

PTAB Again Upholds Cisco Patent On Remand From Fed Circ.

By **Suzanne Monyak**

Law360 (September 4, 2018, 8:46 PM EDT) -- The Patent Trial and Appeal Board on Tuesday upheld the validity of a computer network patent owned by Cisco Systems Inc., finding after the case was sent back from the Federal Circuit that the patent claims challenged by Arista Networks Inc. are not obvious in light of prior art.

In its decision on remand, the PTAB found that an earlier patent known as Kunzinger, which uses internet protocol security tunnels to send information securely over unsecure networks, does not teach the claims in Cisco's patent.

As instructed by the Federal Circuit, the PTAB explained in its decision that the term "tunneling," as applied in computer network transmissions, is used differently in Kunzinger than it is in Cisco's patent, known as U.S. Patent 8,051,211.

"We remain persuaded that there are critical differences between 'tunneling' as that term is used in the claims at issue in the '211 patent and the IPsec tunnels taught in Kunzinger," the opinion says.

Cisco sued Arista in a California federal court in December 2014, alleging the computer network company had infringed multiple of Cisco's patents, including the '211 patent, with Arista's data center switches.

That same month, Cisco also accused Arista of violating Section 337 of the Tariff Act, filing a complaint with the U.S. International Trade Commission claiming Arista was importing products that violated Cisco's intellectual property, including the '211 patent.

Cisco's patent covers systems and methods for achieving "multi-bridge LAN aggregation," which lets computers' local area networks use bridges composed of certain devices to communicate with each other, according to court filings.

Arista then petitioned the board in April 2015 to institute inter partes review of 12 claims in the patent, arguing the claims were obvious and anticipated in light of prior art.

The PTAB found in October 2016 that a combination of prior art did not disclose the tunneling limitation included in Cisco's patent. Arista appealed, and the Federal Circuit in March vacated the PTAB's decision, instructing the board to further clarify its reasoning.

On remand, Cisco argued that the patented Kunzinger method of transmitting information is actually prohibited by the '211 patent. The company explained that Kunzinger "examines the frame" during transmission, while its patented method skips that step during tunneling to avoid delays.

Arista, however, maintained in its remand brief that the examination that occurs during the tunneling process is the same in both Kunzinger and the '211 patent.

"Kunzinger plainly teaches a skilled artisan to transmit tunneled packets by examining information added by encapsulation just like the disclosure and claims of the '211 patent," Arista's brief said.

Tuesday's decision siding with Cisco's argument and reaffirming the PTAB's earlier conclusion comes just a week after Arista and Cisco moved to settle their patent infringement claims in the California federal court and before the ITC.

Cisco and Arista reached a confidential settlement last week in the district court litigation, resulting in the dismissal of all patent infringement claims, according to an Aug. 27 court order granting the stipulation. Also on Aug. 27, Cisco and Arista filed a motion to terminate the ITC investigation because of a settlement between the two companies, according to an ITC filing.

According to an attached summary of the ITC settlement agreement, Arista may continue "at its discretion" the IPR proceedings challenging Cisco's patents, including the challenge to the '211 patent.

"Cisco is pleased the PTAB has confirmed the patentability of Cisco's claims," a spokesperson for Cisco said in a statement to Law360.

Counsel for Arista did not immediately respond to a request for comment on Tuesday.

The patent at issue is U.S. Patent Number 8,051,211.

Cisco is represented by Lori A. Gordon of King & Spalding LLP, and Robert Greene Sterne, Jon E. Wright and Daniel Block of Sterne Kessler Goldstein & Fox PLLC.

Arista is represented by Walter Renner, Lauren Degnan, David Goren, Linhong Zhang and Todd Miller of Fish & Richardson PC.

The case is Arista Networks Inc. v. Cisco Systems Inc., case number IPR2015-00975, in the Patent Trial and Appeal Board.

--Additional reporting by Kevin Penton. Editing by Jack Karp.

Update: This story has been updated with a comment from Cisco.