

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, INC.,
Patent Owner.

Case IPR2018-01559
Patent 9,686,193 B2

Before BRIAN J. McNAMARA, J. JOHN LEE, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION

Denying Petitioner's Request for Rehearing of Decision on Institution
37 CF.R. § 42.71(d)

INTRODUCTION

Cisco Systems, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–20 (“the challenged claims”) of U.S. Patent No. 9,686,193 B2 (Ex. 1001, “the ’193 Patent”). Centripetal Networks, Inc. (“Patent Owner”) timely filed a Preliminary Response (Paper 6). On April 2, 2019, we issued a decision denying institution of an *inter partes* review (Paper 7, “Decision” or “Dec.”), concluding that Petitioner failed to demonstrate a reasonable likelihood of prevailing on its asserted unpatentability ground against the challenged claims (*id.* at 13).

Petitioner timely filed a Request for Rehearing of our denial of institution. Paper 8 (“Req. Reh’g”). For the reasons explained below, Petitioner’s Request is *denied*.

DISCUSSION

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify all matters it contends were misapprehended or overlooked by the Board. *Id.* The Board applies an abuse of discretion standard when reviewing a decision on a petition for rehearing. 37 C.F.R. § 42.71(c).

According to Petitioner, the Decision erred in construing the term “first operator” to require that it “be distinct from, and not associated with, the claimed ‘one or more packet-filtering rules’” contrary to “material facts of record in the Petition” and without giving weight to “the **only** testimonial evidence of record.” Req. Reh’g 4–5. We are not persuaded of error. Critically, the Decision did not construe the term “first operator” at all. Rather, the Decision noted that Petitioner failed to provide a construction for the term “operator” and failed to adequately explain its contention that the

term should be given its plain and ordinary meaning. Dec. 5–6. Thus, the Decision could not have erroneously required that the first operator “be distinct from, and not associated with, the claimed ‘one or more packet-filtering rules’” because the Decision did not make any such determination.

In fact, the Decision indicated that, based on the Petition, “[i]t is *unclear to what extent* the recited packet-filtering rules may nonetheless be related, e.g., two parts of the same structure or software code.” *Id.* at 12 (emphasis added). The Decision also discussed aspects of the Specification indicating that “the recited operators *may* be distinct from the recited packet-filtering rules.” *Id.* at 11 (emphasis added). Ultimately, the Decision concluded, “therein lies the problem with the Petition as to the first operator limitation—it *does not provide adequate explanation*” to address those issues. *Id.* at 12 (citing 37 C.F.R. § 42.104(b)(3)–(5)) (emphasis added). Thus, the basis for denial of the Petition was Petitioner’s failure to provide adequate explanation, not any particular construction of the term “operator” or “first operator.”

In its Request for Rehearing, Petitioner attempts to belatedly provide explanation by citing and quoting various passages from several different portions of the Petition. *See* Req. Reh’g 5–10. None of these passages, however, are from the Petition’s discussion of claim construction (Pet. 14) or its discussion of the “first operator” term (*id.* at 43–44). Rather, Petitioner now cites portions of its general background on the ’193 Patent and its prosecution history (*id.* at 6, 7, 10–14), various dependent claims (*id.* at 50–53, 58–64), and a different limitation of a different (albeit similar) independent claim (*id.* at 54–55). *See* Req. Reh’g 5–10. The Petition’s failure to provide adequate explanation cannot now be remedied, on

rehearing, by piecing together disparate parts of the Petition to fashion a new explanation that should have been provided in the Petition, but was not. *See Huawei Device Co. v. Optis Cellular Tech., LLC*, IPR2018-00816, Paper 19 at 9–10 (PTAB Jan. 8, 2019) (precedential).

Petitioner also asserts multiple times that the Decision overlooked and/or gave insufficient weight to its expert’s “unrebutted” testimony, and refers to this purported testimony several times. Req. Reh’g 5, 6, 9–11, 13, 15. Remarkably, however, the Request does not include *any* citations or quotations from its expert’s testimony, i.e., it does not identify *any* specific testimony that the Decision allegedly overlooked or failed to weigh appropriately. Thus, we are not persuaded that the Decision did so.

Finally, Petitioner simply reiterates the same arguments regarding its application of the Sourcefire prior art reference that were deemed insufficient in the Decision. In general, Petitioner contends Sourcefire discloses “intrusion rules” that teach the “packet-filtering rules” recited in the challenged claims, and that these rules are used in the same way in Sourcefire as in the ’193 Patent—i.e., two-stage filtering. *See* Req. Reh’g 11–15. Petitioner notes that Sourcefire describes a type of intrusion rule (i.e., “drop rules”) where, based on criteria specified by such rules, the result is that a drop action occurs, i.e., the packet at issue is dropped. *See id.* These are essentially the same arguments presented in the Petition. *See* Pet. 37–42. A request for rehearing is not an opportunity to reargue the same points already considered and rejected in the Decision.

Moreover, as the Decision explained, these arguments fall short because they do not address sufficiently *what performs the drop action*, i.e., the “operator.” *See* Dec. 9–12. Nor does Petitioner—whether in the Petition

or the Request for Rehearing—explain how Sourcefire teaches that a drop rule is applied to a packet “responsive to” a determination resulting from applying the same rule, i.e., applying the rule (again?) when the rule was already applied. *See id.* at 10–11. As the Decision made clear, it may well be that Petitioner intended to argue Sourcefire’s rules teach both the recited rules and the recited operator, but no explanation was provided to support such a reading. *Id.* at 10–12.

To be sure, Petitioner is correct that claim 1 recites that the “packet-filtering rule” specifies both “criteria” and a “first operator.” *See* Req. Reh’g 8. After reciting a determination that certain packets correspond to said criteria, however, the claim proceeds to recite a separate step of “applying” the specified first operator, which is “configured to drop” the relevant packets, and a further step of actually “dropping . . . each packet.” The Petition identified teachings in Sourcefire corresponding to the rule (i.e., intrusion rules), the criteria specified by the rule (e.g., specified 5-tuple values and data transfer types), and the action of ultimately dropping packets. Pet. 35–43. As the Decision explained, however, the Petition failed to explain sufficiently which structure (or other aspect) of Sourcefire teaches an operator that is configured to drop particular packets and, responsive to a determination based on applying the intrusion rule’s criteria, actually drops the packets. Dec. 9–10. Instead, the Petition simply asserted conclusorily that “a drop operator would be applied.” Pet. 44. As the Decision determined, “[n]either the Petition nor the cited portions of Dr. Staniford’s Declaration identifies the source of the referenced term ‘drop operator’” or what, specifically, it refers to. Dec. 10. In the Request for Rehearing,

Petitioner fails to identify any argument or record evidence we overlooked or misapprehended that negates that conclusion.

CONCLUSION

For the foregoing reasons, Petitioner has not carried its burden of showing that we misapprehended or overlooked any matter, or abused our discretion, in a manner such that the Decision should be modified.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's Request for Rehearing is *denied*.

IPR2018-01559
Patent 9,686,193 B2

PETITIONER:

Patrick McPherson
Christopher Tyson
Joseph Powers
DUANE MORRIS LLP
pdmcpherson@duanemorris.com
cjtyson@duanemorris.com
japowers@duanemorris.com

PATENT OWNER:

James Hannah
Jeffrey Price
Michael Lee
KRAMER LEVIN NAFTALIS & FRANKEL LLP
jhannah@kramerlevin.com
jprice@kramerlevin.com
mhlee@kramerlevin.com

Bradley Wright
BANNER & WITCOFF, LTD.
bwright@bannerwitcoff.com