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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JR., LINWOOD H. OVERBY, JOYCE A. PORTER, and DAVID J. WIERBOWSKI

Appeal 2015-001551
Application 13/547,603
Technology Center 2400

Before MAHSHID D. SAADAT, LINZY T. McCARTNEY, and JOYCE CRAIG, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1, 4–13, and 16–19. Appellants have canceled claims 2, 3, 14, and 15. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

The present patent application concerns "the field of secure forms of computer communications and more particularly to secure forms of computer communications for multiple clients sharing s a single network address." Spec. ¶ 1. Claim 1 illustrates the claimed subject matter:

> 1. A computer implemented method for Internet protocol security (IPsec) packet processing for multiple clients sharing a single network address comprising:
>
> receiving a packet for IPsec processing in association with a specified client among the multiple clients sharing the single network address;
>
> locating a specific dynamic filter rule for the specified client by
>
> locating multiple dynamic filter rules matching a 5-tuple for the packet; and
>
> determining the specific dynamic filter rule from the multiple dynamic filter rules using client identifying information exclusive of the 5-tuple produced for the packet; and,
>
> performing IPsec processing of the packet using the located specific dynamic filter rule.

REJECTIONS

Claims 1, 5, 6, 8–13, and 17–19 stand rejected on the ground of non-statutory obviousness-type double patenting as unpatentable over Overby, Jr. et al. (US 8,250,229 B2; Aug. 21, 2012).

Claims 13, 16, 17, and 19 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 4–6, 8, 13, and 16–19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Attwood et al. (US 6,347,376 B1; Feb. 12, 2002) and Alles et al. (US 6,952,728 B1; Oct. 4, 2005).

ANALYSIS

Double Patenting Rejection

Appellants have not contested the Examiner's rejection of claims 1, 5, 6, 8–13, and 17–19 on the ground of non-statutory obviousness-type double patenting. Appellants have therefore waived any argument that the Examiner erred. *See* 37 C.F.R. §§ 41.37(c)(iv); *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative). Accordingly, we sustain the Examiner's rejection of claims 1, 5, 6, 8–13, and 17–19 on the ground of non-statutory obviousness-type double patenting.

§ 101 Rejection

Independent claim 13 recites "[a] computer program product comprising a computer useable storage medium having stored therein computer usable program code." Claims 16, 17, and 19 depend from claim 13. The Examiner concluded these claims encompass non-statutory subject matter because Appellants' specification fails to exclude non-transitory signals from the term "computer usable storage medium." *See* Final Act. 16–18. Appellants argue paragraph 35 of their specification distinguishes storing "from the emphasized other functions of containing, communicating, propagating, and transporting." App. Br. 6. Therefore, according to Appellants, the specification distinguishes a "storage medium" from a non-statutory "signal medium." *Id.* at 7; *see also* Reply Br. 2–3.

We find Appellants' arguments unpersuasive. "During examination, claims . . . are to be given their broadest reasonable interpretation consistent with the specification." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citation and internal quotation marks omitted). The broadest reasonable interpretation claims drawn to a "computer usable storage medium" and the like usually encompasses transitory signals, unless the specification explicitly discloses otherwise. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1859–64 (PTAB 2013) (precedential); *see also* David J. Kappos, *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. & Trademark Office 212 (Feb. 23, 2010). When the broadest reasonable interpretation of a claim includes transitory signals, the claim covers non-statutory subject matter and should be rejected under 35 U.S.C. § 101. *See In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007); *Mewherter*, 107 USPQ2d at 1862.

Appellants' specification does not define the term "computer usable storage medium." The specification simply discloses "a computer-usable or computer readable medium can be any apparatus that can contain, store, communicate, propagate or transport the program . . . . The medium can be electronic, magnetic, optical, electromagnetic, infrared, or semiconductor system (or apparatus or device) *or a propagation medium*." Spec. ¶ 35 (emphasis added). We see nothing in these statements that requires excluding transitory signals from the construction of "computer usable storage medium." To the contrary, as found by the Examiner, disclosing a "computer-usable medium" that stores data may be "a propagation medium" indicates the term "computer-usable storage medium" encompasses transitory signals. *See* Final Act. 4. Accordingly, Appellants have not

persuaded us the broadest reasonable interpretation of the term "computer usable storage medium" excludes transitory signals. We therefore sustain the Examiner's rejection of claims 13, 16, 17, and 19 under 35 U.S.C. § 101.

§ 103 Rejection

Claim 1 recites in relevant part "locating multiple dynamic filter rules matching a 5-tuple for the packet" and "determining the specific dynamic filter rule from the multiple dynamic filter rules using client identifying information exclusive of the 5-tuple produced for the packet." App. Br. 18. Independent claims 6 and 13 recite similar limitations. *Id.* at 18, 22–23.

Appellants contend Attwood fails to teach or suggest claim 1's "locating" step because "Attwood discloses the dynamic rules associated with [a] placeholder are not searched until a *matching placeholder is located*." Reply Br. 7 (emphasis modified). According to Appellants, the "locating" step "requires that a matching 5-tuple be found, not merely a placeholder." *Id.* Appellants assert "there is nothing in Attwood that requires the matching of all five elements of the 5-tuple." *Id.* (emphasis omitted); *see also* App. Br. 14.

We find Appellants' arguments unpersuasive. On its face, claim 1 does not preclude searching dynamic rules after locating a matching placeholder or require matching all five elements of a 5-tuple as argued by Appellants. And Appellants have not identified any persuasive evidence that requires construing claim 1 in this manner. Claim 1 simply recites "locating multiple dynamic filter rules matching a 5-tuple for the packet." The plain and ordinary meaning of "matching" includes "that corresponds." *See, e.g.*, "matching, adj.," OED Online,

http://www.oed.com/view/Entry/114893?rskey=goBENJ&result=3&isAdvanced=false (last visited September 15, 2016). Thus, the broadest reasonable interpretation of the "locating" limitation includes locating multiple dynamic filter rules *that correspond to* a single element of the 5-tuple for the recited packet. For the reasons discussed below, Attwood teaches or suggests the "locating" limitation under this construction.

As found by the Examiner, Attwood discloses placeholders that contain pointers to groups of dynamic rules. Attwood Fig. 5; *see* Final Act. 19. Attwood teaches the "placeholders . . . have a field . . . of attributes *which are used to match with the attributes of a packet* to determine which rule to apply to the packet." Attwood 6:13–18 (emphasis added); *see* Final Act. 19. "The attributes used for matching typically are IP source address (SA) and source port (SP), IP destination address (DA) and destination port (DP) and protocol (P)." Attwood 6:13–18.

Appellants acknowledge these five attributes "are equivalent to the ones associated with Appellants' 5-tuple." App. Br. 10 n.2. Although Attwood teaches that "[n]ot all attributes have to be specified in a rule," Attwood explicitly discloses a dynamic rule group that specifies all five of these attributes. Attwood 6:23–24, 7:47–55. Accordingly, Attwood's disclosure that "placeholders . . . have a field . . . of attributes which are used to match with the attributes of a packet" and "[t]he attributes used for matching typically" include the five attributes that form a 5-tuple teaches or suggests locating a placeholder with attributes that match the attributes that form a packet's 5-tuple. By locating a placeholder that matches a 5-tuple, Attwood's method has also located a plurality of dynamic rules—the groups

of rules pointed to by the matching placeholder—that correspond to (i.e., that are associated or have a relationship with) the 5-tuple.

Appellants next contend Attwood does not teach or suggest "locating multiple dynamic filter rules." App. Br. 11–14; Reply Br. 7–8. In particular, Appellants assert Attwood's Figures 7, 9, and 12 illustrate that Attwood's method (1) searches for dynamic rules only after finding a matching placeholder and (2) stops searching for dynamic rules after locating a matching dynamic rule. *See* App. Br. 11–14; Reply Br. 7–8. In Appellants' view, Attwood "teaches away from even wanting to locate dynamic filters, yet alone multiple dynamic filter rules, since [Attwood] avoids even searching the dynamic rules." Reply Br. 8.

We find Appellants' arguments unpersuasive. As an initial matter, Appellants' arguments concerning Attwood's Figures 7, 9, and 12 do not address the Examiner's rejection. The Examiner did not find the portions of these figures that depict finding a *specific* dynamic filter teaches or suggests "locating multiple dynamic filter rules." Instead, the Examiner relied on Attwood's disclosure of locating a *placeholder* that both (1) points to a plurality of dynamic rules and (2) matches the five packet attributes that make up Appellants' 5-tuple. *See* Final Act. 19; Ans. 5–9; *see also* Attwood 6:13–18, 7:32–9:27, 12:3–13:24; Figs. 5, 7, 12.

To the extent Appellants contend Attwood's method of locating a placeholder does not teach or suggest "locating multiple dynamic filter rules," we disagree. As explained above, by locating a placeholder that matches a 5-tuple, Attwood's method also locates a plurality of dynamic rules (the groups of rules pointed to by the matching placeholder) that correspond to the 5-tuple.

Moreover, Attwood's process of locating placeholders that point to multiple dynamic rules is consistent with the process described by Appellants' specification. Appellants' specification discloses that, in some situations, Appellants' method locates a dynamic filter rule placeholder (a "NTT anchor") that both points to a plurality of dynamic filter rules ("NTT filter rules") and encompasses a packet's 5-tuple. *See* Spec. ¶¶ 22, 30; Figs. 2, 3B. Depending on the circumstances, the method then uses an "UDP encapsulated source port" to locate a particular dynamic filter rule. *See id.* ¶ 30. This indicates that "locating multiple dynamic filter rules matching a 5-tuple for the packet" includes locating a dynamic filter rule placeholder that both corresponds to a 5-tuple and points to multiple dynamic rules.

Finally, Appellants contend Alles does not each or suggest "determining the specific dynamic filter rule from the multiple dynamic filter rules using client identifying information *exclusive* of the 5-tuple produced for the packet." Appellants assert this limitation "requires determining a specific dynamic filter rule from multiple dynamic filter rules using client identifying information from *only* the 5-tuple produced for packet." App. Br. 16 (emphasis added); *see also* Reply Br. 8–9.

We find Appellants' arguments unpersuasive. As found by the Examiner, the broadest reasonable interpretation of "exclusive of" encompasses "not including." *See* Ans. 10; *see also* "exclusive, adj. and n.," OED Online, http://www.oed.com/view/Entry/65833?redirectedFrom=exclusive (last visited September 15, 2016). Moreover, as pointed out by the Examiner, Appellants' specification discloses using "client identifying information" (e.g., a UDP encapsulating source port) that differs from a 5-tuple to determine a specific dynamic filter rule. Ans. 10; Spec. ¶¶ 18, 22–23. Therefore, the broadest reasonable interpretation of "using client identifying information

exclusive of the 5-tuple" includes "using client identifying information *not including* the 5-tuple." The Examiner found (and we agree) that the combination of Attwood and Alles teaches or suggests this limitation under this construction. *See* Final Act. 19–20; Ans. 10–11.

For the above reasons, we sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a). Because Appellants have not presented separate, persuasive patentability arguments concerning the Examiner's rejection of claims 4–13, and 16–19 under 35 U.S.C. § 103(a), we also affirm the Examiner's rejection of these claims.

DECISION

For the above reasons, we affirm the Examiner's non-statutory obviousness-type double patenting rejection of claims 1, 5, 6, 8–13, and 17–19. We also affirm the Examiner's rejections of claims 13, 16, 17, and 19 under 35 U.S.C. § 101 and claims 1, 4–6, 8, 13, and 16–19 stand under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED