

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,

Petitioner,

v.

TAASERA LICENSING LLC,

Patent Owner.

Patent No. 9,923,918

Filing Date: March 27, 2017

Issue Date: March 20, 2018

Inventors: Blair Gaver Nicodemus and Billy Edison Stephens

Title: METHODS AND SYSTEMS FOR CONTROLLING ACCESS
TO COMPUTING RESOURCES BASED ON KNOWN
SECURITY VULNERABILITIES

**PATENT OWNER'S
PRELIMINARY RESPONSE**

Case No. IPR2023-00574

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2001	Fifth Amended Docket Control Order, Dkt. 225, <i>In re: Taasera Licensing LLC, Patent Litigation</i> , No. 2:22-md-03042-JRG (E.D. Tex. May 19, 2023)
2002	Defendants’ Joint Patent L.R. 3-3 Invalidity Contentions and Subject Matter Ineligibility Contentions, <i>In re: Taasera Licensing LLC, Patent Litigation</i> , No. 2:22-md-03042-JRG, served April 29, 2023
2003	Invalidity Contentions for U.S. Patent No. 9,923,918 Based on U.S. Patent No. 8,065,712 to Cheng et al. (“Cheng”), <i>In re: Taasera Licensing LLC, Patent Litigation</i> , No. 2:22-md-03042-JRG, served April 29, 2023

I. INTRODUCTION

On February 9, 2023, Palo Alto Networks, Inc. (“Petitioner”) submitted a petition (Paper 2, “Petition” or “Pet.”) to institute *inter partes* review (“IPR”) of U.S. Patent No. 9,923,918 (Ex. 1001, “the ’918 Patent”), challenging claims 1-24 (the “Challenged Claims”).

The Board should deny the Petition because the Petition fails to show how the claims are unpatentable. In particular, the Petition fails to show how the limitations “determining, by the computing system, a compliance state of the endpoint based on the user information and status information, and a plurality of compliance policies in the data store” and “determine, by the computing system, a compliance state of the endpoint based on the user information and status information, and a plurality of compliance policies in the data store” would be rendered obvious, because Petitioner fails to show that the claimed “status information” is utilized in making any determination of a compliance state.

The Board should further deny the Petition in the discretion of the Director under 35 U.S.C. § 314(a), as the concurrent District Court litigation will proceed to trial long before the Board would issue a Final Written Decision.

II. THE '918 PATENT

The '918 Patent discloses methods and systems for fine tuning access control. '918 Patent, Abstract.

The inventors of the '918 Patent recognized that large networks of computers lacked adequate access control and compliance facilities. *Id.*, 3:7-39. In particular, prior art systems “lack[ed] the ability to form context-based access control decisions using as decision inputs state information provided by point solutions that are not context aware.” *Id.*, 3:8-11. Moreover, they lacked the “ability to collect endpoint state information from multiple point solutions, collect endpoint information from the environment itself, . . . and integrate the collected information to form a higher-level holistic and intelligent view of the overall endpoint state.” *Id.*, 3:11-17. Prior art solutions further “do not provide the ability to define conditional, parameter-based business logic with flexible compliance models. They lack the ability to define via configuration settings parameter values for different users and user groups, and further lack the ability to optionally and selectively notify an end user when access control restrictions are being enforced on their endpoint.” *Id.*, 3:27-33.

To solve these problems, the inventors created a system to flexibly manage corporate security policies. *Id.*, 3:43-44. In particular, the system is “for developing a compliance policy to control the access of an endpoint computing system to a resource in a host computing system.” *Id.*, 4:39-53.

III. LEGAL STANDARD

The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so called secondary considerations. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966). A claim is only unpatentable under 35 U.S.C. § 103 if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (quoting 35 U.S.C. § 103).

“An invention is not obvious simply because all of the claimed limitations were known in the prior art at the time of the invention. Instead, we ask ‘whether there is a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to combine the references, and that would also suggest a reasonable likelihood of success.’” *Forest Lab ’ys, LLC v. Sigmapharm Lab ’ys, LLC*, 918 F.3d 928, 934 (Fed. Cir. 2019). “Of course, concluding that the references are within the scope and content of the prior art to be considered for obviousness does not end the inquiry. *Graham* makes clear that the obviousness inquiry requires a determination whether the claimed invention would have been obvious to a skilled

artisan.” *Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1050 n.14 (Fed. Cir. 2016).

IV. LEVEL OF ORDINARY SKILL IN THE ART

For the purposes of this Preliminary Response only, Patent Owner utilizes Petitioner’s proposed level of skill in the art: a bachelor’s degree in computer science, computer engineering, or electrical engineering and at least three years of experience in networking operating systems and cyber security, or a master’s degree in one of the foregoing and at least two years of experience in the aforementioned fields. Someone with less or different technical education but more relevant practical experience, or more relevant education but less practical experience, could also be considered a POSITA. Pet. at 3.

V. CLAIM CONSTRUCTION

For the purposes of this Preliminary Response only, Patent Owner agrees that no claim terms require construction. Pet. at 7.

VI. ARGUMENT

The Petition fails to show a reasonable likelihood that any of the Challenged Claims would have been obvious over Cheng.

A. Cheng Does Not Render Obvious “determining, by the computing system, a compliance state of the endpoint based on the user information and status information, and a plurality of compliance policies in the data store;” 1[f], 9[f]

By its plain language, this limitation requires the computing system to determine a compliance state based on the *user information* and *status information* received in the preceding step¹ and at least two *compliance policies in the data store*. The Petition fails to show that Cheng renders this limitation obvious.

For limitation 1[e] and 9[e], the Petition identifies the results of Cheng’s “certain checks” as the status information. Pet. at 20-21, 40. Cheng allegedly discloses “registry, process, application and service checks.” *Id.*

However, Petitioner does not argue that the check results are used to make any determination regarding compliance. Indeed, Petitioner (and its expert) merely pay lip service to the check results, stating only that “Based on the results or sum evaluation of the checks, the access manager determines whether the client machine meets the standards of adequate protection.” Pet. at 24. *See also* Ex. 1003, ¶ 69

¹ “receiving, across a network, at the computing system, status information about the plurality of operating conditions on the endpoint, gathered by the one or more software services on the endpoint, and user information that identifies a user of the endpoint;” 1[e] and 9[e].

(same). Petitioner and its expert's conclusory statements do not show that the system determines *compliance* based on the status information (checks) and compliance policies. Indeed, the relevant portion of the Petition does not attempt to show that any compliance policies are considered, much less that those policies are in a data store. Pet. at 24. Thus, Petitioner's first argument does not show that this limitation is obvious.

Petitioner next argues that "the compliance state of the endpoint is also based on the user information and a plurality of additional compliance policies in the data store, and using this information to determine network access." *Id.* Petitioner further relies on "role-based access" and "roles" that are determined from any of a: MAC address, subnet, IP address, and/or user identifier. *Id.* at 24-25. Thus, Petitioner argues, "A POSITA would have understood that using information such as a user identifier (*i.e.*, user information), client machine MAC address, or other device identifier for determining the role of a user, and thus determining network access, is a further determination of the compliance state of the endpoint based on the user information and a plurality of compliance policies in the data store. . . ." *Id.* at 25. However, nothing related to determining the role of a user or network access is the previously identified "status information." And Petitioner makes no showing that any compliance policies are used to determine network access. As noted above, Petitioner only identifies the results of Cheng's "checks" as status information.

Accordingly, the determination “of the role of a user, and thus determining network access” does not meet or render obvious this limitation.

Petitioner makes no obviousness arguments that would overcome the above deficiencies. Accordingly, the Petition does not show that this limitation would be rendered obvious, and therefore fails to show a reasonable likelihood of success as to independent claims 1 and 9, and their dependent claims 2-8 and 10-16.

B. Cheng Does Not Render Obvious “determine, by the computing system, a compliance state of the endpoint based on the user information and status information, and a plurality of compliance policies in the data store”

Claim 17 recites the limitation “determine, by the computing system, a compliance state of the endpoint based on the user information and status information, and a plurality of compliance policies in the data store.” Petitioner explicitly relies on its claim 1 arguments as to this limitation. For the same reasons stated above, the Petition fails to show that this limitation would be rendered obvious. The Petition, therefore, fails to show a reasonable likelihood of success as to claim 17 and its dependent claims 18-24.

VII. THE PETITION SHOULD BE DENIED IN THE DISCRETION OF THE DIRECTOR UNDER 35 U.S.C. § 314(A)

Based on Petitioner’s reasons regarding § 314(a), the Board should exercise its discretion to deny this Petition.

The circumstances of the parallel District Court proceeding necessitate denial of the Petition under the Board’s precedent, as every factor considered in relation to efficiency, fairness, and the merits supports denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 6 (P.T.A.B. Mar. 20, 2020) (precedential) (considering (a) “whether the petitioner and the defendant in the parallel proceeding are the same party”; (b) “overlap between issues raised in the petition and in the parallel proceeding”; (c) “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision”; (d) “investment in the parallel proceeding by the court and the parties”; (e) “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted”; and (f) “other circumstances that impact the Board’s exercise of discretion, including the merits.”).

As set forth below, these factors collectively demonstrate that efficiency and integrity of the AIA are best served by denying review. First, the Petitioner is the Defendant in the parallel proceeding. *See infra* Section VII.A. Second, the Challenged Claims are all at issue in the District Court Litigation, and Petitioner has raised identical arguments for invalidity there. *See infra* Section VII.B. Third, trial in the District Court Litigation is set for March 15, 2024 (Ex. 2001), five months earlier than the projected statutory deadline for a Final Written Decision of this Petition in August 22, 2024. *See infra* Section VII.C. Fourth, the parties (and Taasera in particular) have invested significant resources on developing legal and factual

issues of validity and infringement in the District Court Litigation and will have invested substantially more resources before any decision on this Petition. *See infra* Section VII.D. Fifth, the Court has neither granted nor denied a stay pending this Petition. *See infra* Section VII.E. Finally, no other factors favor institution. *See infra* Section VII.F.

Accordingly, the Board should exercise its discretion under § 314(a) and deny the Petition because institution of this proceeding would not be consistent with the objective of the AIA to “provide an effective and efficient alternative to District Court litigation.” *NHK Spring Co. v. Intrix-Plex Techs., Inc.*, IPR2018-00752, Paper 8, at 20 (P.T.A.B. Sept. 12, 2018) (quoting *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, at 16–17 (P.T.A.B. Sept. 6, 2017) (precedential)).

**A. The Parallel District Court Proceeding and the Petition
Involve the Same Parties**

As noted in Patent Owner’s Mandatory Notice, there exists a parallel District Court proceeding between the same parties regarding the same subject patent (the ’918 Patent). *Palo Alto Networks, Inc., v. Taasera Licensing LLC*, IPR2023-00574, Paper 5 at 2-3 (P.T.A.B. March 2, 2023); Pet. at 51-52. Accordingly, this factor weighs in favor of discretionary denial.

B. The District Court Litigation Involves Substantially the Same Claims, Grounds, Arguments, and Evidence

This Petition is co-extensive with invalidity arguments that Petitioner has already raised in the District Court Litigation. 9,923,918 Based on U.S. Patent No. 8,065,712 to Chenget *al.*, *In re: Taasera Licensing LLC, Patent Litigation*, No. 2:22-md-03042-JRG served April 29, 2023. “In at least these ways, the parallel proceedings would duplicate effort. This is an inefficient use of Board, party, and judicial resources and raises the possibility of conflicting decisions.” *Cisco Sys., Inc. v. Ramot at Tel Aviv Univ. Ltd.*, IPR2020-00122, Paper 15 at 10 (P.T.A.B. May 15, 2020). Accordingly, this fact weighs strongly in favor of discretionary denial.

Petitioner states that it “will not pursue in parallel district court proceedings the same grounds as in the Petition.” Pet. at 51. Yet, the sole reference (Cheng) used in the Petition and Petitioner’s corresponding arguments significantly overlap with the claims, references, arguments, and evidence in the District Court Litigation. In fact, for the overlapping reference Cheng, Petitioner explicitly incorporates by reference the grounds asserted in the PTAB and points to the same sections of each reference for each of the same claim elements. *See, e.g.*, Ex. 2002 at 84 (“Defendant incorporates by reference each of the grounds of invalidity presented in the petition for the following *inter partes* review proceeding(s) (IPRs) and any additional petitions for IPRs that may be filed challenging the patentability of the ’038 and ’918

patents, respectively: IPR2023-00573 ('038 patent) [and] IPR2023-00574 ('918 patent)'), 215 (“Defendant incorporates by reference each of the obviousness combinations and motivations to combine presented in the petition for the following *inter partes* review proceeding(s) (IPRs) and any additional petitions for IPRs that may be filed challenging the patentability of the '038 and/or '918 patent: IPR2023-00573 [and] IPR2023-00574”).

For this reason, denial of institution under § 314(a) is appropriate because the Petition “includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel [District Court] proceeding.” *Fintiv*, IPR2020-00019, Paper 11, at 12.

C. Proximity of the District Court’s Trial Date

The proximity of the District Court Litigation’s trial date to the Board’s projected statutory deadline for a Final Written Decision strongly weighs in favor of discretionary denial.

The parties’ trial is scheduled for March 15, 2024. Exhibit 2001 (Fifth Amended Docket Control Order, Dkt. 225, *In re: Taasera Licensing LLC, Patent Litigation*, No. 2:22-md-03042-JRG (E.D. Tex. May 19, 2023)). Pursuant to 35 U.S.C. §§ 314(b)(1) and 316(a)(11), the projected statutory deadline for a Final Written Decision of this Petition is August 22, 2024. As the District Court’s trial will be more than five months before the projected statutory deadline, this factor weighs

strongly in favor of denying institution. *See Supercell Oy v. Gree, Inc.*, IPR2020-00513, Paper 11 at 10-12 (P.T.A.B. June 24, 2020) (denying institution where the jury trial was scheduled to conclude approximately ten months before the statutory deadline); *Edward LifeSciences Corp. v. Evalve, Inc.*, IPR2019-01479, Paper 7, at 6-13 (P.T.A.B. Feb. 26, 2020) (denying institution where jury trial would conclude more than nine months before a final decision would be due); *Samsung Elecs. Am., Inc. v. Uniloc 2017 LLC*, IPR2019-01218, Paper 7, at 7-10 (P.T.A.B. Jan. 7, 2020) (denying institution where jury selection was scheduled for approximately six months before trial in the Board proceeding would conclude); *Next Caller Inc. v. TrustID, Inc.*, IPR2019-00961, -00962, Paper 10, at 8-16 (P.T.A.B. Oct. 16, 2019) (denying institution where trial was scheduled to conclude “several months,” before a final decision would be due); *Cisco Sys., Inc.*, IPR2020-00122, Paper 15 at 8 (“Because the trial date is substantially earlier than the projected statutory deadline for the Board’s final decision, this factor weighs in favor of discretionary denial.”).

Petitioner does not contest that the proximity of the trial favors denial of institution. Thus, this factor also weighs in favor of discretionary denial.

D. Significant Investment and Petitioner’s Delay in Filing the Petition

The parties’ investment in the parallel proceeding weighs in favor of discretionary denial.

In the District Court Litigation, the Court has already entered six Docket Control Orders (Dkts. 8, 15, 46, 84, 209, 225), Discovery Order (Dkt. 137), Protective Order (Dkt. 162), and E-Discovery Order (Dkt. 195). Discovery is also well under way. The parties have already exchanged initial disclosures, infringement contentions pursuant to P.R. 3-1, and invalidity contentions pursuant to P.R. 3-3. The parties have already exchanged proposed claim terms and preliminary claim constructions for those terms, fact discovery closes in approximately five months on October 16, 2023, and a trial date is set for March 15, 2024, which is less than a year away. Ex. 2001.

As noted above, the sole reference used in the Petition (Cheng) and Petitioner's corresponding arguments significantly overlap with the claims, references, arguments, and evidence in the District Court Litigation. Petitioner further fails to offer any explanation why the Board should review the same claims on the same grounds which will already have been adjudicated by the District Court based on the parties' investment. Thus, the parties' and Court's substantial investment in this proceeding weighs in favor of denial of institution under this factor.

E. No Stay of the Parallel District Court Proceeding

There is no stay of the parallel District Court proceeding. Even if the Petition were instituted and Petitioner filed a motion to stay the District Court Litigation,

prejudice, tactical disadvantage to Taasera, the late stage of the litigation, and the lack of potential simplification would weigh strongly against such a motion. *See Lennon Image Techs., LLC v. Macy's Retail Holdings, Inc.*, 2:13-CV-00235-JRG, 2014 WL 4652117, at *1 (E.D. Tex. Sept. 18, 2014). The statutory deadline for institution is not until after responsive claim construction briefing is due, placing any motion for a stay close to trial. Ex. 2001; *see Intell. Ventures v. FedEx Corp.*, No. 2:16-cv-00980-JRG, Dkt. 141 at 4-5 (E.D. Tex. Oct. 24, 2017) (“The Court agrees that the Parties have already invested substantial effort and resources during discovery and in preparing claim construction briefing. . . . These circumstances weigh against staying this case”).

Moreover, a stay would not decrease the burden on the Court and the parties since the instituted IPRs cover one out of the seventy-one references that Petitioner raised in the District Court Litigation for both anticipation and obviousness, under § 112, and under § 101. Ex. 2002, at 19-24, 83-84, 165-215, 374-386, 430-455. *Intell. Ventures*, No. 2:16-cv-00980-JRG, Dkt. 141 at 3-4 (“[T]he instituted IPRs only cover a narrow slice of the invalidity arguments Defendants have raised in this case. For example, Defendants have argued that the ’715 Patent is invalid under § 102 with respect to at least eight references . . . under § 103 with respect to at least twenty-six combinations . . . under § 112 [], and under § 101.”).

Accordingly, it would be unlikely for the Court to hold that a stay would streamline the litigation and this factor supports denial of institution.

F. Other Factors Favor Discretionary Denial

Petitioner does not present a strong case on the merits, further supporting denial of institution. *See supra* Section VI. Petitioner also does not identify any other factors which weigh against discretionary denial. Pet. at 50-51.

Thus, when viewing the factors together, the Petition should be denied in the Director's discretion under 35 U.S.C. § 314(a).

VIII. CONCLUSION

For the foregoing reasons, the Petition fails to show a reasonable likelihood of success as to any Challenged Claim. Patent Owner respectfully requests that the Board deny institution of the Petition in its entirety.

Respectfully submitted,

Dated: May 22, 2023

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S PRELIMINARY RESPONSE specified in 37 C.F.R. § 42.24 has 3,250 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word for Office 365.

Respectfully Submitted,

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