

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TREND MICRO INC.,
Petitioner,

v.

CUPP COMPUTING AS,
Patent Owner.

PGR2021-00100
Patent 10,951,632 B2

Before THOMAS L. GIANNETTI, GARTH D. BAER, and
SHARON FENICK, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

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

I. INTRODUCTION

Trend Micro Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”), requesting a post-grant review of claims 1, 9, 16, and 24 (the “challenged claims”) of U.S. Patent No. 10,951,632 B2 (Ex. 1001, “the ’632 Patent”). CUPP Computing AS (“Patent Owner”) filed a Preliminary Response to the Petition (Paper 9, “Prelim. Resp.”). In addition, at our request, Petitioner filed an Explanation for Filing Multiple Petitions (Paper 13) and Patent Owner filed a Response to Petitioner’s Explanation (Paper 14).

We have authority under 35 U.S.C. § 324 to determine whether to institute post-grant review. For the reasons discussed below, we deny the Petition and do not institute post-grant review.

II. BACKGROUND

A. RELATED MATTERS

The ’632 patent is at issue in *CUPP Cybersecurity LLC v. Trend Micro, Inc.*, No. 3:20-cv-03206 (N.D. Tex.). The ’632 patent is also challenged in IPR2021-01236, IPR2021-01237, and PGR2021-00101.

B. REAL PARTY-IN-INTEREST

The Petition identifies Trend Micro as the real party-in-interest. Pet. 1. Patent Owner in its Preliminary Response does not contest this identification. Patent Owner identifies CUPP Computing AS the real party-in-interest. Paper 7, 1.

C. THE ’632 PATENT

The ’632 patent describes a system and method for providing data and device security between external and host devices. Ex. 1001, 1:30–33. According to the patent, mobile devices are more vulnerable to attacks by malicious code when traveling outside an enterprise network. *Id.* at 1:61–

65. The patent thus describes “a small piece of hardware [a ‘mobile security system’] that connects to a mobile device and filters out attacks and malicious code.” *Id.* at 5:45–47. The patent explains that “[u]sing the mobile security system, a mobile device can be protected by greater security and possibly by the same level of security offered by its associated corporation/enterprise.” *Id.* at 5:49–52.

The ’632 patent also describes a wake module configured to wake a mobile device from a power management mode. *Id.* at Fig. 18, 21:63–64.

D. CHALLENGED CLAIMS

Petitioner challenges claims 1, 9, 16, and 24. Pet. 4. Of the challenged claims, claims 1 and 16 are independent. Independent claim 1 is representative and is reproduced below:

1. A security system, comprising:
security system memory;
a communication interface configured to communicate with a mobile device and configured to communicate over a network with a security administrator device, the mobile device including a mobile device processor and including a security agent configured to cooperate with the security system, the security administrator device having a security administrator processor different than the mobile device processor, the mobile device being remote from the security administrator device, the mobile device being a first computer system, the security system being a second computer system, the security administrator device being a third computer system, the first computer system, the second computer system and the third computer system being separate computer systems; and
a security system processor being different than the mobile device processor and different than the security administrator processor, the security system processor being configured to:

store in the security system memory at least a portion of wake code, the wake code being configured to detect a wake event and to send a wake signal to the mobile device in response to detecting the wake event, the security agent of the mobile device being configured to receive the wake signal, the security agent of the mobile device being configured to wake at least a portion of the mobile device from a power management mode in response to receiving the wake signal, the security agent of the mobile device being configured to perform security services after the at least a portion of the mobile device has been woken;

detect a particular wake event;

prepare a particular wake signal in response to detecting the particular wake event; and

send the particular wake signal to the mobile device in response to detecting the particular wake event, the security agent of the mobile device being configured to wake the at least a portion of the mobile device in response to receiving the particular wake signal and being configured to perform particular security services after the at least a portion of the mobile device has been woken.

Ex. 1001, 31:15–59.

E. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability. Pet. 4.

Reference(s)	Basis	Challenged Claims
Hall ¹	§ 103	1, 9, 16, 24
Hall, Meenan ²	§ 103	9, 24
Joseph ³	§ 103	1, 16
Joseph, Meenan	§ 103	9, 24

¹ Ex. 1007, U.S. Patent App. Pub. No. 2008/0120423.

² Ex. 1008, U.S. Patent App. Pub. No. 2006/0101277.

³ Ex. 1009, U.S. Patent App. Pub. No. 2010/0218012.

III. ELIGIBILITY FOR POST-GRANT REVIEW

The post-grant review provisions of the Leahy-Smith America Invents Act (“AIA”)⁴ apply only to AIA patents, which are patents that have an effective filing date on or after March 16, 2013. *See* AIA §§ 3(n)(1); 6(f)(2)(A). Pre-AIA patents—those with effective filing dates before March 16, 2013—are not eligible for post-grant review.

Petitioner’s petition for *inter partes* review in IPR2021-01236 is “substantively duplicative” of its post-grant review petition in this case. Paper 13, 2. Petitioner filed its post-grant-review petition in this case “out of an abundance of caution,” in case the Board decides that the ’632 patent is an AIA patent “because Public PAIR incorrectly lists the ’632 patent as an AIA patent.” *Id.* at 1–2.

Neither party, however, contends that the ’632 patent is an AIA patent. Instead, as Petitioner explains, “[t]he ’632 patent is a pre-AIA patent because its effective filing date is no later than August 4, 2009, the date of its ancestor U.S. Patent No. 8,631,488, to which the ’632 patent claims priority via a series of continuations.” Pet. 3. Similarly, Patent Owner contends “the ’632 Patent is indisputably a pre-AIA Patent.” Paper 14, 1.

We agree with the parties that the ’632 patent is a pre-AIA patent,⁵ and thus is not eligible for post-grant review.

⁴ Pub. L. No. 112-29, 125 Stat. 284 (2011).

⁵ The ’632 patent claims the benefit of the filing date of a chain of patents including U.S. Patent No. 9,843,595, which was filed on December 6, 2016. Ex. 1001, 1:15–16.

IV. ORDER

Accordingly, it is:

ORDERED that the Petition for post-grant review is denied as to the challenged claims of the '632 patent; and

FURTHER ORDERED that no post-grant review is instituted.

PETITIONER:

Robert Buergi
Michael Burns
DLA Piper LLR (US)
robert.buergi@dlapiper.com
michael.burns@dlapiper.com

PATENT OWNER:

James Hannah
Jeffrey Price
Jenna Fuller
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
jhannah@kramerlevin.com
jprice@kramerlevin.com
jfuller@kramerlevin.com