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10

11   UNITED STATES DISTRICT COURT
12   FOR THE NORTHERN DISTRICT OF CALIFORNIA
                        SAN FRANCISCO DIVISION
13

14 IMPLICIT NETWORKS, INC.,   Case No. 10-CV-3365 SI

15   Plaintiff,   **IMPLICIT NETWORKS' OPPOSITION
                                             TO JUNIPER NETWORKS/F5
16 v.   NETWORKS' MOTION FOR
                                             SUMMARY JUDGMENT OR, IN THE
17 F5 NETWORKS, INC.,   ALTERNATIVE, FOR PARTIAL
                                             SUMMARY JUDGMENT, ON THE
18   Defendant.   ISSUE OF INVALIDITY**

19

20

21 _____

22 IMPLICIT NETWORKS, INC.,   Case No. C 10-4234 SI

23   Plaintiff,   Date: December 14, 2012
                                             Time: 9:00 a.m.
24 v.   Courtroom: 10

25 JUNIPER NETWORKS, INC.,

26   Defendant.

27

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I.   INTRODUCTION AND SUMMARY.

2   Decasper is a one format system. It is a router, a node in a network that takes in IP

3   packets and spits out IP packets. It carefully preserves the IP format throughout. Decasper

4   turns on the efficient processing of uniform IP packets. It centers on preserving the one

5   format it handles, exactly the converse of the demultiplexing (conversion) claimed by the

6   patents-in-suit.

7   As a router, Decasper does not disclose building paths to demultiplex the packets of a

8   message. *See* below § V. It does not teach input and output formats, as it does not deal with

9   formats at all. Nor does Decasper teach storing state to process the subsequent packets of a

10 message, as claimed here. *See* below § V.

11

12   Neither Juniper nor F5 could build their infringing products based on Decasper.

13 Juniper's and F5's products process packets by unwrapping the packets, inspecting the

14 contents layer by layer, and then determining the correct processing post-TCP. Decasper

15 does not do this. Nor does Decasper necessarily maintain state for the duration of a message.

16 In fact, Decasper routers may not even see all the packets of a message. That is not what

17 routers do.

18

19   Appreciating these points, Juniper combines Decasper with two generic texts, Nelson

20 and IBM. Juniper cites to pages dealing with LZ compression, and then incongruously

21 argues that mixing compression with Decasper gives rise to '163. But LZ compression

22 would not work with Decasper, as this compression requires exactly the kind of all packet

23 state that Decasper disclaims. *See* below § V. Putting together disparate things to break a

24 larger whole is the antithesis of the kinds of combinations giving rise to real obviousness.

25 *See In Re Icon Health*, 496 F.3d 1374, 1382 (Fed. Cir. 2007)

26

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28

For that matter, there would be no motivation to combine Decasper's one format fast router with a demultiplexing system. The two systems are exactly at cross purposes; adding format driven conversion to Decasper's fast router thwarts the very goals that Decasper serves. Mixing the two would be like sewing a bowling ball onto the belly of a fish – it would make no sense and neither would function well.

Two other points merit note in a brief introduction. Juniper trumpets the pending reexams, and suggests (without quite saying) that the process is all but over. It is not. These are early rejections, as is common, and the process has years to run. The foundation on this Bleak House is yet being dug.

Juniper also suggests that the presumption of validity means nothing here and that it need not prove invalidity by clear and convincing evidence. Juniper Br. at 2. It argues that the PTO did not have Decasper before it in the original prosecution, and hence the presumption of validity has no force. What Juniper does not acknowledge, however, is that art very similar to Decasper was fully disclosed in the original prosecution. Decasper is cumulative over the art disclosed, a point that Juniper carefully sidesteps. Indeed, Juniper's expert, Dr. Calvert, despite writing a 235 page expert report with 36 separate references and 40 combinations, carefully did not even look at whether any art disclosed in the first prosecution was similar to Decasper. *See* § IV below. This was no mere inadvertence.

Perhaps the best evidence that Juniper does not truly think '163 is invalid comes in its conduct in a related case, *Juniper Networks, Inc. v. Palo Alto Networks*, 2012 WL3133092 (D. Del. 2012). There, Juniper is asserting seven networking patents against its competitor, Palo Alto Networks. Juniper characterizes these patents as "core" networking patents and vigorously defends their validity. These patents are *remarkably* similar to '163, just later in time. *See* § VIII, below. Surely the jury is entitled to hear Juniper explain how its own

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