage. Ex. 1004, 11:12–13. The extractors use a set of extraction rules to look for pieces of text that match a pattern specified by the rule. *Id.* at 11:18–20, 11:41–43, 11:50–52, 12:30–33. The purpose of these rules is to create a document that pairs attributes (e.g., date or location)

with the value for that attribute (e.g., 06/01/2000 or Barbados). *Id.* at 11:29–34. Thus, Sheth’s rules identify text and then extract that text.

As we explained in our claim construction section above, however, claim 1 in the ’796 patent (1) identifies a “regularly identifiable expression” (i.e., a first text), (2) identifies a “portion of information” *associated with the first text* (i.e., a second text), then (3) extracts the “portion of information” (i.e., second text). Sheth does not disclose the subject matter of claim 1 because Sheth just searches for text using a regular expression and then extracts the text matching the pattern defined by the regular expression. Petitioner effectively has construed the two “identifying” limitations to mean the same thing, but as we identified in our claim construction section above, the two “identifying” limitations are each looking for something different. For this reason, we are not persuaded that Petitioner has established a reasonable likelihood of success with respect to the obviousness of claim 1 in view of Sheth. The same deficiency applies to the remaining independent and dependent claims in the Sheth ground. *See* Pet. 22–36.

*E. Asserted Obviousness in View of Richardson and Madnick
(Claims 1–10, 12–21, 23, and 25)
and
Richardson, Madnick, and Groner
(Claims 11, 22, and 24)*

Starting with claim 1, Petitioner’s Richardson-based grounds solely rely on Richardson to teach the two “identifying” limitations but contain the same misconception identified above as to their meaning. *See* Pet. 36–48. For the first “identifying” limitation, Petitioner cites Richardson’s discussion of looking for regular expressions in text. *Id.* at 39–40 (citing, e.g., Ex. 1005, 5:34–40, 5:51–53, 5:60–61). Then, as with the Sheth ground,

Petitioner again cites to Richardson’s discussion of looking for regular expressions in text, albeit citing to a different portion of the reference. *Id.* at 44 (citing, e.g., Ex. 1005, 9:17–22, Fig. 5(a)). But as we explained above, the first “identifying” limitation looks for a regularly identifiable expression in the input sequence of data, whereas the second “identifying” limitation looks for information “associated with” the regularly identifiable expression. Two different things are identified.

To the extent Petitioner is reading the first “identifying” limitation on the regular expression search in Richardson, then Petitioner is improperly reading the second “identifying” limitation to be a nullity. For the reasons expressed in our claim construction section above, the two “identifying” steps recite two different searches. *See Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (“claims are interpreted with an eye toward giving effect to all terms in the claim”). On the other hand, to the extent Petitioner is reading the first “identifying” limitation to be a passive step of merely acknowledging a regular expression to be later used for searching in the second step, then Petitioner is reading out the claimed action of “identifying” that expression “in the input sequence of data symbols.” Ex. 1001, 13:21–22; *Bicon*, 441 F.3d at 950.

The same deficiency applies to the remaining independent and dependent claims in the Richardson-based grounds. *See* Pet. 48–70.

IV. CONCLUSION

For the reasons explained above, we find that Petitioner has not established a reasonable likelihood of success in showing that any claim of the ’796 patent would have been obvious under the proposed grounds. Accordingly, we do not institute *inter partes* review.

V. ORDER

In consideration of the foregoing, it is hereby ORDERED that *inter partes* review of claims 1–25 of the '796 patent on the grounds raised in the Petition is denied.

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