

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

CROGA INNOVATIONS LTD.,
Patent Owner.

IPR2024-01196
Patent 10,601,780 B2

Before JEAN R. HOMERE, TERRENCE W. McMILLIN, and
RUSSELL E. CASS, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71(d)

I. INTRODUCTION

Cisco Systems, Inc. (“Petitioner”) timely filed a request for rehearing (Paper 8, “Request” or “Req.”) of the Decision Denying Institution (Paper 7, “Decision” or “Dec.”) of an *inter partes* review challenging claims 1–20 of U.S. Patent No. 10,601,780 B2 (Ex. 1001, “the ’780 patent”). Petitioner contends that the Board should reconsider the Decision because the Decision “overlooked a key prior art disclosure identified in the Petition.” Req. 3.¹ We have reconsidered the Decision and deny the Request to modify the Decision and institute an *inter partes* review.

II. BACKGROUND²

The ’780 patent has two independent claims. Independent system claim 1 is directed to “[a] networked computer system comprising . . . an **internal firewall** configured to separate the host system from the virtual system” and independent method claim 11 is directed to “network isolation in a networked computer system, the method comprising . . . separating the host system from the virtual system using an **internal firewall**.” Ex. 1001, 12:63–13:13, 13:65–14:17 (emphasis added). For these internal firewall

¹ The pages in the Request are mis-numbered. The second page is numbered “3” and the third page is numbered “4.” Nonetheless, we use the Request’s page numbers so that our cites correspond with the numbers used in the Request.

² The Decision discusses the relevant technology, the challenged claims, the asserted grounds, and provides background regarding the dispute between the parties. We therefore only provide details with particular relevance to the Request.

limitations, Petitioner relied on Delco (US 8,166,474 B1(Ex. 1005)).³ Paper 2, 38–41 (“Pet.”). In particular, Petitioner argued that “Delco’s packet filter layer 74 is an “*internal firewall*” because it performs the function of a firewall—filtering packets —between the internal virtual machine and destinations that are external to the virtual machine (e.g., the host system 42 or over the Internet).” Pet. 39. In the Decision, the Board “considered Delco and all its teachings and suggestions and determine[d] that Petitioner ha[d] not sufficiently shown that Delco teaches or suggests the internal firewall limitations.” Dec. 13.

III. STANDARD OF REVIEW

The standard applicable to a request for rehearing of a Board decision is provided in Rule 42.71(d), which states in pertinent part:

The burden of showing a decision should be modified lies with the party challenging the decision. 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, or a reply.

37 C.F.R. § 42.71(d) (2021). A request for rehearing is not an opportunity merely to disagree with the Board’s assessment of the arguments or weighing of the evidence.

IV. ANALYSIS

Petitioner’s argument in support of rehearing and modification of the Decision is:

³ Petitioner relied on its showing for the internal firewall limitation in claim 1 for its showing relating to the corresponding limitation in claim 11. Pet. 68.

The Board denied institution based on an incorrect understanding that “[p]acket filter 74 is positioned to protect Guest OS 58 from external network packets not from the host system or packets originating from the host system.” DI, 16-17. The Board also stated: “Packet filter 74 is a filter of packets from an external network and does not function to separate the host system from the virtual system.” DI, 17.

Such statements are contrary to the prior art and the Petition’s analysis. Delco’s packet filter 74 filter[s] packets from both an external network **and from the host system**. In analyzing the “internal firewall” limitation, the Petition cites to Delco’s teaching that using “packet filters in the individual virtual machines enables each virtual machine to discretely manage network communications with respect to all external entities, **including the host operating system**.” Ex.1005, 3:40-46; Petition, 40-41. Packet filter 74 corresponds to the claimed “internal firewall” because it applies “specific restrictions and controls” to filter packets passing between the guest operating system and host operating system. Ex.1005, 10:28-31; Pet., 19-20 & 39-40. For example, packet filter 74 is configurable to restrict the guest operating system’s access to certain “destination ports” on the host operating system. Ex.1005, 8:44; Petition, 39-40 (“...customized policy rules such as... which ports the virtual machine can access”). Thus, Delco teaches the critical feature—filtering packets passing between the guest and host operating systems—that the Board mistakenly believed to be lacking.

Req. 3–4. The only passage in Delco allegedly overlooked by the Board that even refers to the host operating system is a single sentence in the “Summary of the Invention” in column 3, lines 40– 46, which provides:

An advantage of the present invention is that the distributed implementation of packet filters in the individual virtual machines enables each virtual machine to discretely manage network communications with respect to all external entities, **including the host operating system** and other virtual machines.

Ex. 1005, 3:40–46 (emphasis added). This sentence was not overlooked by the Board in its Decision. This sentence is quoted in the Decision on page 12 and cited on page 13. Dec. 12–13. In the Petition, Petitioner interprets this sentence as teaching that “[b]y filtering traffic between the virtual system and the host system, the packet filter 74 acts as an internal firewall that **implements isolation** between the virtual machine(s) and the host operating system.” Pet. 40–41. There at least two things wrong with this interpretation: (1) this sentence is not discussing packet filter 74 or how it functions; and (2) managing communication is not implementing isolation. And, we reject the contention that this single sentence in Delco supports Petitioner’s interpretation that Delco’s packet filter 74 is an internal firewall that separates the virtual machine from the host system. *See* Req. 3–4. The Board’s contrary interpretation of Delco’s teachings as a whole regarding the function of packet filter 74 and whether it is the recited internal firewall as alleged by Petitioner is much better supported. *See* Dec. 11–21. Petitioner did not show in the Petition (or the Request) that Delco’s packet filter 74 filters packets from the host system.

Petitioner cites two other passages in Delco in its argument contending the Board overlooked key prior art disclosure in the Petition. *See* Req. 3–4. These passages in Delco provide:

Factors defined by rule sets for evaluation can include source and destination addressing, whether based on MAC, IP, IPX, or similar addresses or address ranges, the type of network traffic, such as broadcast, unicast, and multicast, the packet transmission protocol, such as ARP, IPX, IP, TCP, UDP, HTTP, and the like, the packet designated source and **destination ports**, including whether falling within privileged

and unprivileged port ranges, the direction of the network traffic, and packet size.

....

Network access, though only subject to the specific restrictions and controls established by the corresponding packet filter 74, is then available 108 to the guest operating system 58.

Ex. 1005, 8:38–46 (emphasis added), 10:28–31. These passages were not overlooked by the Board. The first passage was cited on page 13 of the Decision. In the Request, Petitioner argues that this passage supports a finding that “packet filter 74 is configurable to restrict the guest operating system’s access to certain ‘destination ports’ on the host operating system.” Req. 4. However, this argument fails because this passage does not teach or suggest that the destination ports are on the host operating system. An interpretation of the network traffic being discussed in this passage that is more in keeping with the disclosure of Delco is that this discussion relates to the preferred embodiments of Delco being discussed and “external communications network 48” “permitting connection to a local intranet 22 . . . and further, or directly, in alternate scenarios, to a public communications network 24, such as the Internet.” Ex. 1005, 4:58–61, 6:19–20.

The second passage was quoted on page 17 of the Decision and cited on pages 19 and 21 of the Decision. As explained in the Decision, this second passage contradicts rather than supports Petitioner’s argument that packet filter 74 is an internal firewall separating the virtual machine from the host system. *See* Dec. 17, 19, 21.

We also note that the Board found Petitioner's declaration evidence relating the internal firewall limitations to be unsupported by Delco and entitled to little weight. *See* Dec. 13 n.7.

In view of the foregoing, we disagree with Petitioner's assertion that "[t]he Board's decision overlooks Delco's teaching that the packet filter 74 ('*internal firewall*') filters packets passing between the host system and the virtual system." Req. 3. The Board directly addressed Petitioner's arguments and evidence regarding whether packet filter 74 acts as an internal firewall between a virtual machine and the host system. Dec. 11–21. The Board considered Delco's teachings and found that Petitioner had not shown that Delco teaches or suggest the internal firewall limitations of the '780 patent. *Id.* at 21. Moreover, the Board explained why it considered Petitioner's evidence to be inadequate. *Id.* at 12–21.

In its Request, Petitioner points to evidence that has already been considered, not overlooked. As noted above, a request for rehearing is not an opportunity merely to disagree with the Board's assessment of the arguments or weighing of the evidence. In the Request, Petitioner fails to discuss the Board's reasoning and the substantial evidence on which the Board's Decision was based. *See* Req. 3–4. Petitioner also fails to provide a persuasive explanation as to how or why the Board was mistaken. *Id.* Petitioner's disagreement with the Board's Decision is insufficient to meet Petitioner's burden of showing the Decision should be modified.

V. CONCLUSION

The Board's decision did not overlook the prior art's disclosure related to the internal firewall limitations in the Petition. Petitioner has failed to meet its burden of showing that we should modify our Decision.

VI. ORDER

It is

ORDERED that Petitioner's request for rehearing is *denied*.

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