UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.,
Petitioner,

v.

SPHERIX PORTFOLIO ACQUISITION II, INC.,
Patent Owner.

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Case IPR2015-00999
Patent 7,397,763 B2

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Before JUSTIN BUSCH, LYNNE E. PETTIGREW, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

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

I.   INTRODUCTION

Cisco Systems, Inc. ("Petitioner") filed a Petition requesting *inter partes* review of claims 1–25 ("the challenged claims") of U.S. Patent No. 7,397,763 B2 (Ex. 1001, "the '763 patent"). Paper 2 ("Pet."). Spherix Portfolio Acquisition II, Inc. ("Patent Owner") filed a Preliminary Response. Paper 8 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may be authorized only if "the information presented in the petition . . . and any [preliminary] response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a); 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, we determine that the information presented by Petitioner establishes that there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of claims 1–25 of the '763 patent. Accordingly, pursuant to 35 U.S.C. § 314, we institute an *inter partes* review of claims 1–25 of the '763 patent.

A. Related Proceedings

The '763 patent is involved in *Spherix Inc. v. Cisco Systems, Inc.*, Case No. 1:14-cv-00393 (D. Del.). Pet. 1. According to Patent Owner, the following additional proceedings involve the '763 patent or related U.S. Patent No. 8,607,323 B2: *Spherix Inc. v. Juniper Networks, Inc.,* Case No. 1:14-cv-00578 (D. Del), and *NNTP, LLC v. Huawei Investment & Holding Co., Ltd.*, Case No. 2:14-cv-0677 (E.D. Tex.). Paper 5, 2. Related U.S. Patent No. 8,607,323 B2 also is the subject of IPR2015-01001.

B. The '763 patent

The '763 patent relates generally to admissions control in a connectionless communications network. Ex. 1001, 1:13–15. According to the '763 patent, there were "no suitable methods for detecting link over-utilisation and communicating this to a call server or other management node in order that link over-utilisation can be prevented." *Id.* at 1:60–63. Therefore, "[i]f a link is already carrying the maximum number of VOIP calls, or other non-voice traffic, adding additional calls seriously degrades the voice quality of existing calls using that link," "[t]he new call added to the link also has poor voice quality," and "[c]ontinuing to add calls to the link degrades the quality of all calls until none of those calls are recognisable." *Id.* at 1:31–37. Known methods of admissions control require devices to support Middlebox Communication (MIDCOM) protocols, Packetcable protocols, or Common Open Policy Service (COPS) with Reservation Protocol (RSVP), but these protocols were not widely supported. *Id.* at 2:7–3:37.

To address these problems, the '763 patent describes a "method of providing call admission control which does not require using MIDCOM protocol methods, Packetcable protocols or COPS-RSVP approaches . . . which is simple to implement, cost-effective and which is able to deal with particular situations such as conference calls and/or lawful intercept." *Id.* at 3:57–62. Figure 3 of the '763 patent is reproduced below.
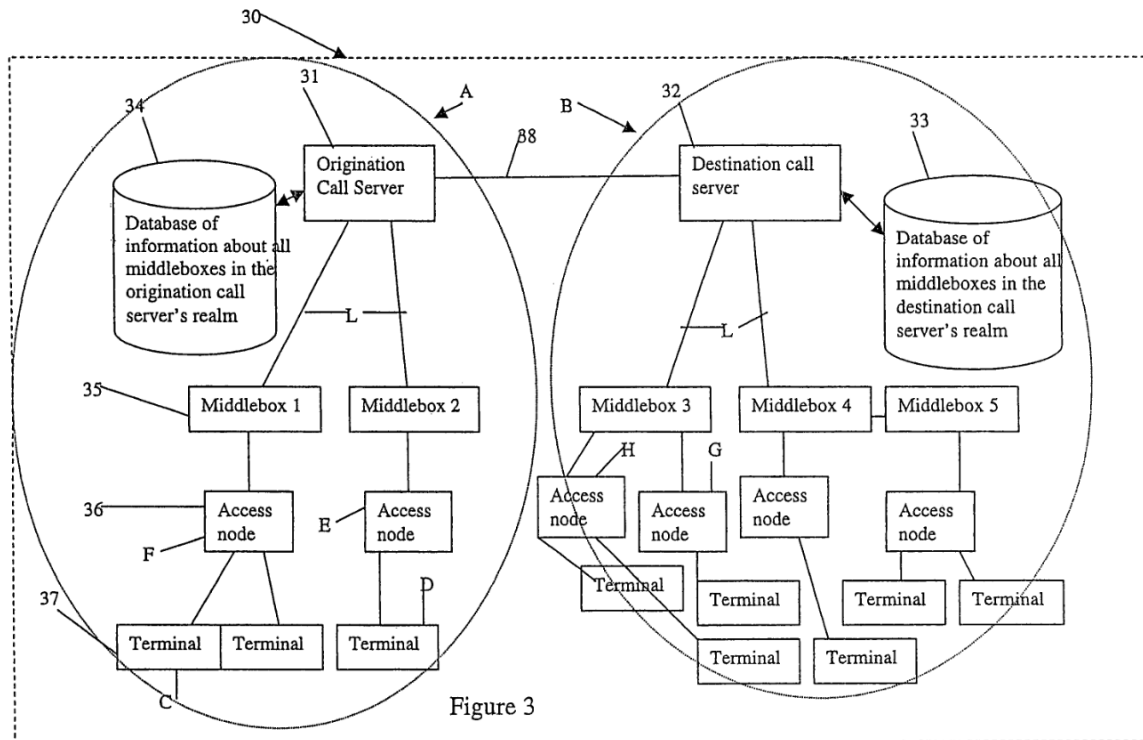
Figure 3

Figure 3 shows Voice over IP (VoIP) communications network 30
comprising a plurality of nodes interconnected by links. *Id.* at 8:19–21.
Communications network 30 comprises call servers 31, 32 interconnected by
link 38. *Id.* at 8:21–26. Each call server 31, 32 is associated with one or
more middleboxes 35, and is able to control packet media endpoints that are
behind those middleboxes with which the call server is associated. *Id.* at
8:26–29. Each middlebox is connected (possibly indirectly) to one or more
packet media endpoints 36, and those packet media endpoints are connected
to one or more terminals via which users are able to access the
communications network. *Id.* at 8:30–34.

Call server 31 serves realm A and call server 32 serves realm B. *Id.*
at 8:40–43. Accessible by each call server is a database 33, 34, which
contains pre-specified information about all the middleboxes in that call
server's realm, including: (1) which packet media endpoints are associated

with each middlebox; (2) the maximum possible bandwidth of the low-bandwidth link associated with each middlebox; and (3) the current available bandwidth on the associated low-bandwidth link. *Id.* at 8:48–60.

When a call request is made by a user of a terminal, a call request message, preferable in a form known in the art, is sent from that terminal to the associated call server via a packet media endpoint and one or more middleboxes. *Id.* at 8:63–9:3. If the bandwidth required for the call is less than each of the available bandwidths for the middleboxes associated with the origination and destination packet media endpoints, then the call is accepted. *Id.* at 9:54–56. Otherwise, the call is refused. *Id.* at 9:56–57. "When a call is accepted, the appropriate middlebox database is updated once the call begins and when the call ends." *Id.* at 9:65–66.

C. Illustrative Claim

Of the challenged claims, claims 1, 9, and 11 are independent. Claim 1 is reproduced below:

> 1. An admission control server for use in a packet-switched communications network, the network comprising a plurality of nodes and a plurality of links interconnecting the nodes, said server comprising:
>
> (i) an input configured to receive a call admission request in respect of a potential call traversing the network between two or more packet media endpoints;
>
> (ii) an input configured to access predetermined information about one or more of the plurality of links to be used for carrying packets comprising the potential call, the predetermined information comprising an amount of available bandwidth on said one or more of the plurality of links;
>
> (iii) a processor configured to determine whether to accept the potential call on the basis of the accessed predetermined information;

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