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EXAMINER

PALIWAL, YOGESH

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WU JIANG

Appeal 2015-001103
Application 13/481,273
Technology Center 2400

Before JAMES R. HUGHES, CATHERINE SHIANG, and
LINZY T. McCARTNEY, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant has requested rehearing of the decision entered June 15, 2016 (“Dec.”), which affirmed the Examiner’s decision to reject claims 1, 3, 4, 7, and 9–11 under 35 U.S.C. § 103. We have considered Appellant’s arguments, and such arguments have not persuaded us that we misapprehended or overlooked any matters in our decision. Therefore, Appellant’s Request for Rehearing (“Req.”) is denied.

DISCUSSION

A request for rehearing “must state with particularity the points [of law or fact] believed to have been misapprehended or overlooked by the Board,” and must comply with 37 C.F.R. § 41.52(a)(1) (2012).

Appellant argues the cited references do not collectively teach the claimed “source address.” *See* Req. 1–9. In particular, Appellant cites paragraphs 27 and 24 of the Specification, and argues the “claimed *source address* is used to identify a networked source (e.g. a server) of suspicious code.” Req. 4; *see also* Req. 6. Appellant contends: “Neither cited reference describes a physical ‘source address’ of a packet”; and under Appellant’s construction of the term, “[n]either reference identifies a reason to record/send an ‘address source.’” Req. 6, 8 (boldface omitted).

We disagree. Our decision addresses paragraphs 27 and 24 of the Specification cited by the Appellant, and Appellant has not persuasively shown the cited paragraphs require the claimed “source address” to identify a “networked source” (App. Br. 10–11) or “actual physical sources (i.e. servers)” (Reply Br. 4). *See* Dec. 4–5. In fact, Appellant does not point to any actual language in the cited paragraphs for supporting such arguments. *See* App. Br. 7–8, 10–11; Reply Br. 4. Instead, our decision explains the Examiner’s interpretation of the claim term is consistent with the cited Specification paragraphs, as Gupta teaches an address that identifies the source. *See* Dec. 3–5. Further, Appellant’s argument about a “physical ‘source address’” (Req. 6 (boldface omitted)) underscores the issue here: the claim term “source address” itself does not require a *physical* source address.

Because Appellant has not shown his construction of the “source address” is correct, his argument that under the narrow construction, “[n]either reference identifies a reason to record/send an ‘address source’” (Req. 8) is unpersuasive. In any event, contrary to Appellant’s argument, “[i]f the claim extends to what is obvious, it is invalid under § 103” and “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418–19 (2007).

We note Appellant is not precluded from amending the claims to further narrow the scope of the claim term “source address,” such as by adding a narrowing wherein clause, provided the amendment is adequately supported by the Specification. Because the patentability of such amended claims is not before us, we do not express any opinion as to whether such amended claims are patentable over the cited references and/or other references.

CONCLUSION

For the reasons stated above, Appellant has not shown we misapprehended or overlooked any issue of fact or law in our decision.

We have *granted* Appellant’s Request for Rehearing to the extent that we have reconsidered our decision dated June 15, 2016. Appellant has not shown that we misapprehended or overlooked any issue of law or fact in reaching that decision. Accordingly, we deny Appellant’s Request for Rehearing.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

DENIED