

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,
Petitioner,

v.

CISCO SYSTEMS, INC.,
Patent Owner.

Case IPR2016-00303
Patent 6,377,577 B1

Before BRYAN F. MOORE, MATTHEW R. CLEMENTS, and
PETER P. CHEN, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION
Instituting *Inter Partes* Review and
Granting Motion for Change of Filing Date
37 C.F.R. § 42.108

I. INTRODUCTION

Arista Networks, Inc. (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 of U.S. Patent No. 6,377,577 B1 (Ex. 1001, “the ’577 patent”). Paper 1 (“Pet.”). Cisco Systems, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon consideration of the Petition and Preliminary Response, we are persuaded that Petitioner has met its burden of showing a reasonable likelihood that it would prevail in showing that claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 are unpatentable.

A. *Related Proceedings*

The ’577 patent is involved in *Cisco Systems, Inc. v. Arista Networks, Inc.*, Case No. 4:14-cv-05343 (N.D. Cal.) and *Cisco Systems, Inc. v. Arista Networks, Inc., Network Devices, Related Software and Components Thereof (II)*, ITC Inv. No. 337-TA-945. Pet. 1; Paper 5, 1. Petitioner has also filed other petitions requesting *inter partes* review the ’577 patent: IPR2015-00973, IPR2015-01049, and IPR2016-00301. Paper 5, 1. Petitioner also has filed over a dozen other petitions requesting *inter partes* review of other patents owned by Patent Owner: IPR2015-00974 (U.S. Patent No. 7,224,668), IPR2015-00975 (U.S. Patent No. 8,051,211), IPR2015-00976 (U.S. Patent No. 7,023,853), IPR2015-00978 (U.S. Patent No. 7,340,597), IPR2015-01050 (U.S. Patent No. 7,023,853), IPR2015-01710 (U.S. Patent

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No. 7,224,668), IPR2016-00018 (U.S. Patent No. 8,051,211), IPR2016-00119 (U.S. Patent No. 7,047,526), IPR2016-00244 (U.S. Patent No. 7,953,886), IPR2016-00304 (U.S. Patent No. 7,023,853), IPR2016-00306 (U.S. Patent No. 7,023,853), IPR2016-00308 (U.S. Patent No. 7,162,537), and IPR2016-00309 (U.S. Patent No. 7,224,668).

B. The '577 Patent

The '577 patent is titled, "Access Control List Processing in Hardware," and relates generally to a method for performing access control list processing in hardware using an associative memory. Ex. 1001, Abstract. Data packets transmitted between network devices can be restricted using a technique known as "access control." *Id.* at 1:6–7. One access control technique is to use access control lists or "ACLs" to determine whether to permit or deny transmission of a packet to a particular destination. *Id.* at 1:13–15 ("[T]he ACL describes which selected source devices are permitted (and which denied) to send packets to which selected destination devices.").

The Specification provides an example of a known ACL format, where each ACL includes "access control specifiers." *Id.* at 1:17. These specifiers contain information to match with incoming packets, and then based on a match, specify a particular access result (e.g., whether transmission of a packet is "specifically permitted or specifically denied"). *Id.* at 1:16–27. Figure 1 of the '577 patent is reproduced below.

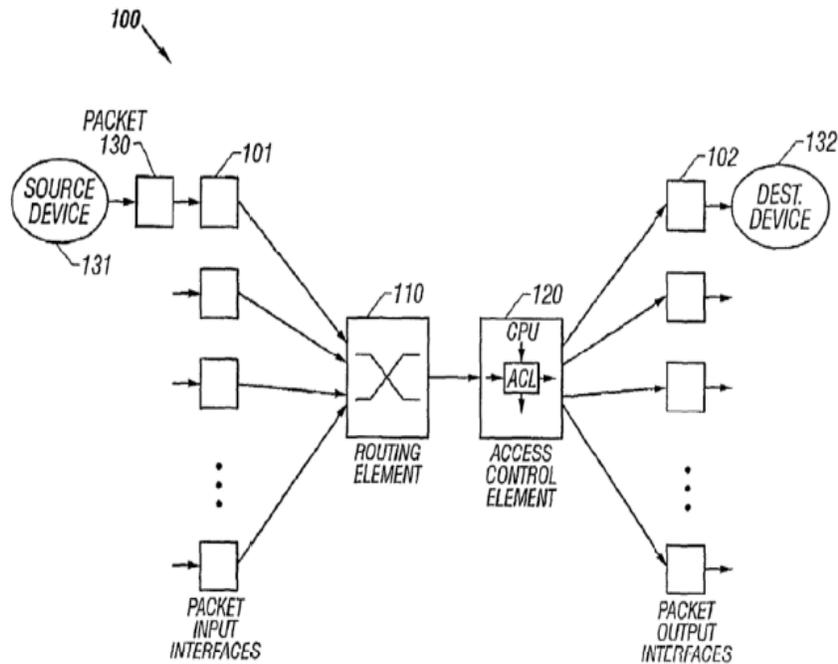


FIG. 1

Figure 1 is a block diagram of a system for performing access control in accordance with the '577 patent. As shown in Figure 1, packet 130 arrives at one of the system's packet interfaces 101. *Id.* at 3:30–31. Routing element 110 then selects one or more of the output interfaces to which the packet should be forwarded. *Id.* at 3:32–36. Prior to forwarding, access control element 120 determines whether to allow transmission of the packet. *Id.* at 3:36–40. Figure 2 of the '577 patent is reproduced below.

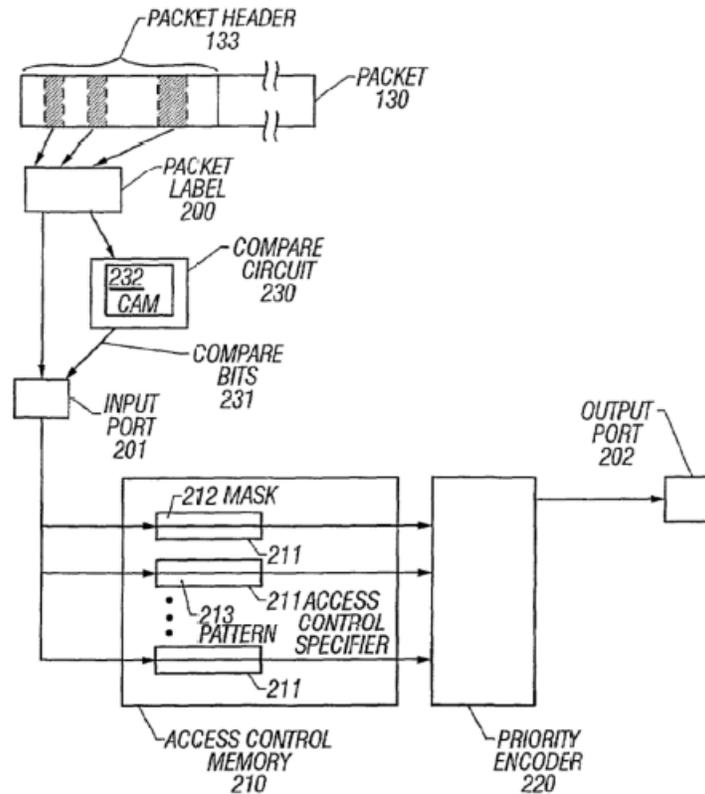


FIG. 2

Figure 2 is a block diagram of an access control element that contains access control patterns. When packet 130 arrives at access control element 120, packet label 200 is created based on information derived from packet header 133 of packet 130. *Id.* at 4:1–4. The information in packet label 200 is compared to label match mask 212 and label match pattern 213 of each access control specifier 211. *Id.* at 4:34–47. If a match is found with a particular access control pattern, priority encoder 200 selects the corresponding access control specifier 211 with the highest priority and provides an indicator of that access control specifier 211 to output port 202.

Id. at 4:47–56. The indicator specifies an access control result, which specifies if the packet should be transmitted. *Id.* at 4:57–65.

C. Illustrative Claim

Petitioner challenges claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 of the '577 patent. Claim 1 is the only independent claim, and is reproduced below:

1. A method, including the steps of
maintaining a set of access control patterns in at least one associative memory;
receiving a packet label responsive to a packet, said packet label being sufficient to perform access control processing for said packet;
matching matchable information, said matchable information being responsive to said packet label, with said set of access control patterns in parallel, and generating a set of matches in response thereto, each said match having priority information associated therewith;
selecting at least one of said matches in response to said priority information, and generating an access result in response to said at least one selected match; and
making a routing-decision in response to said access result.

Ex. 1001, 7:34–48.

D. Asserted Ground of Unpatentability

Petitioner challenges claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 under 35 U.S.C. § 103(a) as obvious over a combination of Huey¹ and ATM UNI Specification.²

¹ U.S. Patent No. 5,467,349, issued Nov. 14, 1995 (Ex. 1020).

² ATM User-Network Interface Specification, Version 3.0, Sept. 10, 1993 (Ex. 1021).

II. ANALYSIS

A. § 325(d)

Patent Owner argues that Huey is substantially similar to the prior art presented in the '973 IPR and the '1049 IPR. Prelim. Resp. 1–2, 12–14 (referring to U.S. Patent No. 5,920,886 (“Feldmeier”) and U.S. Patent No. 6,081,522, (“Hendel”)). We are not persuaded by this argument. The argument is premised on characterizing Huey as “an ordinary forwarding reference.” *Id.* at 12. Other than characterizing Huey as an ordinary forwarding reference, Patent Owner has not shown the overlap in arguments presented previously by Petitioner.

Not being persuaded that the same or substantially the same prior art or arguments were previously presented to the Office, we decline to exercise our discretion under 35 U.S.C. § 325(d).

B. Assignor Estoppel

Patent Owner urges the Board to deny institution under an application of assignor estoppel, which Patent Owner admits the Board does not recognize as a defense in *inter partes* review proceedings. Prelim. Resp. 36–51. None of the arguments presented persuaded us to deviate from our continued policy of rejecting assignor estoppel as doctrine applicable to *inter partes* review. As we have explained in other decisions where a patent owner has argued this issue:

Under the AIA, “a person *who is not the owner of a patent* may file with the Office a petition to institute an *inter partes* review of the patent.” 35 U.S.C. § 311(a) (emphasis added). Consequently, under the statute, an assignor of a patent, who is no longer an owner of the patent at the time of filing, may file a petition requesting *inter partes* review. This statute presents a clear expression of Congress’s broad grant of the

ability to challenge the patentability of patents through *inter partes* review.

Athena Automation Ltd. v. Husky Injection Molding Sys. Ltd., Case IPR2013-00290, slip op. at 12–13 (PTAB Oct. 25, 2013) (Paper 18); *see also Esselte Corp. v. DYMO B.V.B.A.*, Case IPR2015-00779 (PTAB Aug. 28, 2015) (Paper 13); *B/E Aerospace, Inc. v. MAG Aerospace Industries, LLC*, Case IPR2014-01510, slip op. at 14–15 (PTAB March 26, 2015) (Paper 24); *Redline Detection, LLC, v. StarEnvirotech, Inc.*, Case IPR2013-00106, slip op. at 12–13 (PTAB June 30, 2014) (Paper 66); *Synopsys, Inc. v. Mentor Graphics Corp.*, Case IPR2012-00042, slip op. 16–17 (PTAB Feb. 19, 2014) (Paper 60). Regarding these cases, Patent Owner asserts that,

those decisions should not control the outcome of this Petition, as doing so would be contrary to the rules governing this proceeding and would work a substantial injustice on Cisco if Bechtolsheim and Cheriton, through their company Arista, were permitted to disavow their prior assignments and allow Arista to use these proceedings as an end run around the assignor estoppel doctrine.

....

By not recognizing assignor estoppel, the Board has created a serious loophole whereby parties that Article III courts would estop from contesting the validity of a patent can do an end-run around that result by venue-shopping.

....

... [I]t would be exceedingly unfair to allow the inventors or their privies, after they collected millions of dollars in value from Cisco in part for their obligations to assign patents to their employer, to be heard now to contend that assignment was worthless. Arista is estopped. The Board should recognize this and deny Arista institution of any '577 patent claim.

Prelim. Resp. 38, 42, 50–51. We have reviewed and considered Patent Owner’s arguments for application of assignor estoppel, as quoted above and otherwise explicated throughout its Preliminary Response. We are cognizant of the specter of forum shopping, but we agree with the Board’s prior statement that, “Congress has demonstrated that it will provide expressly for the application of equitable defenses when it so desires.” *Redline*, Paper 40, slip op. at 4 (PTAB Oct. 1, 2013) (citing *Intel Corp. v. Int’l Trade Comm’n*, 946 F.2d 821, 836–38 (Fed. Cir. 1991)). Accordingly, we decline to apply assignor estoppel to this *inter partes* review proceeding.

C. Claim Construction

As a step in our analysis for determining whether to institute a review, we determine the meaning of the claims for purposes of this Decision. In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278 (Fed. Cir. 2015) (“We conclude that Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA.”), *cert. granted sub nom. Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 890 (mem.) (2016). Under the broadest reasonable construction standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). We must be careful not to read a particular embodiment appearing in the written

description into the claim if the claim language is broader than the embodiment. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Petitioner proposes constructions for the terms “access control,” “associative memory,” “packet label,” “responsive,” and “access control specifier.” Pet. 5–9. Patent Owner adopts the Board’s modified construction of “access control,” agrees with Petitioner’s proposed construction of “access control specifier,” disputes Petitioner’s proposed constructions of “packet label,” and proposes a new term—“access result”—for construction. Prelim. Resp. 18–25. For the purposes of this Decision, only the following terms require construction.

1. “access control”

The Board construed “access control” in connection with determining whether to institute *inter partes* review of the ’973 IPR. In particular, we relied on the Specification’s description of access control element 120, as follows:

[T]he invention can be used to augment or override routing decisions otherwise made by the router, using the access control element 120. In addition to specifying that the packet 130 is to be dropped or forwarded to the higher-level processor, the access control element 120 can alter the output interface, which was selected by the routing element 110, to another selected output interface. The invention can thus be used to implement QOS (quality of service) policies and other administrative policies.

Ex. 1001, 6:32–41. Based on the above, we construed “access control” as “restriction[] on the transmission of a packet or alteration of a selected

output interface for the packet.” *See* ’973 IPR, Paper 11, 4–5 (Decision on Request for Rehearing).

Petitioner proffers that a person of ordinary skill in the art would understand that “access control,” under the broadest reasonable interpretation, “include[s] ‘restrictions or modifications of the transmission of a packet.’” Pet. 5–6 (citing Ex. 1002 ¶¶ 42–44). Petitioner further notes the Board’s decision in the ’973 IPR. *Id.* at 6–7.

Patent Owner acknowledges the Board’s construction set forth in the ’973 IPR, as stated above, but submits that the “correct” interpretation of “access control” is “restriction of packets from being transmitted from selected source devices to selected destination devices.” Prelim. Resp. 18–19, n.2. Patent Owner relies on this passage from the Specification:

In a computer network for transmitting information, messages can be restricted from being transmitted from selected source devices to selected destination devices. In known computer networks, this form of restriction is known as “access control” and is performed by routers, which route messages (in the form of individual packets of information) from source devices to destination devices.

Ex. 1001, 1:4–10. Patent Owner also proffers, without explanation, two dictionary definitions. Prelim. Resp. 19, n.2 (citing Exs. 2001, 2002). We are not persuaded that Patent Owner’s proposed construction is correct. First, the passage Patent Owner relies on does not account for the express disclosure of the access control element “alter[ing] the output interface,” as described in column 6. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc) (“[C]laims must be read in view of the specification [T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to

the meaning of a disputed term.” (citation omitted) (internal quotation marks omitted)). Because Patent Owner’s proposed construction focuses only on “restriction,” but ignores “altering” or “modifying” the output interface, we conclude that the construction is inconsistent with the Specification.

Second, Patent Owner’s construction is not commensurate with the scope of the claim, which does not mention either source devices or destination devices. Indeed, the passage on which Patent Owner relies describes “access control” as a feature of a router, which routes messages from source devices to destination devices. Ex. 1001, 1:4–10. Claim 1, however, does not recite a router, or otherwise define the networking environment to which the “access control” is confined.

Third, the proffered dictionary entries have not been explained on the current record. Their relevance, at this stage of the proceeding, is questionable in light of the failure to discuss any of the definitions in the brief and in light of the Declaration of H. Jonathan Chao (“Chao Decl.”) not relying on any of them to offer an opinion concerning the understanding of a person of ordinary skill in the art.

Accordingly, giving the term its plain and ordinary meaning in the context of the Specification, we construe “access control” as “restriction on the transmission of a packet or alteration of a selected output interface for the packet.”

2. “*access control specifier*”

The parties appear to agree to the construction of “access control specifiers” as “a specifier that includes information for matching with a packet and that may indicate, or aid in indicating, an access result.” Pet. 9; Prelim. Resp. 23–25. This construction is the result of ITC ALJ MaryJoan

McNamara's order on claim construction in the co-pending litigation concerning a patent related to the '577 patent. *Id.* Petitioner otherwise does not support the claim construction with any evidence. For instance, Petitioner does not rely on the Specification to show that the construction has a plain and ordinary meaning or is otherwise consistent with the Specification. The Chao Declaration offers no guidance regarding the scope of this term.

Patent Owner also agrees with the ITC's claim construction. Prelim. Resp. 24.

The '577 patent describes the access control list as including "a sequence of access control entries, which are mapped to a set of access control specifiers 211." Ex. 1001, 5:11–13. The Specification also states that:

Each access control specifier 211 includes a label match mask 212 and a label match pattern 213. For each access control specifier 211, each bit of the label match mask 212 determines whether or not a corresponding bit of the packet label 200 is tested. If so, the corresponding bit of the label match pattern 213 is compared for equality with the corresponding bit of the packet label 200. If all compared bits are equal, the access controls specifier 211 matches the packet label 200.

Id. at 4:36–44. That is, the Specification describes the "access control specifier" as including at least two things: a mask and a pattern. With regard to the "access result," the Specification includes a "deny/permit" parameter in the access control entry. *Id.* at 5:35–40. Indeed, the Specification states that "[a]ccess control entries can specify that particular actions are permitted, denied, or that they will be recorded in a log." *Id.* at 5:25–26. The Specification, however, does not state that the "permit/deny"

permission is an access control specifier. In one embodiment, the permission is an “indicator” that is provided to output port 202 from priority encoder 220. *See id.* at 4:57–60 (“[t]he indicator provided to the output port 202 specifies whether or not the packet 130 has permission to be forwarded”). The Specification also describes another indicator: one provided from the access control specifier 211 to priority encoder 220. *Id.* at 4:49–51 (“an indicator from each one whether or not that access control specifier 211 matched the packet label 200”).

It is not clear from this description that the two described “indicators” are the same, i.e., that access control specifier 211 indicating a match also indicates the permission that is provided to output port 202. Nevertheless, the description of the access control element shows the intertwined process of matching access control specifiers to provide an indicator and determine the result. *See id.* at 7:6–12 (describing step 326 of the method illustrated in Figure 3, as matching the packet label against the access control memory, determining all the successful matches, coupling the successful matches to priority encoder 220, determining the highest-priority match, and providing an output result from input access control element 120). Accordingly, we are persuaded that the ITC’s construction of “access control specifier” is consistent with the plain and ordinary meaning and with the Specification. We, therefore, adopt that construction here: “a specifier that includes information for matching with a packet and that may indicate, or aid in indicating, an access result.”

3. “access result”

Patent Owner argues that “access result” should be construed to mean “result of access control for a packet, which determines whether

transmission of the packet to its intended destination is permitted or denied.” Prelim. Resp. 20–22. Petitioner does not provide a proposed construction for “access result.”

We decline to limit “access result” to a permit/deny decision for the same reasons stated above with respect to “access control.” Patent Owner’s proposed construction is unduly narrow because it ignores “altering” or “modifying” the output interface.

D. The Challenged Claims – Obviousness over Huey and ATM UNI Specification

Petitioner contends that claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 are unpatentable under 35 U.S.C. § 103 as obvious over Huey and ATM UNI Specification. Pet. 12–57. Petitioner relies on the testimony of Dr. H. Johnathan Chao. Ex. 1002. Patent Owner disagrees. Prelim. Resp. 25–36.

1. Huey

Huey, titled “Address Handler for an Asynchronous Transfer Mode Switch,” teaches an address handling circuit for an asynchronous transfer mode (“ATM”) switch. Ex. 1020, Abstract, 1:8–10. The address handling circuit processes a cell data stream including a plurality of cells. *Id.* at 4:58–60. Each cell has a header portion with a virtual channel identifier (VCI) and a virtual path identifier (VPI) and a data payload portion. *Id.* at 4:60–62.

Figure 4 of Huey depicts a functional block of an ATM switching system.

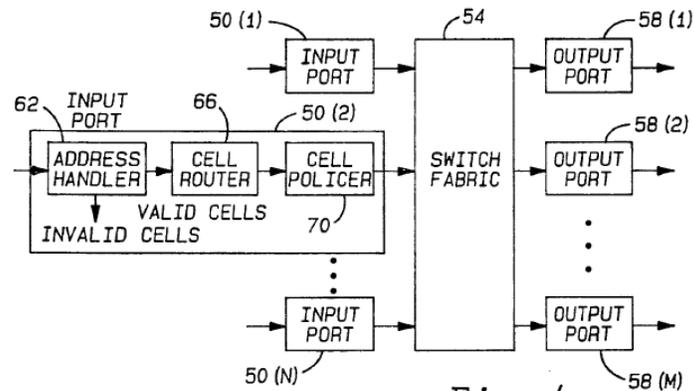


Fig-4
PRIOR ART

As shown in Figure 4, ATM switching system includes a plurality of input ports, 50(1), 50(2), to 50(N), switch fabric 54, and a plurality of output ports 58(1), 58(2), to 58(M). *Id.* at 3:34–38, 5:54–56. Each input port 50 can include an address handler 62, a cell router 66, and a cell traffic policer 70. *Id.* at 3:38–40. Address handler 62 evaluates header 24 of each cell 22 input thereto to validate cells for routing by cell router 66 and to detect invalid cells that are not routed. *Id.* at 3:40–42. Cell traffic policer 70 monitors input data streams including a plurality of cells 22 on a VP and/or VC basis at entry points to ATM switching network 10. *Id.* at 3:46–48. Cell policer 70 monitors ATM cell input rates to ensure one subscriber does not exceed a subscribed peak input data rate. *Id.* at 3:52–54. Cell policer 70 can also monitor average input data stream rates if needed. *Id.* at 3:54–55.

Figure 10A of Huey is reproduced below.

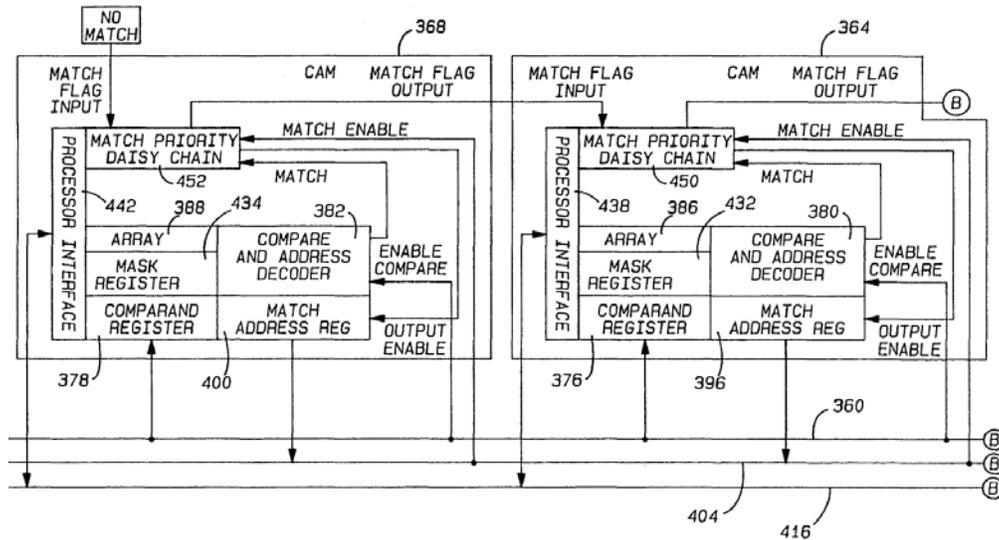


Fig-10a

Figure 10A is a detailed logic diagram of address handling circuit 340 which parallels operation of address handling circuit 200 of Figure 8. *Id.* at 8:45–48. Content addressable memory circuits (“CAMs”) 364 and 368 load the VPI/VCI addresses from compare bus 360 into comparand registers 376 and 378. *Id.* at 9:13–15. CAMs 364 and 368 compare the VP/VC address against VC/VP addresses stored in arrays 386 and 388 to determine if there is a match. *Id.* at 9:17–20. A match by CAM 364 or 368 is signaled to match address circuit 392, which enables the highest priority CAM that has the match. *Id.* at 9:20–23. The contents of the match address register of the highest priority CAM is output onto match address bus 404. *Id.* at 9:23–25.

2. ATM UNI Specification

ATM UNI Specification defines the interfaces used between ATM user devices and switches. Ex. 1021, 30–31. It teaches that “[a] traffic contract is comprised of a QoS class, a vector of traffic parameters, a conformance definition and other items as specified in section 3.6.” *Id.* at 76. It also teaches a Usage Parameter Control (“UPC”), which “is defined as

the set of actions taken by the network to monitor and control traffic in terms of traffic offered and validity of the ATM connection.” *Id.* at 96, 122. “The UPC is intended to control the traffic offered by an ATM connection to ensure conformance with the negotiated Traffic Contract.” *Id.* at 125.

3. Analysis

Petitioner asserts that a combination of Huey and ATM UNI Specification renders obvious claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31. Pet. 12–57. For example, independent claim 1 recites “receiving a packet label responsive to a packet, said packet label being sufficient to perform access control processing for said packet.” Petitioner cites Huey’s cell header, which includes VPI/VCI addresses, as the recited “packet label.” Pet. 17–18. Independent claim 1 also recites, “matching matchable information, said matchable information being responsive to said packet label, with said set of access control patterns in parallel, and generating a set of matches in response thereto, each said match having priority information associated therewith.” Petitioner cites Huey’s teaching of matching VPI/VCI addresses with VP/VC addresses stored in CAMs 364 and 368 in parallel, and generating matches associated with priority information. Pet. 19–21.

Independent claim 1 also recites “selecting at least one of said matches in response to said priority information, and generating an access result in response to said at least one selected match.” Petitioner cites Huey’s teaching to select the contents of the match register of the highest priority CAM, cites ATM UNI Specification’s teachings regarding Usage Parameter Control, and argues that Huey’s cell traffic policer 70 “necessarily generates a discard instruction, i.e., an access result, for cell[s] that violate,

or fail to conform to, the Traffic Contract.” Pet. 25; *see id.* at 22–26. Finally, independent claim 1 recites “making a routing decision in response to said access result.” Petitioner argues that the combination of Huey and ATM UNI Specification teaches that Huey’s cell traffic policer 70 makes a routing decision in response to said access result by discarding cells that do not conform with the Traffic Contract. Pet. 26–27. Petitioner sets forth reason to combine Huey and ATM UNI Specification on pages 12–13 of the Petition. Petitioner performs a similar analysis for dependent claims 2, 7–10, 12–16, 18–22, 25, and 28–31. Pet. 28–57.

Patent Owner argues that Huey does not disclose access control because it discloses only address lookup and filtering, which it characterizes as “simply determin[ing] whether the address exists in a table of addresses.” Prelim. Resp. 27 (quoting Ex. 1015); *id.* at 26–28. Specifically, Patent Owner argues that Huey does not have the ability to restrict transmission of a packet or alter a selected output interface for a packet, as our construction of “access control” requires. Petitioner is not relying, however, upon Huey’s operation when the VP/VC information from a cell header cannot be matched. To the contrary, Petitioner is relying upon a scenario where the VP/VC information from a cell header *does* match, but the cell is nevertheless subsequently discarded by cell traffic policer 70 for not conforming with the Traffic Contract. Pet. 22–26. As a result, this argument by Patent Owner is not persuasive.

Patent Owner also argues that Huey’s address handling circuit does not perform access control. Prelim. Resp. 28–29. This argument also is not persuasive because Petitioner relies upon the *combination* of Huey’s address handling circuit and cell traffic policer 70 for performing the claimed

method, not upon Huey's address handling circuit alone. *See, e.g.*, Pet. 13 (“Combined, the address handler and policer perform the claimed method.”).

Patent Owner also argues that Petitioner has not sufficiently explained how the traffic policer imposes “a restriction on transmission or an alteration of a selected output port.” Prelim. Resp. 29–30. We disagree. Huey teaches that “Cell [traffic] policer 70 monitors ATM cell input rates to ensure one subscriber does not exceed a subscribed peak input data rate. Cell policer 70 can also monitor average input data stream rates if needed.” Ex. 1020, 3:52–55. ATM UNI Specification provides further details about Huey's user to network interfaces (“UNI”) 18 taught in Huey, such as a Usage Parameter Control that ensures conformance with a Traffic Contract by, *inter alia*, discarding cells that exceed allowed rate limits. *See, e.g.*, Ex. 1021, 76, 122, 125–126. On this record, we are persuaded that Huey's cell traffic policer 70 is imposing “a restriction on transmission of a packet,” as our construction requires, at least when it discards a non-conforming cell.

Patent Owner also argues that ATM UNI Specification does not disclose “access control.” Prelim. Resp. 30–32. Specifically, Patent Owner argues that ATM UNI Specification does not teach restricting transmission of a packet based on characteristics of the actual data cell. On this record, however, we are persuaded that ATM UNI Specification teaches discarding of non-conforming cells based on characteristics of the actual data cell—i.e., VPI/VCI addresses in the cell header. *See, e.g.*, Ex. 1021, 122, 125–126.

Patent Owner also argues that the combination of Huey and ATM UNI Specification does not disclose “access control patterns.” Prelim. Resp. 32–33, 36. This argument is not persuasive, however, because Patent Owner

identifies nothing in the Specification to suggest that Huey's VPI and VCI addresses are not encompassed by the term "access control patterns."

Finally, Patent Owner argues that the combination of Huey and ATM UNI Specification does not disclose generating an access result in response to a match. Prelim. Resp. 33–36. Patent Owner notes, correctly, that Huey's discard instruction, which Petitioner contends is the recited "access result," is based on whether a cell passed to the policer exceeds the Traffic Contract. *Id.* at 35. Claim 1, however, requires only that the access result be generated "in response to" the match. On this record, we are persuaded that Huey's discard instruction is generated "in response to" a match by the address handling circuit because a match necessarily precedes the determination by cell traffic policer 70 to discard a non-conforming cell. *See, e.g.*, Pet. 23 (citing Ex. 1020, 9:39–41, Fig. 10b). Put another way, no cell is ever discarded by cell traffic policer 70 unless that cell has first been matched by address handler 62.

4. Conclusion

On this record, we are persuaded that Petitioner has shown a reasonable likelihood that claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 are obvious over a combination of Huey and ATM UNI Specification.

E. Motion for Change of Filing Date

Concurrently with the filing of the Petition, Petitioner filed a Motion for Change of Filing Date requesting that the Board deem the Petition filed on Tuesday, December 8, 2015, because of problems with the Board's electronic filing system, "PRPS." (Paper 3). Petitioner proffers evidence in the form of communications with the Board's staff regarding Petitioner's attempts to file the Petition on December 8, 2015, during an apparent

malfunction of PRPS. *Id.*, Appx. A. Petitioner also states that it served, on December 8, the Petition and exhibits on Patent Owner in accordance with the Board's rules. *Id.* at 3. Our review of the record reveals that Patent Owner did not oppose the Motion or otherwise challenge Petitioner's assertion that it served Patent Owner with the required papers. Having reviewed the Motion and the supporting evidence, we determine good cause has been shown and, therefore, grant the Motion. We deem the Petition and supporting exhibits filed on December 8, 2015.

III. CONCLUSION

For the foregoing reasons, we are persuaded that Petitioner has met its burden of showing a reasonable likelihood that claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 are unpatentable.

IV. ORDER

After due consideration of the record before us, and for the foregoing reasons, it is:

ORDERED that the Motion for Change of Filing Date is *granted* and the Petition and supporting exhibits are deemed filed on December 8, 2015;

FURTHER ORDERED that pursuant to 35 U.S.C. § 314, an *inter partes* review is hereby instituted as to claims 1, 2, 7–10, 12–16, 18–22, 25, and 28–31 of the '577 patent as unpatentable under 35 U.S.C. § 103(a) over a combination of Huey and ATM UNI Specification; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '577 patent is hereby instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

IPR2016-00303
Patent 6,377,577 B1

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