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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
95/000,659	02/13/2012	6629163	159291-0025(163)	6219
7590 10/01/2012 HEIM, PAYNE & CHORUSH, LLP 600 TRAVIS STREET SUITE 6710 HOUSTON, TX 77002			EXAMINER AHMED, SALMAN	
			ART UNIT 3992	PAPER NUMBER
			MAIL DATE 10/01/2012	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ACTION CLOSING PROSECUTION (37 CFR 1.949)	Control No.	Patent Under Reexamination
	95/000,659	6629163
	Examiner	Art Unit
	SALMAN AHMED	3992

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

Responsive to the communication(s) filed by:

Patent Owner on 04 June, 2012

Third Party(ies) on 30 August, 2012

Patent owner may once file a submission under 37 CFR 1.951(a) within 1 month(s) from the mailing date of this Office action. Where a submission is filed, third party requester may file responsive comments under 37 CFR 1.951(b) within 30-days (not extendable- 35 U.S.C. § 314(b)(2)) from the date of service of the initial submission on the requester. **Appeal cannot be taken from this action.** Appeal can only be taken from a Right of Appeal Notice under 37 CFR 1.953.

All correspondence relating to this inter partes reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

PART I. THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892
2. Information Disclosure Citation, PTO/SB/08
3. _____

PART II. SUMMARY OF ACTION:

- 1a. Claims 1, 15 and 35 are subject to reexamination.
- 1b. Claims _____ are not subject to reexamination.
2. Claims _____ have been canceled.
3. Claims _____ are confirmed. [Unamended patent claims]
4. Claims _____ are patentable. [Amended or new claims]
5. Claims 1, 15 and 35 are rejected.
6. Claims _____ are objected to.
7. The drawings filed on _____ are acceptable are not acceptable.
8. The drawing correction request filed on _____ is: approved. disapproved.
9. Acknowledgment is made of the claim for priority under 35 U.S.C. 119 (a)-(d). The certified copy has: been received. not been received. been filed in Application/Control No _____
10. Other _____

DETAILED ACTION

1. This Office action addresses claims 1, 15 and 35 of United States Patent No. 6,629,163 (Balassanlan, Edward) in response to Patent Owner (hereinafter PO) response dated 6/4/2012 and Third Party Comment dated 8/30/2012 for *inter partes* reexamination.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted have been considered by the examiner to the extent that they have been explained in the submissions.

Status of the Claims

3. Original claims 1, 15 and 35 are rejected.

Response to Arguments

4. PO argues in pages 2-3:

After Juniper Networks filed its reexamination request, United States District Judge Susan Illston issued a *Markman* Order in the Related Litigation (attached as Exhibit 2, February 29, 2012).² The Court's Order—which was not before the PTO when it granted the reexamination request—construed several terms at issue in this reexamination. Although a *Markman* Order is not binding on the PTO, such an Order nonetheless reflects a decision from the District Court on the meaning of particular claim terms in light of the specification and other

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intrinsic evidence, and thus should be considered when the PTO construes those same terms for the purpose of reexamination. In this case, Implicit respectfully submits that the PTO should follow the District Court's constructions, in part, because they were rendered after both Implicit and Juniper Networks fully briefed and argued the issues, and because they reflect the considered judgment of an Article III judge. There is no point in re-inventing the (claim construction) wheel in this reexamination.

However, Examiner respectfully disagrees with PO's assertion. "[I]n PTO reexamination, the standard of proof- a preponderance of evidence – is substantially lower than in a civil case" and there is no presumption of validity in reexamination proceedings." 678 F.3d 1357, 1364 (Fed. Cir. 2012) (internal citations omitted); see also *Old Reliable Wholesale, Inc. v. Cornell Corp.*, 635 F.3d 539, 548 n.6 (Fed. Cir. 2011) ("Whereas clear and convincing evidence is required to invalidate a patent in district court, a patent can be invalidated during PTO reexamination by a simple preponderance of the evidence.").

PO argues in page 11:

The Examiner's positions regarding the proper constructions of the terms in claims 1, 15, and 35 are not clear. For example, while the Office Action includes statements to the effect that "Implicit has taken a broad view" or "under Implicit's apparent claim constructions" (*see, e.g.,* Office Action at 4, 9, 10, and 17), there is no indication how the Examiner believes the claims should be construed. Additionally, the Examiner did not have the benefit of the District Court's claim constructions when the Office Action was issued.

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