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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/176,845	06/20/2002	Thomas E. Anderson	0016.0008US1	4788
29127	7590	01/24/2013	EXAMINER	
HOUSTON ELISEFFVA 420 BEDFORD ST SUITE 155 LEXINGTON, MA 02420			NGUYEN, PHUONGCHAU BA	
			ART UNIT	PAPER NUMBER
			2464	
			NOTIFICATION DATE	DELIVERY MODE
			01/24/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS E. ANDERSON, DAVID J. WETHERALL, and
STEFAN R. SAVAGE

Appeal 2010-000776
Application 10/176,845
Technology Center 2400

Before DENISE M. POTHIER, ERIC B. CHEN, and JOHN A. EVANS,
Administrative Patent Judges.

CHEN, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the non-final rejection of claims 1, 2, 4-8, 10-12, 49-55, and 57-63.¹ Claims 3 and 9 have been indicated to be allowable if rewritten in independent form, and claims 13-48, 56, and 64 have been withdrawn from consideration pursuant

¹ We refer to the Appeal Brief (“App. Br.”) filed June 18, 2008, the Examiner’s Answer (“Ans.”) mailed July 24, 2009, and the Reply Brief (“Reply Br.”) filed September 24, 2009.

to a restriction requirement. We have jurisdiction under 35 U.S.C. § 6(b).
We reverse.

STATEMENT OF THE CASE

Appellants' invention relates to an apparatus equipped to receive network traffic data for network traffic routed over one or more network links relevant to a network link. Analysis is performed to determine if the network link of interest is being misused and includes determining whether the network traffic routed is inconsistent with an expected traffic pattern.

(Abstract.)

Claim 1 is exemplary, with disputed limitations in italics:

1. A networking method comprising:

receiving threshold specifications for a plurality of network traffic metrics defining an expected network traffic pattern for one or more network links relevant to a network link of interest;

receiving network traffic data associated with said network traffic metrics; and

determining whether said network link of interest is being misused based on said received network traffic data and said received threshold specifications for said network traffic metrics defining said expected network traffic pattern for said one or more network links relevant to said network link of interest.

Claims 1, 7, 50, 53, 58, and 61 stand rejected under 35 U.S.C.

§ 103(a) as being obvious over Krishnan (U.S. Patent No. 4,931,941; June 5, 1990) and Lin (U.S. Patent No. 6,405,250 B1; June 11, 2002).

Claims 2, 4-8, 10-12, 49, 51, 52, 55, 57, 59, 60, and 63 stand rejected under 35 U.S.C. § 103(a) as being obvious over Krishnan, Lin, and Shanklin (U.S. Patent No. 6,578,147 B1; June 10, 2003).

Claims 54 and 62 stand rejected under 35 U.S.C. § 103(a) as being obvious over Krishnan, Lin, and Holender (U.S. Patent No. 6,069,894; May 30, 2000).

ANALYSIS

We are persuaded by Appellants' arguments (App. Br. 5-6; *see also* Reply Br. 2) that the combination of Krishnan and Lin would not have rendered obvious independent claim 1, which includes the limitation "determining whether said network link of interest is being misused"

The Examiner acknowledged that Krishnan does not disclose the limitation "determining whether said network link of interest is being misused" (Ans. 5) and therefore, relied upon Lin for teaching a network management system that manages network elements (Ans. 5, 15-16). In particular, the Examiner found that "the actual determining of data transmitted [in Lin] between nodes causing the status of nodes NEs [network elements] changing from Good to Bad" corresponds to the limitation "determining whether said network link of interest is being misused." (Ans. 16; *see also* Ans. 5.)

Under the broadest reasonable interpretation consistent with the Specification, we do not agree with the Examiner that Lin teaches the limitation "determining whether said network link of interest is being *misused*" (emphasis added). Appellants' Specification explains that "the present invention relates to the detection of network *misuses*, such as *denial-of-service attacks*." (Spec. 1:7-9 (emphases added).) Furthermore, Appellants' Specification explains that "[i]n accordance with the present invention, director 102, complemented by a number of sensors 104a-104n,

are [sic] employed to detect and prevent such *abuse or misuse of the network links.*” (Spec. 6:1-3 (emphasis added).) In the context of computing, one synonymous definition for “misuse detection” is an “intrusion-detection system” which is defined as “[a] type of security management system for computers and networks that gathers and analyzes information from various areas within a computer or a network to identify possible security breaches, both inside and outside the organization” and “detect a wide range of hostile attack signatures, generate alarms, and, in some cases, cause routers to terminate communications from hostile sources.” MICROSOFT® COMPUTER DICTIONARY 264, 343 (5th ed. 2002). Thus, under the broadest reasonable interpretation consistent with the Specification, we interpret “misuse” as an intrusion of a computer or network resulting in a security breach (e.g., a denial-of-service attack).

Lin relates to network management “using passive monitoring and proactive management.” (Col. 1, ll. 10-11.) In one embodiment, Lin explains that a “network-wide model captures how ‘glitches’ may ripple through various network elements” and to “classify states of each NE into GOOD states and BAD states.” (Col. 5, ll. 31-34.) Lin also teaches determining when: (1) a fault occurs at the NE (col. 5, ll. 44-54); (2) the NE is having problems communicating (col. 6, ll. 22-23); or (3) some threshold is surpassed (col. 6, l. 21). However, the Examiner has not provided sufficient evidence to support a finding that Lin teaches the limitation “determining whether said network link of interest is being misused” given its broadest, reasonable construction in light of the Specification, particularly when Lin is silent regarding intrusion of a computer or network resulting in a security breach.

Therefore, we do not agree with the Examiner that the combination of Krishnan and Lin would have rendered obvious independent claim 1, which includes the limitation “determining whether said network link of interest is being misused.”

Accordingly, we do not sustain the rejection of independent claim 1 under 35 U.S.C. § 103(a). Claims 50 and 53 depend from independent claim 1. We do not sustain the rejection of claims 50 and 53 under 35 U.S.C. § 103(a) for the same reasons discussed with respect to independent claim 1.

Independent claim 7 recites limitations similar to those discussed with respect to independent claim 1. We do not sustain the rejection of claim 7, as well as dependent claim 58 and 61, for the same reasons discussed with respect to claim 1.

Claims 2, 4-8, 10-12, 49, 51, 52, 55, 57, 59, 60, and 63 depend from independent claims 1 and 7. Shanklin was cited by the Examiner for teaching the additional features of claims 2, 4-8, 10-12, 49, 51, 52, 55, 57, 59, 60, and 63. (Ans. 6-13.) However, the Examiner’s application of Shanklin does not cure the above noted deficiencies of Krishnan and Lin.

Claims 54 and 62 depend from independent claims 1 and 7. Holender was cited by the Examiner for teaching the additional features of claims 54 and 62. (Ans. 13-14.) However, the Examiner’s application of Holender does not cure the above noted deficiencies of Krishnan and Lin.

DECISION

The Examiner’s decision to reject claims 1, 2, 4-8, 10-12, 49-55, and 57-63 is reversed.

Appeal 2010-000776
Application 10/176,845

REVERSED

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