Paper No. 6

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AKAMAI TECHNOLOGIES, INC.,
Petitioner,

v.

LIMELIGHT NETWORKS, INC.,
Patent Owner.

Case IPR2016-01011
Patent 7,715,324

Patent Owner's Preliminary Response

AKAMAI

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EXHIBIT LIST

Exhibit	Description
2001	Declaration of Dr. Kevin Almeroth ("Dr. Almeroth Declaration")
2002	Attachment to Dr. Almeroth Declaration – CV of Dr. Kevin Almeroth
2003	Attachment to Dr. Almeroth Declaration – List of Materials Considered"
2004	Microsoft Visual C# 2008 Comprehensive: An Introduction to Object-Oriented Programming by Joyce Farrell, p. 821
2005	Joint Claim Construction and Prehearing Statement, No. 3:15-cv-720-JAG, Dkt. 112 (E.D. Va. June 20, 2016)
2006	U.S. Patent No. 6,108,703
2007	Order, No. 3:15-cv-720-JAG, Dkt. 146 (E.D. Va. Aug. 9, 2016)

I. INTRODUCTION

Patent Owner, Limelight, Inc. ("Patent Owner"), submits the following Preliminary Response to the Petition for *Inter Partes* Review (the "Petition") filed by Akamai Technologies, Inc. ("Petitioner") regarding Claims 1, 2, 4, 5, 6, 7, 8, 10, and 11 ("Challenged Claims") of U.S. Patent No. 7,715,324 ("the '324 Patent"). Akamai has alleged that Claims 1, 2, 5, 6, 7, 8, and 11 are unpatentable under 35 U.S.C. § 103(a) in view of U.S. Patent Publication No. 2007/0156845 ("Devanneaux"), and further in view of U.S. Patent Publication No. 2007/0226375 ("Chu") ("Ground 1"). (Petition at 14). Additionally, Akamai alleges that claims 4 and 10 are unpatentable under 35 U.S.C. § 103(a) in view of the Devanneaux and Chu, further in view of the publication titled "Transmission Control Protocol, DARPA Internet Program, Protocol Specification" ("RFC793") ("Ground 2") (collectively, "Grounds of Rejection"). (*Id.*).

As a threshold matter, the Petition fails to show how the cited references, alone or in combination, meet all of the limitations of any of the challenged claims. The rules require that "[e]ach petition … must include … [a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence." 37 C.F.R. § 42.22(a)(2); *see also* 37 C.F.R. § 42.104(b)(4)-(5). As explained by the Supreme Court, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated

reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007), *quoting In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). In this case, the Petition includes unsupported conclusory statements that the cited references disclose various claim elements. The Petition further fails to articulate why it would have been obvious to combine the cited references. Additionally, the Petition relies on an incorrect construction for the term "uniform resource indicator (URI)," which is present in all of the claims. This construction is contradicted by the intrinsic evidence as well as the ordinary and customary meaning the term would have to one of ordinary skill in the art at the relevant time. Accordingly, Petitioner has failed to articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness for the Challenged Claims.

II. SUMMARY OF THE PATENTED TECHNOLOGY

The '324 Patent relates to improvements in the optimization of network protocols (such as TCP) used to connect networked computers—servers and clients in particular. The '324 Patent discloses systems and methods where a server can actively monitor network connections, such as TCP sockets, for requests. (*See, e.g.,* Ex. 1001, 2:10-4:52, 23:14-24:48). When requests come in, the server can analyze the request to determine whether the connection should be optimized. (*Id.*). If the connection should be optimized, the server can re-configure the connection.

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