

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case IPR2015-00867
Patent 8,458,341 B2

Before KARL D. EASTHOM, JENNIFER S. BISK, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

INTRODUCTION

A. Background

Petitioner, Apple Inc., filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–11, 14–25, and 28 (the “challenged claims”) of U.S. Patent No. 8,458,341 B2 (Ex. 1001, “the ’341 patent”). Patent Owner, VirnetX Inc., filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented does not show a reasonable likelihood that Petitioner would prevail with respect to any claim. *See* 35 U.S.C. § 314(a). Accordingly, we deny the Petition to institute an *inter partes* review.

B. Related Matters

The parties indicate Patent Owner has asserted claims of its patents related to the ’341 patent against Petitioner and five other entities in “numerous lawsuits.” Pet. 6–7; Paper 5, 12–13. Petitioner also filed another petition seeking *inter partes* review of the ’341 patent—IPR2015-00866. Pet. 2. In addition, many other *inter partes* review and *inter partes* reexamination proceedings challenging related patents are currently, or have been recently, before the Office.

C. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1–11, 14–25, and 28 of the ’341 patent are unpatentable under 35 U.S.C. § 103 based on the combination of

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Aventail¹ and RFC 2401,² as well as Aventail, RFC 2401, and RFC 2543³.
Petitioner also provides testimony from Dr. Roberto Tamassia. Ex. 1005.

D. The '341 Patent

The '341 patent describes secure methods for communicating over the Internet. Ex. 1001, 10:9–11. Specifically, the '341 patent describes “the automatic creation of a virtual private network (VPN) in response to a domain-name server look-up function.” *Id.* at 39:24–26. This automatic creation makes use of a modified Domain Name Server as opposed to a conventional Domain Name Server (DNS), which is described as follows:

Conventional Domain Name Servers (DNSs) provide a look-up function that returns the IP address of a requested computer or host. For example, when a computer user types in the web name “Yahoo.com,” the user’s web browser transmits a request to a DNS, which converts the name into a four-part IP address that is returned to the user’s browser and then used by the browser to contact the destination web site.

Id. at 39:27–33.

The modified DNS server may include both a conventional DNS and a DNS proxy. *Id.* at 40:20–22. The DNS proxy of the

¹ Aventail Connect v3.01/v2.51 Administrator’s Guide (1996–1999) (Ex. 1009) (“Aventail”). Exhibits 1009–1011 all relate to the Aventail Connect application and are collectively referred to as “Aventail Connect” unless otherwise noted. *See* Aventail Connect v3.01/v2.51 User’s Guide (1996–1999) (“Aventail User Guide,” Exhibit 1010); Aventail ExtraNet Center v3.0 Administrator’s Guide (NT and UNIX) (“Aventail ExtraNet,” Exhibit 1011).

² S. Kent & R. Atkinson, *Security Architecture for the Internet Protocol*, Request for Comments: 2401 (BBN Corp., November 1998) (Ex. 1008) (“RFC 2401”).

³ M. Handley, et. al., *SIP: Session Initiation Protocol*, Request for Comments: 2543 (March 1999) (Ex. 1013) (“RFC 2543”).

modified DNS server intercepts all DNS lookup requests, determines whether the user has requested access to a secure site (using for example, a domain name extension or an internal table of secure sites) and if so, whether the user has sufficient security privileges to access the requested site. *Id.* at 40:26–32. If the user has requested access to a secure site to which it has insufficient security privileges, the DNS proxy returns a “host unknown” error to the user. *Id.* at 40:49–52. If the user has requested access to a secure site to which it has sufficient security privileges, the DNS proxy requests a gatekeeper to create a VPN between the user’s computer and the secure target site. *Id.* at 40:32–38. The DNS proxy then returns to the user the resolved address passed to it by the gatekeeper, which need not be the actual address of the destination computer. *Id.* at 40:38–44.

The VPN is “preferably implemented using the IP address ‘hopping’ features,” (changing IP addresses based upon an agreed upon algorithm) described elsewhere in the ’341 patent, “such that the true identity of the two nodes cannot be determined even if packets during the communication are intercepted.” *Id.* at 40:5–9.

E. Illustrative Claim

Claims 1 and 15 of the ’341 patent are independent. Claim 1 is illustrative of the claimed subject matter and recites:

1. A network device, comprising:
 - a storage device storing an application program for a secure communications service; and
 - at least one processor configured to execute the application program for the secure communications service so as to enable the network device to:

send a request to look up an internet protocol (IP) address of a second network device based on a domain name associated with the second network device;

receive, following interception of the request and a determination that the second network device is available for the secure communications service, an indication that the second network device is available for the secure communications service, the requested IP address of the second network device, and provisioning information for a virtual private network communication link;

connect to the second network device, using the received IP address of the second network device and the provisioning information for the virtual private network communication link; and

communicate with the second network device using the secure communications service via the virtual private network communication link.

Ex. 1001, 56:2–25.

ANALYSIS

A. Claim Construction

We interpret claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); see *In re Cuozzo Speed Techs., LLC.*, 793 F.3d 1268, 1275–76 (Fed. Cir. July 8, 2015), *reh'g en banc denied*, 2015 WL 4100060 (Fed. Cir. July 8, 2015). We presume a claim term carries its “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question” at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (citation and quotations omitted).

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