Trials@uspto.gov
571-272-7822

Paper No. 42
Entered: June 9, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIVERBED TECHNOLOGY, INC.,
Petitioner,

v.

SILVER PEAK SYSTEMS, INC.,
Patent Owner.

Case IPR2014-00245
Patent 8,392,684 B2

Before DENISE M. POTHIER, JUSTIN T. ARBES, and HYUN J. JUNG, *Administrative Patent Judges.*

JUNG, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Riverbed Technology, Inc. ("Petitioner") filed a Petition (Paper 2, "Pet.") on December 11, 2013 requesting institution of an *inter partes* review of claims 1–24 of U.S. Patent No. 8,392,684 B2 ("the '684 patent") pursuant to 35 U.S.C. §§ 311–19. Silver Peak Systems, Inc. ("Patent Owner") did not file a preliminary response. Based on the Petition, we instituted *inter partes* review of claims 1–24. Paper 12 ("Dec. on Inst.").

After institution, Patent Owner did not file a Patent Owner Response, and instead filed a Motion to Amend (Paper 16, "Mot.") seeking to cancel claims 1–24 and substitute claims 25–48 in their place. Petitioner filed an Opposition (Paper 23, "Opp.") to the Motion to Amend, and Patent Owner filed a Reply (Paper 26, "Reply"). In addition, the parties rely upon testimony from various declarants. Petitioner proffered the Declaration of Steven W. Landauer (Ex. 1008) with the Petition. Patent Owner proffered the Declaration of Geoff Kuenning, Ph.D. (Ex. 2001, "Kuenning Decl.") with its Motion to Amend and a Second Declaration of Dr. Kuenning (Ex. 2013, "2d Kuenning Decl.") with its Reply. In addition, a transcript of Dr. Kuenning's deposition (Ex. 1010, "Kuenning Dep.") was submitted by Petitioner. No deposition transcript was filed for Mr. Landauer.

An oral hearing in this proceeding was held on February 5, 2015, and a transcript of the hearing is included in the record (Paper 41, "Tr.").

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we grant Patent Owner's Motion to Amend to the extent that it requests to cancel claims 1–24 of the '684 patent. We determine that Patent Owner has not met its burden with respect to proposed

substitute claims 25–48 and thus, the Motion is denied as to the substitute claims. The Motion to Amend, therefore, is *granted-in-part*.

A. The '684 Patent (Ex. 1001)

The '684 patent, titled "Data Encryption in a Network Memory Architecture for Providing Data Based on Local Accessibility," issued on March 5, 2013 from U.S. Patent Application No. 11/497,026 ("the '026 application") filed on July 31, 2006. The '026 application is a continuation-in-part of U.S. Patent Application No. 11/202,697, which issued as U.S. Patent No. 8,370,583 B2, which was the subject of IPR2013-00403.

The '684 patent relates to encrypting data in a network memory architecture. Ex. 1001, 1:18. Figure 3 of the '684 patent is reproduced below:

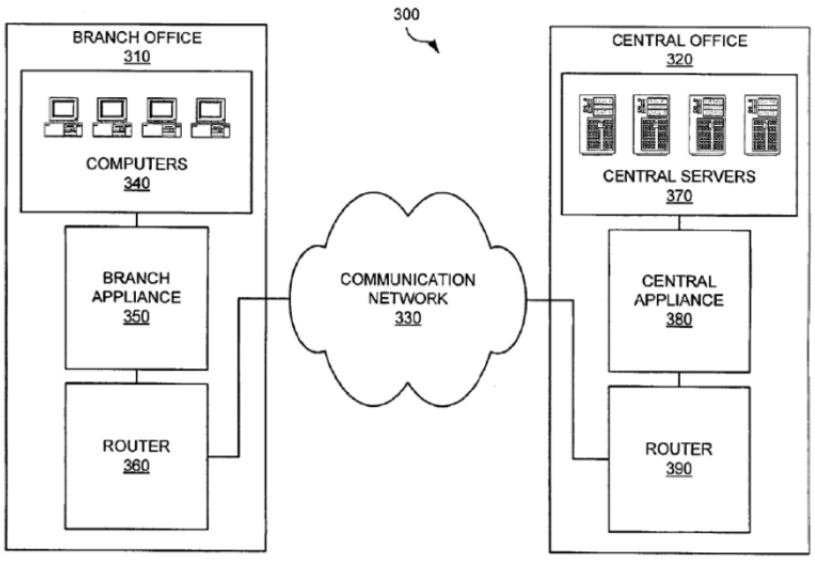

Figure 3 illustrates an exemplary implementation of network memory system 300. *Id.* at 4:62–63, 5:64–65. Network memory system 300 includes branch office 310 and central office 320. *Id.* at 5:65–66. Branch office 310 has computers 340 and branch appliance 350, and branch office 310 is coupled through router 360 to communication network 330. *Id.* at 5:66–6:2,

4–7. Branch appliance 350 "comprises hardware and/or software elements configured to receive data (e.g., email, files, and database[] transactions), determine whether a portion of the data is locally accessible to an appliance (e.g., central appliance **380**), generate an instruction based on the determination, and transfer the instruction to the appliance." *Id.* at 6:38–43.

Central office 320 includes central appliance 380 that is coupled to communication network 330 through router 390. *Id.* at 6:2–3, 7–10. Central appliance 380 "comprises hardware and/or software elements configured to receive data, determine whether a portion of the data is locally accessible to an appliance (e.g., the branch appliance **350**), generate an instruction based on the determination, and transfer the instruction to the appliance." *Id.* at 7:13–18. "In some embodiments, the instruction indicates an index within a database for storing and retrieving the data." *Id.* at 7:10–12.

In the exemplary embodiment, branch appliance 350 and central appliance 380 intercept network traffic between computers 340 and central servers 370. *Id.* at 7:29–32. Branch appliance 350 encrypts data, stores the encrypted data within a local copy in branch appliance 350, and transmits data to central appliance 380. *Id.* at 8:24–27. Branch appliance 350 also retrieves encrypted response data from the local copy per an instruction from central appliance 380, decrypts the response data, and forwards the response data to computers 340. *Id.* at 8:27–31.

Central appliance 380 also can receive an instruction from branch appliance 350 to store encrypted data in a local copy locally accessible to central servers 370. *Id.* at 8:34–37. Central appliance 380 is configured to determine whether the data is locally accessible to branch appliance 350 and

to decrypt the data before transmitting the data to central server 370. *Id.* at 8:39–41, 43–45.

Figure 4 of the '684 patent is reproduced below:

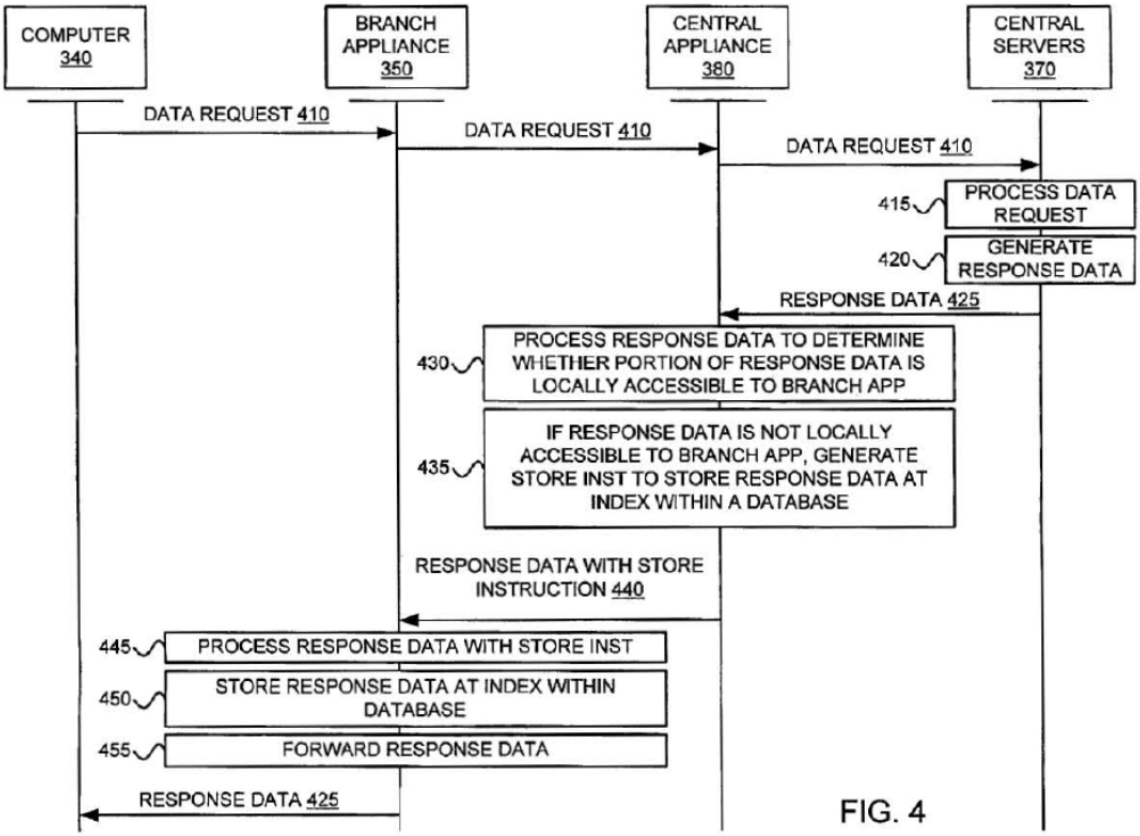

FIG. 4

Figure 4 is a sequence chart for the network memory system where a response to a data request is not accessible locally to a branch device. *Id.* at 4:64–67, 9:25–28.

Computer 340 transmits data request 410 through branch appliance 350 and central appliance 380 to central server 370. *Id.* at 9:25–31. Central servers 370 generate response data 425 based on data request 410 and transmit response data 425 to central appliance 380. *Id.* at 9:34–36, 39–41, Fig. 4 (sequence 420). Central appliance 380 processes response data 425 to determine whether a portion of response data 425 is accessible locally to

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.