

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMANTEC CORP.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01545
Patent 7,756,996

Before THOMAS L. GIANNETTI, RICHARD E. RICE, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

DECISION
Denying Request for Rehearing
37 CFR § 42.71(d)

INTRODUCTION

Symantec Corporation (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–7 (all claims) of U.S. Patent No 7,756,996, issued on July 13, 2010 (Ex. 1001, “the ’996 patent”). Paper 1 (“Pet.”). Finjan, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). In our Decision dated January 14, 2016, we denied the Petition as to all claims. Paper 10 (“Decision”).

Petitioner requests “partial” reconsideration of our Decision. Paper 11 (“Req. Reh’g”). Petitioner limits its request to independent claims 4 and 7, and dependent claims 5 and 6. Req. Reh’g 2. Petitioner’s stated grounds for rehearing are that (1) in denying trial as to claim 7, the Board relied on limitations not recited in the claim; (2) the Board improperly limited claim 7 to a particular embodiment; (3) the Board’s “implicit” construction of the term “management data” is improper; and (4) the Board improperly limited independent claim 4.

For the reasons that follow, Petitioner’s request for rehearing is denied.

ANALYSIS

The applicable standard for a request for rehearing is set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. 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.

1. *Claim 7 - Reliance on Limitations not Recited*

Petitioner contends that in our Decision, we relied on two limitations not recited in claim 7 in distinguishing that claim from Bavadekar (Pub. No. US 2003/0009571). Req. Reh’g 3–4. Those limitations are “server-originated” and “receiving from a management server computer.” *Id.*

As we pointed out in our Decision, Petitioner did not provide claim-by-claim, element-by-element claim charts demonstrating how each individual claim limitation is met by Bavadekar, or by any of the other references relied upon in the Petition. Decision 12. Thus, Petitioner did not provide an analysis of claim 7 separate from claim 4 or any other claim.

As the rehearing request acknowledges, Petitioner provided a chart showing the limitations of claims 1, 4, and 7 in a side-by-side format. Req. Reh’g 13–14; Pet. 7–8. In presenting that chart, Petitioner explained the purpose as follows:

The text of the three challenged independent claims (1, 4, and 7) is reproduced in the chart below. For ease of reference, labels have been assigned to each limitation, such as 1[P] which refers to the preamble of claim 1 and 4[G] which refers to the final step of claim 4. *Other than the claim format (i.e., system, method and computer-readable storage medium), independent claims 1, 4, and 7 recite substantially similar limitations.* The only meaningful difference is that claim 1 is directed to a system and further requires a “network gateway computer storing a network gateway communicator,” to communicate with a client, management server, and HTTP server, and data “embedders” and “extractors” on the client and gateway. *Thus, where applicable, these claims are discussed together herein.*

Pet. 6–7 (emphasis added; bracketed material in original).

As indicated, Petitioner’s chart assigned a label to each limitation, and equated many of the limitations that appear in all three independent claims. For example, claim element [B] in claim 4 recites, “receiving server-

originated non-HTTP management data from a management server computer intended for at least one client computer.” According to the chart, this term or its equivalent is present in all three independent claims. Pet. 7–8.

The chart, and Petitioner’s accompanying explanation, are discussed and relied upon in the Decision at pages 13–14. Based on Petitioner’s representations and the fact that Petitioner’s analysis treated the common elements together, we discussed claims separately only where differences were relied on by Petitioner. Decision 13.

Petitioner’s anticipation challenge based on Bavadekar discusses claims 4 and 7 together. Pet. 14. Specifically, as to the above claim element [B] limitations “server-originated” and “receiving . . . from a management server computer,” Petitioner’s analysis in relation to Bavadekar does not distinguish between claim 4 and claim 7. Pet. 15–17. Consequently, our Decision took this into account and treated those claims together. Decision 12–16.

Petitioner’s rehearing request asserts that this was error. Req. Reh’g 3–5. Petitioner now asserts that the Petition “pointed out the differences between claims 1, 4, and 7.” *Id.* at 13. Petitioner cites to the statement, quoted above, that the “only meaningful difference is that claim 1 is directed to a system, and further requires a ‘network gateway computer’” *Id.*

Because this argument addresses the “network gateway” recitation in claim 1, not the two claim differences the rehearing request alleges the Board misapprehended or overlooked in considering claim 7, we do not find it persuasive. Nor are we persuaded by Patent Owner’s alternative argument based on a section heading in its Petition, where square brackets were used

to indicate the differences in language between claims 4 and 7 discussed *supra*. *Id.* at 14. The analysis that followed this heading did not discuss the claims separately and did not distinguish between them. Pet. 15–17.

In summary, we conclude that the differences in language between claims 4 and 7 that Petitioner cites in its rehearing request were not relied on in the Petition; in fact, Petitioner told the Board that the claims “recite substantially similar limitations.” Accordingly, the alleged distinction relied on now could not have been overlooked or misapprehended by the Board in its Decision.

2. *Claim 7 – Improperly Limited to a Particular Embodiment*

Petitioner contends that the Board improperly limited claim 7 by requiring a management server separate from the gateway that receives management data. Req. Reh’g 4–8. Also, according to Petitioner, claim 7 “should not be limited to embodiments where the management data and HTTP messages are generated by different computers.” *Id.* at 8.

In the Decision, we explained that our rationale for distinguishing Bavadekar was based on the claims:

Patent Owner points out that in Bavadekar, the same computer that generates the message also generates the HTTP packet with the message as the payload. [Prelim. Resp.] at 16. As a result, message data is never “received from” the management server computer *as these claims require*. *Id.* at 17. We find this argument persuasive. In the ’996 patent, the management server is separate from the gateway that receives the management data. *See* Fig. 3, reproduced *supra*. *The claims reflect this by reciting “receiving server-originated non-HTTP management data from a management server computer intended for at least one client computer.”* Petitioner has failed to show that this element is met by Bavadekar.

Decision 14 (emphasis added). This explanation shows that we were relying on specific claim language requiring “receiving” non-HTTP management data, which we determined was not met by Bavadekar because there the same computer generates the message and the HTTP packet with the message as its payload.

Thus, we are not persuaded that there was an improper reading of limitations from the embodiments into claim 7 as Petitioner asserts. Req. Reh’g 5–8. Petitioner’s argument on this issue amounts to a disagreement with the Board’s findings regarding Bavadekar, and is not persuasive that anything was overlooked or misapprehended by the Board.

3. Improper “Implicit” Construction of Management Data

Petitioner admits that neither party provided a proposed construction of the term “management data.” Req. Reh’g 8. Nevertheless, Petitioner asserts that the Board’s “interpretation” is not supported by “substantial evidence.”

Our rules require that a rehearing request “must specifically identify all matters the party believes the Board misapprehended or overlooked.” 37 C.F.R. § 42.71(d). Petitioner did not propose a construction for this term, and, therefore, cannot show that something was overlooked. Petitioner instead presents an analysis of the term “management data” that was already considered by the Board in denying the Petition. Req. Reh’g 9–10.

Petitioner’s argument on this issue amounts to a disagreement with the Board’s conclusion, and is not persuasive that anything was overlooked or misapprehended.

4. *Claim 4 – Improperly Limited*

Petitioner’s assertion that claim 4 was “improperly limited” by the Board tracks its arguments pertaining to claim 7, *supra*. Req. Reh’g 12–13. For the reasons discussed, we are not persuaded that anything was overlooked or misapprehended.

5. *Other Arguments*

We have considered Petitioner’s other arguments (Req. Reh’g 13–15) and do not find them persuasive.

CONCLUSION

Petitioner has not carried its burden of demonstrating that our Decision denying institution of *inter partes* review of claims 4–7 of the ’996 patent misapprehended or overlooked any matters or that the Board abused its discretion. 37 C.F.R. § 42.71(d).

ORDER

For the foregoing reasons, Petitioner’s Request for Rehearing is *denied*.

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PETITIONER:

Joseph Richetti
Daniel Crowe
BRYAN CAVE LLP
joe.richetti@bryancave.com
dacrowe@bryancave.com

PATENT OWNER:

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

Michael Kim
FINJAN INC.
mkim@finjan.com