

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

JUNIPER NETWORKS, INC.

Petitioner

v.

IMPLICIT, LLC

Patent Owner

Case: IPR2020-00587

Patent No. 9,591,104

**SUR-REPLY IN RESPONSE TO PETITION FOR *INTER PARTES*
REVIEW OF U.S. PATENT NO. 9,591,104**

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Juniper fails to show that the Board should institute proceedings. It is undisputed that the Patent Office considered Decasper in detail and allowed the claims. That reality—which Juniper did not address in Reply—weighs heavily against instituting proceedings under the first prong of *Advanced Bionics*. Juniper also conceded in its Petition that it did not seek reversal of any alleged error made during prosecution. Pet. at 15. That forecloses additional review under the second prong of *Advanced Bionics*. And it ends the inquiry under Section 325(d).

In Reply, Juniper focuses on two different references—CheckPoint and Smith—as providing a reason to institute proceedings. But Juniper only relies on those references for disclosure of supposed “trivial ‘TCP’ limitations,” Reply, at 1. And, for that disclosure, these references are the same in substance as what the Patent Office already considered during prosecution when it allowed these claims. And, again, Juniper did not allege in its Petition that the Patent Office erred. Section 325(d) forecloses further review.

I. The First Prong of *Advanced Bionics* Applies

A. The Petition Relies on the Same Prior Art—Decasper

It is undisputed that (1) *both* grounds in the Petition are based on the Decasper reference and (2) the Decasper reference was front-and-center during prosecution of the Implicit Patents. Juniper does not contest those facts. It instead flips around the references to call CheckPoint and Smith (and not Decasper) the “primary”

references. But Juniper’s Reply exposes that mislabeling: Juniper relies on CheckPoint and Smith for the supposed “trivial ‘TCP’ limitations” of the claims, Reply, at 1, while it relies on Decasper’s teaching for every other limitation (*e.g.*, receiving packets of a message, creating a path, storing the path, processing subsequent packets using the path, etc...).

Decasper is the primary reference for both of Juniper’s proposed grounds. The Patent Office considered that reference, and Implicit addressed that reference in detail during prosecution. This weighs against instituting proceedings here.

**B. The Petition Relies on Substantially the Same Prior Art—
CheckPoint and Smith**

CheckPoint and Smith were also before the Patent Office in substance (and, in the case of CheckPoint, by name). With regard to CheckPoint, Juniper does not dispute that two CheckPoint references were before the Patent Office during prosecution. Juniper also does not contend that, for the issues in its Petition, the substance in its “new” CheckPoint reference is different from the prior CheckPoint references. *See* Reply, at 5.

Juniper instead points to different words from the new CheckPoint reference, specifically “application-layer ‘Security Server’” and the “Content Vectoring Protocol (CVP).” Reply, at 5. These different words, however, do not change the analysis. Juniper relies on those disclosures for their alleged application-layer processing. *See* Pet. at 54–57. That is the same supposed teaching reproduced in

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