

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,

Petitioner

v.

CORRIGENT CORPORATION,

Patent Owner.

Case No. IPR2023-00805

U.S. Patent No. 7,593,400

**PETITIONERS' REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)**

Pursuant to 37 C.F.R. § 42.71(d), Petitioner Arista Networks, Inc. requests rehearing of the Decision Denying Institution of Inter Partes Review dated November 9, 2023, Paper 10 (the “Decision”). Petitioner respectfully submits that the Board’s Decision misapprehended or overlooked: (1) portions of the Petition establishing that Smith is based on a Layer 2 network architecture that requires routing data packets ***based on their MAC addresses***; (2) the knowledge of a POSITA that supports a finding that data packets in Layer 2 ***specify a MAC destination address***; and (3) Patent Owner’s admission that Smith’s data packets specify a MAC source address, which is inconsistent with the finding that Smith’s data packets do not specify a MAC destination address.

I. Background

On April 3, 2023, Petitioner filed a Petition for *inter partes* review of claims 1-20 of U.S. Patent No. 7,593,400 (the “’400 Patent”). Paper 2 (the “Petition”), 3. In particular, the Petition’s Ground 1 argued that at least independent claims 1 and 11 are unpatentable under 35 U.S.C. § 103 as obvious over U.S. Patent Pub. No. 2005/0198371 (EX1004, “Smith”) in view of U.S. Patent No. 6,999,418 (EX1025, “Sharma”). Petition, 12-34.

On November 9, 2023, the Board issued its Decision denying institution of IPR. Decision, 10. The Board focused on Ground 1 and limitations 1[d] and 11[d], both of which recite: “receiving a data packet on an ingress port of said network

node from a MAC source address, said data packet specifying a MAC destination address on said Layer 2 data network.” Decision, 6-9. The Board found that “Petitioner has not adequately shown that Smith satisfies limitations 1[d] and 11[d].” Decision, 9. The Board explained “Smith does not disclose, teach, or suggest that the destination logical identifier is a MAC address, as Petitioner alleges,” “[n]or has Petitioner shown that the inclusion of a destination logical identifier in Smith’s data packet otherwise ‘specifies’ an associated MAC destination address.” Decision, 9. Petitioner respectfully requests reconsideration because the Board misapprehended or overlooked the evidence in the record establishing that Smith satisfies the claimed “said data packet specifying a MAC destination address on said Layer 2 data network.”

II. Legal Standard

A request for rehearing is appropriate when the requesting party believes “the Board misapprehended or overlooked” a matter that was previously in the record. 37 C.F.R. § 42.71(d). The request “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or a sur-reply.” *Id.* In reviewing such a request, “a panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71(c). An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, if a factual finding is not supported

by substantial evidence, or if an unreasonable judgment is made in weighing relevant factors. *See, e.g., Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P’ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

III. Argument

Petitioner respectfully submits that a rehearing is appropriate because the Board misapprehended or overlooked the arguments and evidence in the Petition showing a reasonable likelihood that that Smith’s data packet “specif[ies] a MAC destination address on said Layer 2 data network,” as claim limitations 1[d] and 11[d] require.

A. The Board’s Decision overlooked portions of the Petition that show that data packets in Layer 2 specify a MAC destination address

Petitioner respectfully submits that the Board’s Decision overlooked portions of the Petition discussing the Layer 2 network architecture prevalent in both the ’400 Patent and Smith, which ***requires*** routing data packets ***based on their MAC destination addresses***.

As the Petition explains, Smith is directed to a Layer 2 system architecture for a network switch that is configured to route data packets ***based on MAC addresses***. *See, e.g.,* Petition at 12–14 (discussing Smith’s L2 tables); EX1004, ¶0030 (defining “L2” as “Layer 2”). The term “Layer 2” “refers to the second layer in the protocol stack defined by the well-known Open Systems Interface (OSI) model, also known

as the logical link, data link, or **Media Access Control (MAC) layer.**¹ See, e.g., Petition, 8-9; EX1001, 1:14–:17. At the time of filing of the '400 Patent, it was well-known that a network switch operating in Layer 2 is configured to route a data packet based on the MAC address of the data packet's destination (e.g., MAC destination address) as well the MAC address of the data packet's origination (e.g., MAC source address). For example, the Petition explains:

MAC addresses are used by L2 switches (also called bridges) to switch packets at the network node from an input port to an output port. [EX1003, Petitioner's expert declaration], ¶¶52-54. A MAC bridge is a network device [that] connects two physically separated LANs into a single logical LAN. *Id.* ¶52. **To forward data packets**, called "frames," a MAC bridge maintains a forwarding database (FDB) **of MAC addresses** and corresponding bridge ports of packets that have been received at the bridge. *Id.* ¶¶53-55. **When a bridge receives a packet, it checks the destination MAC address of the packet.** *Id.* ¶55. The bridge checks a MAC address table (or forwarding database) **to determine whether it knows where to forward the message.** *Id.* ¶55. If the destination MAC address of the packet is in the FDB, the bridge forwards the packet to the port associated with that destination MAC address. *Id.* If not, the bridge may send the message over every port to ensure it is received at the intended destination. *Id.* This is called "flooding." *Id.* **When packets are received, the bridge also "learns"**

¹ All emphasis is added.

information about the source MAC address of each packet and, if the source MAC address is not in the FDB, updates the database to reflect the association between the incoming port and the source MAC address.

*Id.*²

Petition, 7–8; *see also* EX1003, ¶53 (Petitioner’s expert confirming that “[e]ach frame [e.g., data packet] includes the MAC address of its source node and the **MAC address of its destination node**”).

The ’400 Patent and Smith are both directed to network systems operating in Layer 2 and incorporate the same routing technique described above. *See, e.g.*, Petition at 12–14, 22–24, 8–11; *see also* EX1004, ¶¶ 34, 9, 44, 46–47, 54, 57, 61 (citations corresponding to the Petition); EX1001, 1:13–:19, 2:60–3:2, 3:7–:11, 3:11–:17, 3:18–24, FIG. 3, 7:55–:63 (citations corresponding to the Petition).

A POSITA would have known about the Layer 2 routing technique noted above, recognized that Smith’s switch also operates in Layer 2, and would have

² As additional context, a L2 switch is configured to learn an association between a data packet’s MAC source address (where the data packet comes from) and the port at which the data packet was received, so that when the L2 switch receives a subsequent data packet and its destination (e.g., the data packet’s **MAC destination address**) is the same as one of the learned MAC addresses, the L2 switch knows to which port to route the data packet. *See, e.g.*, EX1003, ¶¶ 53–54; Petition, 22–24.

found it inherent or obvious that Smith’s data packets “specify[] a MAC destination address on said Layer 2 data network,” as required by limitations 1[d] and 11[d]. *See In re Mouttet*, 686 F.3d 1322, 1333 (Fed. Cir. 2012) (“[T]he test for obviousness is what the combined teachings of the references would have suggested to [a POSITA].”). Indeed, ***each and every embodiment of Smith requires checking the data packet’s MAC destination address*** because that is what Smith uses to determine to which port (e.g., logical interface) the data packet needs to be routed to (e.g., logical interface connected to the network device having the MAC destination address). *See, e.g.*, Petition at 12–14, 18–20, 22–24. If Smith’s data packet did not specify a MAC destination address, Smith would not know where to route the data packets and every embodiment of Smith would be inoperable.

Consequently, Petitioner respectfully requests the Board to reconsider its Decision because a finding that Smith fails to satisfy the claimed “said data packet specifying a MAC destination address on said Layer 2 data network” conflicts with Smith’s disclosure and would require a finding that Smith’s techniques are inoperable.

B. The Board’s Decision misapprehended the Petition’s argument about “destination logical interface” by failing to consider the knowledge or understanding of a POSITA

The Board’s Decision also misapprehended the Petition’s argument about “destination logical interface” by failing to consider the knowledge or understanding

of a POSITA. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (“a prior art reference must be ‘considered together with the knowledge of one of ordinary skill in the pertinent art.’”) (quoting *In re Samour*, 571 F.2d 559, 562, 197 USPQ 1, 3-4 (CCPA 1978)). In contrast to the Decision’s finding, a POSITA would have understood that, if Smith’s “data packet has a destination logical interface,” as Petitioner contended (Petition, 25), ***Smith’s data packet must also specify a MAC destination address because Smith uses the MAC destination address to determine which interface the data packet should be sent to.***

As the Petition explains, Smith uses the same well-known routing technique noted above using the term “interface” instead of “port.” *See, e.g.*, Petition, 18–20, 12, 13. A POSITA would have understood that data packets in a Layer 2 network are routed based on corresponding MAC addresses and would have further understood that Smith’s L2 switch assigns a destination logical interface³ based on

³ The term “logical” in destination logical interface is a term of art used to represent a set of physical interface/links that are grouped together. *See, e.g.*, Petition, 20–22, 12, 13, 8 (describing another well-known technique referred to as link aggregation group (“LAG”) that involves aggregating a group of physical links into a single **logical** link); EX1004, ¶¶ 53, 10, 11-13. The term “destination” in destination logical identifier is simply used to indicate that the *destination* logical

a data packet's MAC destination address. *See, e.g.*, Petition at 12–14, 18–20, 22–24, 8–11. Without the data packet's MAC destination address, Smith would not know the data packet's destination in the Layer 2 network and would not be able to select the appropriate interface as the destination logical interface.

Accordingly, Petitioner respectfully requests the Board to reconsider the Decision based on a POSITA's understanding that if Smith's data packet has a destination logical interface, it must also specify a MAC destination address.

C. The Board's Decision overlooked Patent Owner's admission that Smith's data packet specifies a MAC source address

The Board further overlooked Patent Owner's admission that Smith's data packet specifies a MAC source address, which is inconsistent with the Decision's finding that Smith's data packet fails to specify a MAC destination address. *See, e.g.*, Patent Owner Preliminary Response ("POPR"), p. 7, n. 2 ("Smith expressly discloses the 'sending device's MAC address ...'"). As discussed above and in the Petition, ***data packets in a Layer 2 network are routed from a network device having a MAC address (source) to another network device having a MAC address (destination)***. *See, e.g.*, Petition, 7–8; EX1003, ¶¶ 52–54; EX1001, 1:33–:46;

identifier is an interface that is connected to a network device having the MAC destination address. *See, e.g.*, EX1004, ¶¶ 47, 60; Petition, 12–13.

EX1004, ¶ 54. Nothing in the record nor any of Patent Owner’s argument indicates that Smith’s data packet could specify a MAC source address but not a MAC destination address. Based at least on the inconsistencies of Patent Owner’s argument, Petitioner respectfully requests the Board reevaluate the parties’ arguments and institute IPR of claims 1-20 of the ’400 Patent.

D. The Board’s Decision appears to have overlooked the differences of the arguments presented in the Petition and those presented in IPR2023-00370

Prior to the Decision, the Board denied institution of another IPR petition in *Cisco Systems, Inc. v. Corrigent Corp.*, IPR2023-00370, Paper No. 18 (PTAB, Aug. 11, 2023) (“the 370 IPR”). EX2001. In an attempt to draw an improper parallel, Patent Owner mischaracterized the Petition stated that “the arguments and evidence that Petitioner relies on here are identical to those presented in the 370 IPR.” POPR, 5. They are not.

The Petition here presents substantially different arguments stemming from the fact Petitioner has a fundamentally different understanding of what the claimed invention of the ’400 Patent is than that of the 370 IPR’s petition. As the Petition explains, the claimed invention of the ’400 Patent is directed to a technique for learning the MAC source address on the “egress path,” or as a data packet is being transmitted out from the “egress line card.” *See, e.g.*, Petition, 8–11; EX1001, 3:18–24, FIG. 3, 7:55–:63. The 370 IPR petition did not recognize this distinction. *See*

EX2003, 11–14. Based on this different understanding, the Petition here provided a different mapping of the claimed elements, which the Board appears to have overlooked. *See, e.g.*, Decision, 7 (pointing to “line card 304(1)” and “interface 320(9),” which are different network elements mapped in the 370 IPR petition).

For at least these reasons, Petitioner respectfully requests the Board to reevaluate the Petition and institute IPR of claims 1-20 of the ’400 Patent.

IV. Conclusion

For the reasons set forth herein, individually and cumulatively, Petitioner respectfully requests that its request for rehearing be granted in the above-captioned proceeding.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 08, 2023, I caused a true and correct copy of the foregoing **PETITIONERS' REQUEST FOR REHEARING UNDER 37 C.F.R. § 42.71(d)** to be served via email on the following counsel of record for Patent Owner at SJCorrigentIPR@step toe.com and the email addresses listed below.

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