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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IMPLICIT NETWORKS INC,  
Plaintiff,

Nos. C10-3365 SI; C 10-4234 SI

v.

F5 NETWORKS INC,  
Defendant.

**ORDER GRANTING DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT**

IMPLICIT NETWORKS INC,  
Plaintiff,

v.

JUNIPER NETWORKS, INC.  
Defendant.

Currently before the Court are summary judgment motions by defendant Juniper Networks (Case No. 10-4234 SI) and defendant F5 Networks (Case No. 10-3365 SI) for non-infringement; and a motion for summary judgment by defendant Juniper Networks, in which defendant F5 Networks joins, as to invalidity of the asserted patents. Having considered the arguments of counsel and the papers submitted, the Court GRANTS defendants' motions.

**BACKGROUND**

In these two related cases, plaintiff Implicit Networks, Inc. accuses defendants' products of infringing two patents owned by plaintiff: U.S. Patent No. 6,629,163, as issued September 30, 2003 and as it emerged after reexamination on June 22, 2010 ('163 Patent); and U.S. Patent No. 7,711,857 ('857

1 Patent), issued May 4, 2010 as a continuation application from '163. In early 2012, Juniper filed  
2 requests for *inter partes* reexamination on both patents. The *inter partes* proceedings are still pending,  
3 although the examiners have issued Patent Action Closing Prosecutions (ACPs) concluding that both  
4 patents are invalid as anticipated and/or obvious.

5 According to Implicit, the patents cover a modular networking system which dynamically selects  
6 software routines (“modules” or “beads”) after the arrival of the first packet of a message to build a data  
7 processing path for the subsequent packets of the message (“flow”). See, e.g., Implicit’s Opposition to  
8 Motion for Summary Judgment on Invalidity (“Invalidity Oppo.”) at 4-7. Since Implicit’s system  
9 creates the processing path dynamically and only after the arrival of the first packet, Implicit’s system  
10 is flexible and can be changed to accommodate different processing steps, can be adapted to handle  
11 different sorts of technology/flows, and can adopt “policies” based on administrator direction. *Id.*

12 Implicit accuses two lines of products made by defendant Juniper Networks, Inc.: the SRX and  
13 J series of gateways and routers that use “flow based” processing of internet traffic. Implicit accuses  
14 F5’s “BIG-IP” IP networking products which act as intermediaries and transfer data between users (e.g.,  
15 a consumer) and servers (e.g., an e-commerce business like Amazon). The BIG-IP products help  
16 “enterprise applications” sort and get traffic to the appropriate servers.

## 17 18 DISCUSSION

### 19 I. Defendants’ Motion on Invalidity

20 Juniper, joined by F5, moves for summary judgment on invalidity, arguing that the asserted  
21 claims are invalid as disclosed or rendered obvious by Daniel Decasper, *et al.*, “Router Plugins: A  
22 Software Architecture for Next Generation Routers,” Computer Communication Review, a publication  
23 of ACM SIGCOMM, Vol. 28, No. 4 Oct. 1998. (Decasper98). Juniper also argues that the asserted  
24 claims are rendered obvious by Decasper98 in combination with IBM, Local Area Network Products  
25 Concepts and Products: Routers and Gateways (May 1996) (IBM96) and Mark Nelson and Jean Loup  
26 Gailly, the Data Compression Book, M&T Books (2<sup>nd</sup> ed. 1996) (Nelson).

27 Juniper notes that the PTO examiners in both of the pending *inter partes* reexamination  
28 proceedings have rejected all of the asserted claims. The PTO issued an Action Closing Prosecution

1 (ACP) in the '163 Patent reexam on October 1, 2012 and issued an ACP in the '857 Patent reexam on  
 2 December 21, 2012. *See* '163 Patent ACP, Declaration of Douglas Dixon [Dixon Decl., Docket No.  
 3 167-5], Ex 15; '857 Patent ACP, Docket No. 201 The two panels of examiners found that Claims 1,  
 4 5, and 35 in the '163 Patent and Claims 1, 4 and 10 of the '857 Patent were anticipated in light of  
 5 Decasper98 and obvious in light of Decasper98 alone and/or in combination with IBM96 and Nelson.<sup>1</sup>  
 6 Implicit contends that the PTO actions are irrelevant for two reasons. First, the PTO examiners applied  
 7 only a "preponderance of the evidence" standard of review in determining invalidity, but this Court must  
 8 apply the higher "clear and convincing" standard. Second, Implicit notes that the *inter partes*  
 9 proceedings are far from over. Following the issuance of the ACPs, patent owners are allowed to submit  
 10 additional comments to the examiners and an appeal may follow. *See, e.g.*, Manual of Patent Examining  
 11 Procedures, §§2671, 2672.

12 As relevant to the motion for summary judgment on invalidity, the parties' dispute centers on  
 13 five claim limitations, designated by the parties "1a," "1b," "1e," "1f" and "1g" and shown in bold  
 14 below, which are all present in Claim 1 of the '163 Patent:

15 Claim 1 of '163 Patent:

- 16 1. A method in a computer system for processing a message having a sequence of packets, the  
 17 method comprising:  
 18 **[1a] providing a plurality of components, each component being a software routine**  
 19 **for converting data with an input format into data with an output format;**  
 20 **[1b] for the first packet of the message,**  
 21 *dynamically identifying a non-predefined sequence of components for*  
 22 *processing the packets of the message such that the output format of the*  
 23 *components of the non-predefined sequence match the input format of the*  
 24 *next component in the non-predefined sequence, wherein dynamically*  
 25 *identifying includes selecting individual components to create the non-predefined*  
 26 *sequence of components after the first packet is received; and*  
 27 *storing an indication of each of the identified components so that the non-*  
 28 *predefined sequence does not need to be re-identified for subsequent packets of*  
 the message; and  
 for each of a plurality of packets of the message in sequence,  
**[1e] for each of a plurality of components in the identified non-predefined**  
**sequence,**  
**retrieving state information relating to performing the processing of**  
**the component with the previous packet of the message;**  
**[1f] performing the processing of the identified component with the**

<sup>1</sup> For the '163 Patent, the PTO also found that the claims were anticipated and/or obvious in light of Patent No. 6,243,667 (Kerr). *See generally* Dixon Decl., Ex. 15. However, the PTO rejected that same argument with respect to Claims 1, 4, and 10 in the '857 Patent ACP. '857 ACP at 35.

1 **packet and the retrieved state information; and**  
 2 **storing state information relating to the processing of the component**  
 3 **[1g] with packet for use when processing the next packet of the**  
 4 **message.**

5 *See* Dixon Decl., Ex 15 (italics added in reexamination; bold added by Court to show limitations  
 6 involved in challenge to validity); *see also* Dixon Decl., Ex. 19 (Report of Dr. Scott Nettles on  
 7 Infringement by Juniper; identifying limitations within claims).<sup>2</sup>

8 **A. Legal Standard**

9 **i. In General**

10 A patent is presumed valid after the PTO examination process, based on “the basic proposition  
 11 that a government agency such as the then Patent Office was presumed to do its job.” *Am. Hoist &*  
 12 *Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1359 (Fed. Cir. 1984) (*abrogated on other grounds*  
 13 *by Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276 (Fed. Cir. 2011)) (citing *Morgan v.*  
 14 *Daniels*, 153 U.S. 120 (1894)). The defendant carries a high burden on summary judgment of invalidity,  
 15 as the “moving party seeking to invalidate a patent at summary judgment must submit such clear and  
 16 convincing evidence of invalidity so that no reasonable jury could find otherwise.” *Eli Lilly & Co. v.*  
 17 *Barr. Labs*, 251 F. 3d 955, 962 (Fed. Cir. 2001). The presumption of validity can nonetheless be  
 18 overcome with sufficient evidence. *See Magnivision, Inc. v. Bonneau Co.*, 115 F.3d 956, 960 (Fed. Cir.  
 19 1997) (“The validity of a patent is always subject to plenary challenge on its merits. A court may  
 20 invalidate a patent on any substantive ground, whether or not that ground was considered by the patent  
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22  
 23 <sup>2</sup> Juniper argues that the elements of the other asserted claims *not* corresponding to the five  
 24 limitations identified by Implicit (*i.e.*, non-contested elements of claims 1, 15 and 35 of the ‘163 Patent  
 25 and non-contested elements of Claims 1, 4, and 10 of the ‘857 Patent) are disclosed by Decasper98 and,  
 26 therefore, at a minimum partial summary judgment should be entered in Juniper’s favor on those  
 27 claims/elements. *See* Juniper Motion re Invalidity at 19-21. Implicit does not contest this in its  
 28 Opposition. In Reply, Juniper also argues that because Implicit only challenges whether Decasper98  
 covers sub-aspects of each of the limitations identified in Claim 1 (*e.g.*, Implicit does not dispute that  
 Decasper98 discloses “a plurality of components, each component being a software routine” from 1a)  
 summary judgment should be granted in Juniper’s favor on the “undisputed aspects” of elements 1a, 1b,  
 1e, 1f and 1g. Juniper Reply on Invalidity at 2; *see also* Juniper’s Slides from Summary Judgment  
 Hearing at 4-8 (identifying undisputed claim elements).

1 examiner.”).<sup>3</sup>

2 The moving party’s burden is “especially difficult” when the prior art references presented were  
3 considered by the patent examiner during prosecution. *Glaxo Group Ltd. v. Apotex, Inc.*, 376 F.3d 1339,  
4 1348 (Fed. Cir. 2004). But when, as here, additional evidence is presented by the moving party, “the  
5 burden may be more or less easily carried because of the additional evidence.” *Applied Materials, Inc.*  
6 *v. Advanced Semiconductor Materials Am., Inc.*, 98 F.3d 1563, 1569 (Fed. Cir. 1996). New evidence  
7 supporting an invalidity contention may “carry more weight” than evidence previously considered by  
8 the PTO. *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S.Ct. 2238, 2251 (2011).<sup>4</sup> As the Supreme Court has  
9 held, “[s]imply put, if the PTO did not have all material facts before it, its considered judgment may lose  
10 significant force. . . . And, concomitantly, the challenger’s burden to persuade the jury of its invalidity  
11 defense by clear and convincing evidence may be easier to sustain.” *Id.* (internal citations omitted).

## 12

### 13 ii. Anticipation

14 Under 35 U.S.C. § 102(b):

15 A person shall be entitled to a patent unless–

16 \* \* \*

17 (b) the invention was patented or described in a printed publication in this or a foreign country or  
18 in public use or on sale in this country, more than one year prior to the date of the application for  
19 patent in the United States . . . .

20 In determining validity of a patent claim over the prior art, a two-step process applies. The first  
21 step is the claim construction by the Court. *See Smiths Indus. Med. Sys., Inc. v. Vital Signs, Inc.*, 183  
22 F.3d 1347, 1353 (Fed. Cir. 1999). The second step is a comparison of the asserted claims against the  
23 prior art reference. A determination that a claim is invalid for anticipation requires a finding that “each  
24 and every limitation is found either expressly or inherently in a single prior art reference.” *Celeritas*

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24 <sup>3</sup> *See also Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1139 (Fed. Cir. 1985) (“[t]he  
25 Examiner’s decision, on an original or reissue application, is never binding on the court. It is, however,  
26 evidence the court must consider in determining whether the party asserting invalidity has met its  
27 statutory burden by clear and convincing evidence.”).

27 <sup>4</sup> Citing *SIBIA Neurosciences, Inc. v. Cadus Pharmaceutical Corp.*, 225 F.3d 1349, 1355-1356  
28 (Fed.Cir. 2000) (“[T]he alleged infringer’s burden may be more easily carried because of th[e]  
additional [evidence]”); *Group One, Ltd. v. Hallmark Cards, Inc.*, 407 F.3d 1297, 1306 (Fed. Cir. 2005)  
(similar).

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