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Silver Spring Networks, Inc. c/o Buchanan Ingersoll & Rooney PC PO Box 1404 Alexandria, VA 22313-1404			PATEL, ASHOKKUMAR B	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAJ VASWANI, WILSON CHUEN YEW YEUNG,
CRISTINA SEIBERT, NELSON BRUCE BOLYARD,
BENJAMIN N. DAMM, and MICHAEL C. STJOHNS

Appeal 2016-005067
Application 12/939,702
Technology Center 2400

Before CAROLYN D. THOMAS, DANIEL J. GALLIGAN, and
ADAM J. PYONIN, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants filed a Request for Rehearing under 37 C.F.R.
§ 41.52(a)(1) (hereafter “Request”) on May 26, 2017 for reconsideration of
our Decision mailed March 27, 2017 (hereafter “Decision”). We have
reconsidered the Decision in light of Appellants’ arguments; however, we are
not persuaded of any error therein.

DISCUSSION

In our Decision, we determined:

[i]n the Reply Brief, Appellants present new arguments that “neither Salazar nor Ransom distinguish between different levels of security for different types of commands” and “[a]t no point does Salazar disclose or suggest that a device such as the EP 102, including its processing apparatus 204 or metrology apparatus 206, determines whether a command it generated requires a permit for the command to be performed.” Reply Br. 3, 5. As these arguments are not responsive to findings presented for the first time in the Examiner’s Answer, and good cause has not been shown as to why the arguments were not earlier presented, the arguments will not be considered for the purposes of this appeal.

Decision 5–6.

Appellants argue “the Board misapprehended or overlooked Appellant’s prior arguments in its Appeal Brief filed on May 18, 2015, when the Board indicated that Appellant presented new arguments in its Reply Brief filed on January 8, 2016.” Request 1. Particularly, Appellants “respectfully request[] the Board to reconsider its assertion that the Reply Brief presented new arguments with respect to whether Salazar discloses a device that determines whether a command it generated requires a command [] permit for the command to be performed. Since this argument was presented previously, it should be given full consideration by the Board in assessing the erroneous rejections of claims 22, 32 and 39.” *Id.* 3–4. In support, Appellants refer to the following arguments in the Appeal Brief:

Therefore, the proposed combination of Salazar and Ransom does not result in the claimed invention. Even if Salazar was combined with Ransom, the resultant combination would be that messages from the network management apparatus 108 to the EPs 102 of Salazar would be encrypted, and messages from the EPs 102 to the network management apparatus 108 would be

similarly encrypted. **However, neither Salazar nor Ransom disclose or suggest that a back office system determines whether a command it generated requires a permit for the command to be performed, and if so, forwards the generated command to a permission server which is a secured component of the back office system.** (emphasis added).

Id. 2 (quoting App. Br. 10).

We find that the aforementioned argument presented by Appellants merely makes a conclusory statement but fails to persuasively argue that “Salazar’s EP 102 does not determine whether a command it generated requires a permit for the command to be performed” as belatedly presented in Appellants’ Reply Brief. Therefore, Appellants do not persuade us we misapprehended or overlooked any points in the Decision, in which we considered Appellants’ arguments presented on Page 10 of the Appeal Brief. *See* Decision 3 (quoting pages 10–11 of the Appeal Brief). In our analysis of these arguments, we agreed with the Examiner that “Ransom teaches ‘the back end server system permits users to interact with devices by determining if a user should receive the necessary keys and authentication data in order to submit commands to the utility devices.’” Decision 5 (quoting Ans. 20). We further agreed with the Examiner that the combination of Salazar and Ransom teaches or suggests the claim limitations disputed in the Appeal Brief, as “Salazar . . . teaches determining to authenticate a requestor of a utility network, [and] Ransom . . . teaches using a back office server (of a utility network) for authentication.” Decision 5 (citing Final Act. 4–5; Ans. 20–21). Thus, we do not find agree we overlooked or misapprehended any of Appellants’ Appeal Brief arguments.

Appellants further argue the Reply Brief does not contain new arguments, because

[t]he additional inclusion of the phrase “such as the EP 102, including its processing apparatus 204 or metrology apparatus 206” in the above arguments in the Reply Brief refers to the devices in paragraphs 55–58 of Salazar which the Examiner cites as disclosing the feature “determining whether the generated command requires a permit for the generated command to be performed” (see, e.g., page 4 of the Examiner’s Answer addressing features of claim 22).

Request 3. As an initial matter, we note that Appellants admit that their remarks in the Reply Brief have an “additional inclusion” (*id.*), i.e., a new argument. Further, although the Examiner cites paragraph 55–58 of Salazar in the Answer, as argued by Appellants, we highlight that the Examiner’s Answer merely restates the rejection of the Final Action. *See* Final Act. 4–5 (citing, e.g., Salazar ¶¶ 55–58); Ans. 3–4. As discussed in our Decision, “these arguments are not responsive to findings presented for the first time in the Examiner’s Answer” (Decision 5). Thus, Appellants do not persuade us we erred in finding the Reply Brief presented new arguments.

Accordingly, we do not agree that any points were misapprehended or overlooked in our Decision. *See* 37 C.F.R. § 41.52(a).

DECISION

We have granted Appellants’ request to the extent that we have reconsidered our Decision, but we deny the request with respect to making any changes therein.

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).

REHEARING DENIED