

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case IPR2014-00482
Patent 7,188,180 B2

Before MICHAEL P. TIERNEY, KARL D. EASTHOM, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

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

I. BACKGROUND

Apple Inc. filed a Petition (Paper 1) (“Pet.”) seeking an *inter partes* review of claims 1, 4, 6, 10, 12–15, 17, 20, 22, 26, 28–31, 33, 35, and 37 of U.S. Patent No. 7,188,180 B2 (Ex. 1001, “the ’180 patent”) pursuant to 35 U.S.C. §§ 311–319. On September 3, 2014, the Board instituted an *inter*

partes review of claims 1, 4, 6, 10, 12–15, 17, 20, 22, 26, 28–31, 33, 35, and 37 (Paper 10) (“Dec. on Inst.”).

Subsequent to institution, VirnetX (“Patent Owner”) filed a Patent Owner Response (Paper 19) (“PO Resp.”), and Petitioner filed a Reply (Paper 23) (“Pet. Reply”). An Oral Hearing was conducted on June 2, 2015.

The Board has 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 determine that Petitioner has shown by a preponderance of the evidence that claims 1, 4, 6, 10, 12–15, 17, 20, 22, 26, 28–31, 33, 35, and 37 of the ’180 patent are unpatentable.

A. The ’180 Patent (Ex. 1001)

The ’180 patent describes methods for communicating over the Internet. Ex. 1001, 9:49–50.

B. Illustrative Claim

Claim 1 of the ’180 patent is reproduced below:

1. A method for accessing a secure computer network address, comprising steps of:
 - receiving a secure domain name;
 - sending a query message to a secure domain name service, the query message requesting from the secure domain name service a secure computer network address corresponding to the secure domain name;
 - receiving from the secure domain name service a response message containing the secure computer network address corresponding to the secure domain name; and

sending an access request message to the secure computer network address using a virtual private network communication link.

C. Cited Prior Art

Tavs	US 6,073,175	June 6, 2000	(Ex. 1008)
Bhatti	US 8,200,837 B1	June 12, 2012	(Ex. 1010)

Takahiro Kiuchi and Shigekoto Kaihara, “C-HTTP – The Development of a Secure, Closed HTTP-Based Network on the Internet,” PROCEEDINGS OF SNDSS (1996) (Ex. 1004 – “Kiuchi”).

D. Instituted Grounds of Unpatentability

References	Basis	Claims Challenged
Kiuchi	§ 102	1, 4, 10, 12–15, 17, 20, 26, 28–31, 33, and 35
Kiuchi and Bhatti	§ 103	1, 4, 10, 12–15, 17, 20, 26, 28–31, 33, and 35
Kiuchi and Tavs (alone or in combination with Bhatti)	§ 103	6, 22, and 37

E. Claim Interpretation

Virtual Private Network (VPN) Communication Link

We previously determined that, under a broad but reasonable construction, one of skill in the art would have understood the term “virtual private network communication link,” in light of the Specification, to include “a transmission path between two devices that restricts access to data, addresses, or other information on the path, generally using obfuscation methods to hide information on the path, including, but not limited to, one or

more of authentication, encryption, or address hopping.” Dec. on Inst. 6–7.¹ Patent Owner disputes this interpretation and argues that the term “virtual private network communication link” must be “a communication path between computers in a virtual private network” (PO Resp. 8), “requir[es] computers within a VPN to communicate directly” (PO Resp. 10), and requires a “network of computers,” which, according to Patent Owner must be “more than a ‘path between two devices.’” PO Resp. 14.

We decline to modify our previous construction of this term in the manner suggested by Patent Owner because such a modification is immaterial in this proceeding for reasons set forth below. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (claim terms need only be construed to the extent necessary to resolve the case).

Secure Computer Network Address

We previously construed the term “secure computer network address,” broadly but reasonably, and in light of the Specification to mean “an address that requires authorization for access.” Patent Owner does not agree with this construction and argues that one of skill in the art would have broadly but reasonably understood the term “secure computer network address,” in light of the Specification, to require the secure computer network address to be “associated with a computer capable of virtual private network communications.” PO Resp. 16.

¹ Our construction is consistent with the broadest, reasonable construction in *Inter Partes* Reexamination Control No. 95/001,792. *See Cisco Systems, Inc. v. VirnetX, Inc.*, Appeal 2014-000491, slip. op. at 4–8 (PTAB Apr. 1, 2014) (Decision on Appeal) (involving U.S. Patent No. 7,188,180).

Patent Owner argues that one of ordinary skill in the art would have understood that a “secure computer network address” must be “associated with a computer capable of virtual private network communications” because a claim recites “sending an access request message to the secure computer network address using a virtual private network communication link.” PO Resp. 16. We agree with Patent Owner that claim 1, for example, recites “sending an access request message to the secure computer network address using a virtual private network communication link.” However, Patent Owner does not explain sufficiently why an explicitly recited claim limitation must be incorporated into the construction of an associated claim term. Indeed, if one of ordinary skill in the art would have understood that all secure computer network addresses must be associated with a computer capable of VPN communications and that any computer network address that is associated with computers that are incapable of VPN communications would be understood by one of ordinary skill in the art not to be a “secure computer network address” (even if authorization for access is required), then any such recited claim limitation would be superfluous.

Patent Owner also argues that “VirnetX’s proposed construction has been agreed to by its litigation adversaries and has been adopted by a district court.” PO Resp. 17. Even if Patent Owner’s proposed construction “has been agreed to by” parties in litigation and the district court, Patent Owner does not assert or demonstrate persuasively that one of ordinary skill in the art would have broadly but reasonably construed the term “secure computer network address” in light of the Specification to require association with a computer capable of virtual private network communications.

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