UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SYMANTEC CORP.,
Petitioner,
v.

FINJAN, INC.,
Patent Owner

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Case IPR2015-01546
Patent 7,756,996 B2

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Before THOMAS L. GIANNETTI, RICHARD E. RICE, and
MIRIAM L. QUINN, *Administrative Patent Judges.*

GIANNETTI, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Symantec Corporation ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–7 (all claims) of U.S. Patent No 7,756,996 B2, issued on July 13, 2010 (Ex. 1001, "the '996 patent"). Paper 1 ("Pet."). Finjan, Inc. ("Patent Owner") filed a Preliminary Response. Paper 8 ("Prelim. Resp."). Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we deny Petitioner's request and deny institution of an *inter partes* review of all challenged claims.

I. BACKGROUND

A. The '996 Patent (Ex. 1001)

The '996 patent is titled "Embedding Management Data Within HTTP Messages." The Abstract describes the invention as follows:

> A system for embedding messages within HTTP streams, including a gateway communicator, situated within a network gateway computer that communicates with at least one client computer, for receiving management data intended for the at least one client computer from a management server computer that communicates with the network gateway computer, a gateway data embedder situated within the network gateway computer for inserting non-HTTP management data within an HTTP message, and a client data extractor situated within each of the at least one client computer for extracting non-HTTP management data from within an HTTP message. A method and a computer readable storage medium are also described and claimed.

Ex. 1001, Abstract.

The invention is illustrated by Figures 1 and 2 of the patent, reproduced here:
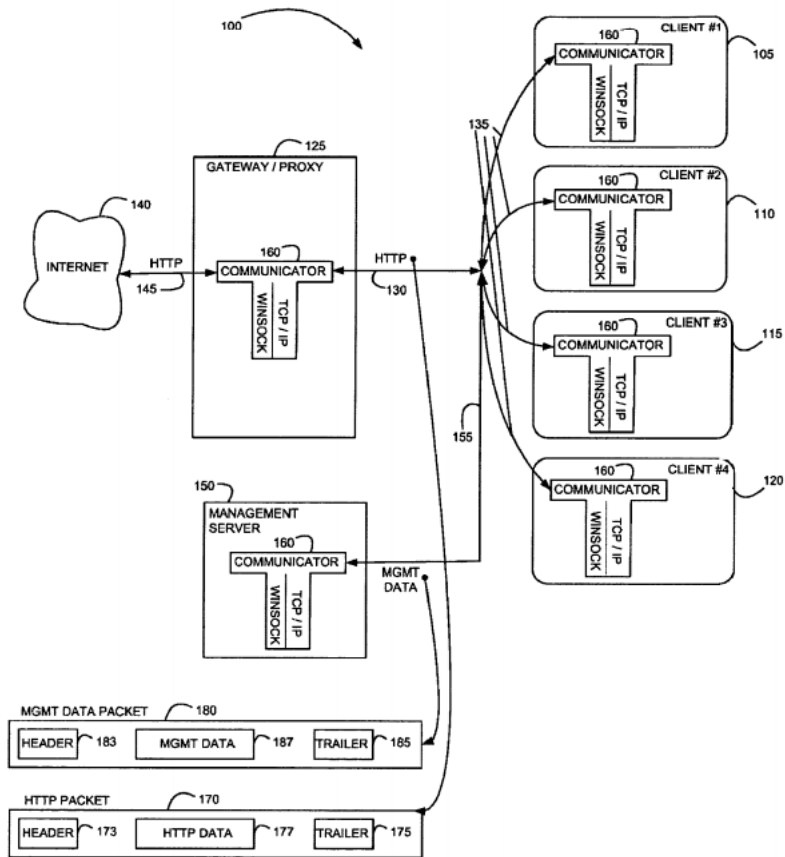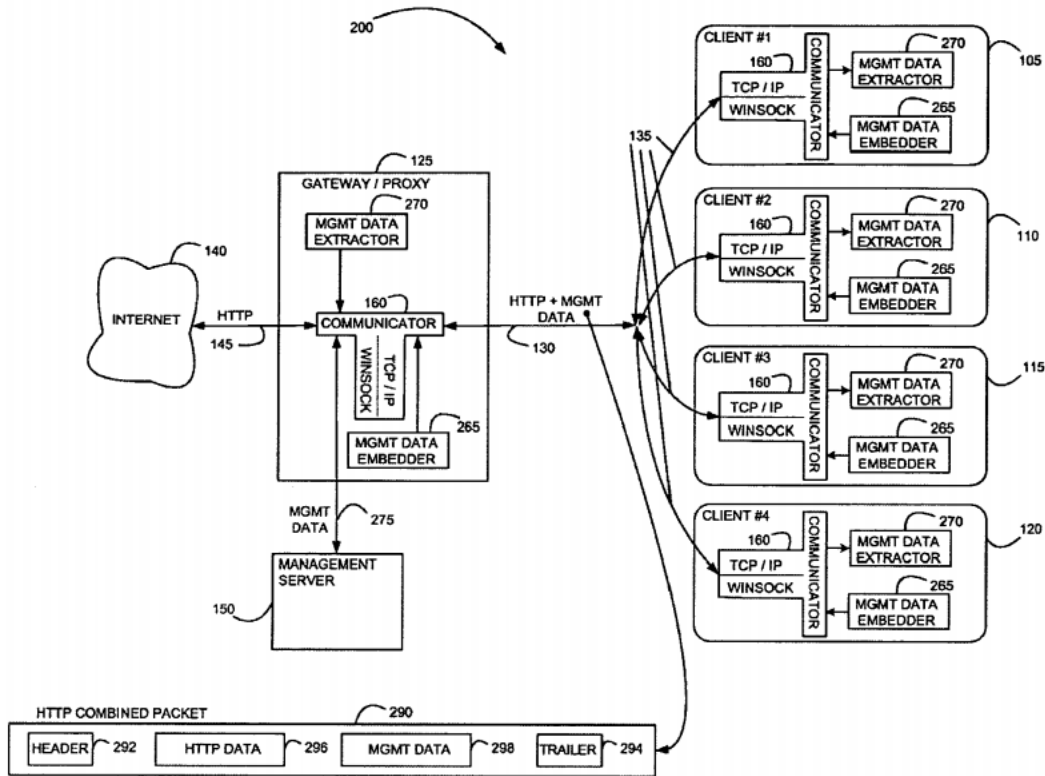

FIG. 1
(PRIOR ART)

FIG. 2

Figure 1 is a simplified block diagram of prior art system 100 for transmitting management data back and forth between a management server computer and a plurality of client computers. Ex. 1001, col. 3, ll. 4–7. Figure 2 is a simplified block diagram of system 200 for embedding messages within HTTP streams, in accordance with a preferred embodiment of the invention of the '996 patent. *Id.* at col. 3, l. 66–col. 4, l. 2. The patent states that, for the sake of clarifying the improvement that system 200 offers

over prior art system 100, like numerals, in the 100-199 range, are used in both figures for common components, and numerals in the 200-299 range are used for components that are unique to Figure 2. *Id.* at col. 4, ll. 2–7.

Shown in Figure 1 are client computers 105, 110, 115, and 120, within a corporate intranet, connected to corporate gateway computer 125 via communication lines 130 and 135. Gateway computer 125 may alternatively be a proxy computer. *Id.* at col. 3, ll. 7–12. Gateway computer 125 connects to Internet 140 via communication line 145. Client computers 105, 110, 115, and 120 typically use web browsers to send requests and responses across the corporate intranet, and across the Internet. *Id.* at col. 3, ll. 12–16.

Also shown in Figure 1 is management server 150, connected to clients 105, 110, 115, and 120 via communication line 155. *Id.* at col. 3, ll. 17–19. Management server 150 and clients 105, 110, 115, and 120 regularly transmit management data back and forth. Such management data may include, for example, network resource queries and responses, queries and responses to ascertain current versions of anti-virus signature files, and updated signature files. *Id.* at col. 3, ll. 26–31.

Figure 2 shows a similar network architecture, in which client computers 105, 110, 115, and 120 are connected to gateway computer 125 and to management server computer 150 within a corporate intranet. *Id.* at col. 4, ll. 8–11. However, in distinction to Figure 1, management server 150 sends and receives its management data through gateway 125. Generally, management data is formatted for transmission using a proprietary, non-HTTP protocol. *Id*. at 11–15.

In Figure 2, clients 105, 110, 115, and 120, and gateway 125 include management data embedders 265 and management data extractors 270. Management data embedder 265 embeds management data within HTTP messages, and management extractor 270 extracts management data from the HTTP messages. *Id.* at col. 4, ll. 16–21.

Management server 150 in Figure 2 sends and receives management data over communication line 275 between management server 150 and gateway 125, instead of directly over communication lines 135, as in Figure 1. As shown in Figure 2, HTTP packets 290, containing combined HTTP data plus management data and travelling over communication lines 130 and 135, include also TCP/IP header data 292, TCP/IP trailer data 294, and a body that includes both HTTP data 296 and management data 298. Thus packets 290 of Figure 2 replace packets 170 and 180 of Figure 1. *Id.* at col. 4, ll. 41–51.

B. Illustrative Claim

The '996 patent has three independent claims: claims 1 (directed to a system), 4 (directed to a method), and 7 (directed to a computer storage medium). Claim 4 illustrates the relevant subject matter of the patent:

> 4. A method for embedding management data within HTTP messages, comprising:
> receiving server-originated non-HTTP management data from a management server computer intended for at least one client computer;
> inserting the server-originated non-HTTP management data within a server-originated HTTP message prior to the server-originated HTTP message being transmitted to the at least one client computer;

extracting the server-originated non-HTTP management
data from within the server-originated HTTP message
subsequent to the server-originated HTTP message being
received by the at least one client computer;
receiving a client-originated HTTP message, the client
originated HTTP message having client-originated non HTTP
management data embedded therewithin;
extracting the client-originated non-HTTP management
data from the client-originated HTTP message; and
transmitting the client-originated non-HTTP management
data to the management server computer.

C. Related Proceedings

Patent Owner and Petitioner are involved in ongoing litigation,
Finjan, Inc. v. Symantec Corp., Case No. 3:14-cv-02998-RS (N.D. Cal.), in
which the '996 patent has been asserted. Petitioner also has filed a second
Petition for *inter partes* review of the '996 patent in Case No. IPR2015-
01545. We express no views here on the challenges to patentability of the
'996 patent in that case, as those are addressed in a separate Decision on
Institution we are issuing concurrently in IPR2015-01545.

D. Real Party-in-Interest

The Petition names one real party-in-interest: Symantec Corporation.
The Preliminary Response does not challenge this. However, Patent Owner
had advised the Board of its contention that all real parties-in-interest have
not been named. IPR2015-01545, Paper 9. In view of our decision not to
institute trial, we do not reach this issue.

E. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are construed according to their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275–79 (Fed. Cir. 2015). Under that 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). However, the claims should always be read in light of the specification and the teachings of the underlying patent. *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015). Thus, the claims "cannot be divorced from the specification and the record evidence." *Id.* (internal quotes omitted).

Petitioner has requested construction of two terms: "non-HTTP management data" and "network gateway computer." Pet. 11–14. Patent Owner has responded that the terms need no construction and that the plain and ordinary meaning of the terms should apply. Prelim. Resp. 8–13.

We agree with Patent Owner that Petitioner's proffered construction of "non-HTTP management data" ("data that the management server transmits and receives using a non-HTTP transport protocol") is unnecessary. Prelim. Resp. 8–9. We therefore adopt the plain meaning suggested by Patent Owner: "management data that is not HTTP." *Id.* at 8. In reaching this conclusion, we note that the '996 patent makes a distinction between management data (e.g., security management data from a

management server) and "regular HTTP traffic that runs back and forth between client web browsers and a corporate gateway or HTTP proxy." Ex. 1001, col. 1, ll. 49–52.

We also agree that no special construction of "network gateway computer" is necessary. We adopt, instead, the plain meaning of the term. In that regard, we are guided by the definition in THE IEEE STANDARD DICTIONARY OF ELECTRICAL AND ELECTRONICS TERMS 449 (Sixth ed. 1996): "In networking, a device that connects two systems that use different protocols." Ex. 3001.

F. References

Petitioner relies on the following three references:

1. Admitted Prior Art ("APA") in the '996 patent specification (Ex. 1001, including col. 1, lines 12–35, col. 3, lines 4–65, and Fig. 1)

2. Bavadekar Pub. No. US 2003/0009571 A1, published Jan. 9, 2003 (Ex. 1002)

3. Binding et al. U.S. Patent No. 6,775,772 B1, filed Oct. 12, 1999 (Ex. 1004)

G. Grounds Asserted

The Petition asserts the following grounds of unpatentability:

References	Basis	Claim(s) Challenged
APA and Bavadekar	§ 103(a)	1–7
APA and Binding	§ 103(a)	1–7

In addition to the supporting argument for these grounds in the Petition, Petitioner presents expert testimony. Ex. 1005, Declaration of Clifford Neuman ("Neuman Decl.").

II. ANALYSIS

A. Asserted Ground Based on APA and Bavadekar

1. Bavadekar Overview

Bavadekar is titled "System and Method for Providing Tunnel Connections Between Entities in a Messaging System." The reference describes using an HTTP tunnel connection to facilitate messaging between clients and brokers. According to the Abstract:

> An HTTP tunnel connection layer is described that may be used to provide reliable, full duplex virtual connections between entities (e.g. clients and brokers) in a distributed application environment using a messaging system. Also described is a novel HTTP tunneling protocol that may be used by the HTTP tunnel connection layer. The HTTP tunnel connection layer may be used by clients to access messaging servers through proxy servers and firewalls, thus expanding the scope of from where clients can access brokers. Using this layer, brokers as well as clients may initiate messaging system messages. This layer may also provide guaranteed data delivery with correct sequencing even in case of a failure on the network. This layer may also provide end-to-end flow control.

Ex. 1002, Abstract.

According to Bavadekar, using a transport protocol tunnel connection layer, if a client is separated from a broker by a firewall, messaging may be run on top of transport protocol connections that are normally allowed

10

through the firewalls. *Id.* ¶ 71. On the client side, a transport protocol
transport driver may encapsulate messages into transport protocol packets
and also may ensure that these packets are sent to the Web server in the
correct sequence. *Id.* This is illustrated in Figure 3A of Bavadekar,
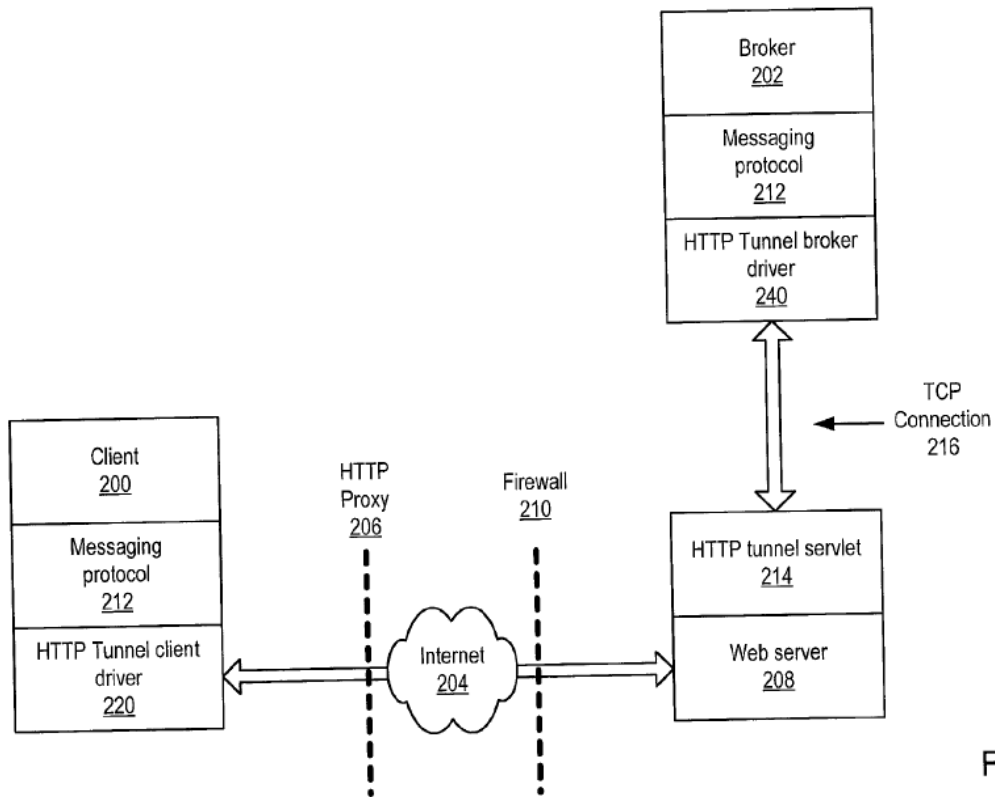reproduced here:

Figure 3A

Figure 3A from Bavadekar illustrates a client-server messaging
system implementing an HTTP tunnel connection layer. Ex. 1002 ¶ 73. As
shown in Figure 3A, client 200 may generate messages using messaging
protocol 212. Such generated messages may then be passed to HTTP tunnel

client driver 220. Client driver 220 may then send the messages as HTTP

POST-request payloads. *Id.* at ¶ 74. The HTTP request may be sent through

HTTP proxy 206, Internet 204, and firewall 210, to Web server 208. On

Web server 208, HTTP tunnel servlet 214 may act as a transceiver, and may

multiplex the HTTP request from multiple clients into a single TCP

connection 216 with broker 202. HTTP tunnel broker device 240 may

receive the HTTP requests from Web server 210 over TCP connection 216.

Id.

Using the HTTP tunneling protocol layer, broker 202, as well as

clients 200, may initiate messaging system messages. *Id.* ¶ 89. Broker 202

may generate HTTP packets that include message data as payloads, and

transmit the HTTP packets to Web server 208 over a TCP connection. *Id.*

2. Obviousness of Claims 1–7

Under 35 U.S.C. § 103(a), an invention is not patentable if the

differences between the claimed subject matter and the prior art are such that

the subject matter, as a whole, would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said

subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406

(2007). The question of obviousness is resolved on the basis of underlying

factual determinations including: (1) the scope and content of the prior art;

(2) any differences between the claimed subject matter and the prior art;

(3) the level of skill in the art; and, (4) where in evidence, so-called

secondary considerations, including commercial success, long-felt but

unsolved needs, failure of others, and unexpected results. *Graham v. John*

Deere Co., 383 U.S. 1, 17–18 (1966).

A holding of obviousness can be based on a showing that "there was an apparent reason to combine the known elements in the fashion claimed." *KSR,* 550 U.S. at 418. However, such a showing requires:

> "[s]ome articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" . . . [H]owever, 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.

Id. (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

In determining obviousness, the references must be considered as a whole. Thus, picking and choosing from a reference only the favorable parts and ignoring the rest is prohibited. *In re Hedges*, 783 F.2d 1038, 1041 (Fed. Cir. 1986). The court in *Hedges* elaborated:

> It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.

Id. (internal quotes and citation omitted).

Petitioner contends that claims 1–7 would have been obvious over APA (exemplified by Figure 1 of the '996 patent, discussed *supra*) and Bavadekar. Pet. 14–29. Petitioner, however, has not provided element-by-element claim charts demonstrating how each claim limitation is met by the combination of APA and Bavadekar, or for any of the other references relied upon in the Petition. Such claim charts, although encouraged, are not required. But the absence of claim charts does not relieve Petitioner from having to provide a "full statement of the reasons for the relief requested."

37 C.F.R. § 42.22(a)(2). We must, therefore, consider whether the information in the Petition is sufficient to demonstrate a reasonable likelihood of prevailing on this challenge. 35 U.S.C. § 314(a).

Petitioner has provided a chart for independent claims 1, 4, and 7, showing the limitations of those three claims in a side-by-side format. Pet. 8–9. Petitioner assigns labels to each limitation, and equates many of the limitations that appear in all three independent claims. For example, according to the chart, claim element [B] ("receiving server-originated non-HTTP management data from a management server computer intended for at least one client computer") or equivalent is present in all three independent claims.

Petitioner's analysis treats these common elements together. Petitioner acknowledges: "[o]ther than the claim format (*i.e.*, system, method and computer-readable storage medium), independent claims 1, 4, and 7 recite substantially similar limitations." Pet. 8. According to Petitioner, "[t]he only meaningful difference is that claim 1, which is directed to a system, further requires a 'network gateway computer storing a network gateway communicator,' for communicating with the client, management server, and HTTP server, and data 'embedders' and 'extractors' on the client and gateway." *Id.* Petitioner states that "where applicable" claim 1, 4, and 7 are discussed together in the Petition. *Id.* Consequently, we will discuss the claims separately only where differences are relied on by Petitioner.

Petitioner contends that "[t]he only difference between the challenged claims and the APA is the use of HTTP piggy-backing or tunneling to

14

deliver the management data between a management server and a client using HTTP messages." Pet. 14. Petitioner acknowledges, however, that the APA itself also does not describe the feature of claims 1–7 calling for the gateway to receive non-HTTP management data intended for the client from a management server. Pet. 21. Petitioner contends that this feature would have been obvious from Bavadekar. *Id.*

These differences are highlighted by comparing Figures 1 and 2 of the '996 patent. In the APA, shown in Figure 1 of the '996 patent, reproduced *supra*, management data packets 180 are sent back and forth between management server 150 and clients 105, 110, 115, and 120 without being received by the gateway. Ex. 1001, col. 3, ll. 26–28. According to the '996 patent, this was a "drawback" of the prior art system, in that "management server 150 creates additional traffic, above and beyond the HTTP traffic." *Id.* at col. 3, ll. 58–60. In contrast, Figure 2 of the patent shows management server 150 sending and receiving management data embedded in HTTP messages through gateway 125. Ex. 1001, col. 4, ll. 11–13. Figure 2 also shows management data "embedders" and "extractors" in gateway 125 and clients 105, 110, 115, and 120. *Id.* at col. 4, ll. 16–21.

Petitioner relies on Bavadekar to supply the features of the claims missing from the APA. Thus, according to Petitioner, "Bavadekar teaches an HTTP tunnel servlet running on a Web server, which acts as a point of contact (*i.e.*, gateway) between the clients communicating over the Internet, and the broker communicating over a direct network connection." Pet. 22. Further, Petitioner contends that "Bavadekar further discloses that this network gateway receives messages generated by the broker (*i.e.*,

management server) that are intended for delivery to the client through the HTTP tunnel connection." *Id.* Finally, Petitioner argues that "it would have been obvious to one of ordinary skill in the art at the time of the '996 patent to combine the HTTP tunneling mechanisms taught by Bavadekar with the APA." *Id.*

Patent Owner points out in response that Bavadekar discloses a message system and is concerned with providing a "transport protocol tunnel connection layer" for the purpose of accessing message servers through proxy servers and firewalls. Prelim. Resp. 14–15. Thus, the system architecture of Bavadekar differs from the '996 patent, resulting in a failure to meet "several key features" of the challenged claims: "(1) receiving non-HTTP management data intended for at least one client computer and (2) inserting the non-HTTP management data within an HTTP message prior to the HTTP message being transmitted to the at least one client computer." *Id.* at 15.

We are persuaded by Patent Owner's arguments that Bavadekar fails to provide features required by the claims that are also not present in the APA. Prelim. Resp. 15–20. For example, we agree that Bavadekar fails to teach that non-HTTP management data is received by a gateway computer because in Bavadekar the same computer that generates Bavadekar's message also generates the HTTP packet with the message as its payload. Prelim. Resp. 16. In Bavadekar, the HTTP tunnel broker driver 240 generates the message and is part of broker 202. Thus, we are not persuaded by Petitioner's identification of HTTP tunnel servlet as the "gateway" in the '996 patent. Pet. 15. In the '996 patent, gateway 125 serves as an

intermediary between clients, management server, and the Internet, and embeds management data HTTP packets intended for the clients. *See supra*. The embedding of messages in Bavadekar is performed by broker 202. Ex. 1002 ¶ 89.

We also agree that Petitioner fails to identify where Bavadekar describes inserting management data into HTTP messages as the claims require. Prelim. Resp. 19–20. Patent Owner argues that there is a distinction between the "message data" described in Bavadekar and "management data" in the '996 patent claims. As Patent Owner explains, "Bavadekar generates traditional HTTP packets for the sole purpose of transferring its payload while the '996 Patent claims inserting management data in HTTP messages for procuring management related functionality." Prelim. Resp. 19–20.

We agree with Patent Owner. As we noted *supra*, the '996 patent makes a distinction between normal HTTP messages generated by browsers and Web servers and management data:

> Management data is typically transmitted back and forth over a network typically using a proprietary non-HTTP protocol, and thus creates additional traffic, above and beyond the HTTP traffic. Such additional traffic increases the number of packets traveling on the network, and the processing required to handle them.

Ex. 1001, col. 1, ll. 29–34. We further agree with Patent Owner that the claims reflect this difference by specifying that management data is "server originated," and is sent and received by the management server using a non-HTTP protocol.

We are persuaded that Petitioner has failed to show that the "payload" messages in Bavadekar are "management data" or are "server originated." *Id.* at 20. That difference is understandable, for, unlike the '996 patent, Bavadekar is not directed to optimizing bandwidth by enabling management and security systems to "piggy back" on top of regular HTTP traffic that runs back and forth between client web browsers and a corporate gateway or HTTP proxy. Ex. 1001, col. 1, ll. 49–52. Instead, Bavadekar is directed to the different problem of providing an HTTP tunnel connection layer that may be used to provide reliable, full-duplex virtual connections between entities (e.g. clients and brokers) in a distributed application environment. Ex. 1002, Abstract. "The HTTP tunnel connection layer may be used by clients to access messaging servers through proxy servers and firewalls, thus expanding the scope of from where clients can access brokers." *Id.*

Patent Owner further contends that the proposed combination of APA and Bavadekar is improper because it is a "product of hindsight bias." Prelim. Resp. 20–24. We agree that Petitioner has not provided a persuasive rationale for combining the APA and Bavadekar. Pet. 17–18; Neuman Decl. ¶¶ 129–32. Petitioner's analysis does not take into account the fact that Bavadekar and the '996 patent are directed to solving different problems, as discussed *supra*. This is a factor which must be considered but was not adequately addressed by Petitioner. *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1334 (Fed. Cir. 2013):

> While a prior art reference may support any finding apparent to
> a person of ordinary skill in the art, prior art references that
> address different problems may not, depending on the art and

circumstances, support an inference that the skilled artisan would consult both of them simultaneously.

Id.

For example, Petitioner contends that "[o]ne of ordinary skill in the art would have been motivated to combine these teachings for a number of reasons, including to improve the efficiency of the messaging system (*e.g.* less network traffic and reduced overhead)." Pet. 17 (citing Neuman Decl. ¶ 131). We agree with Patent Owner that this "rationale" is insufficient, as it is just a restatement of the problem to which the '996 patent is directed, which differs from that addressed by Bavadekar. *See Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853, 859 (Fed. Cir. 2015)("[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.")(internal quotes and citation omitted).

Also unavailing is Petitioner's argument that a desire for increased reliability of message delivery would have led to combining the APA and Bavadekar. In support of this proposition, Petitioner does not point to any teaching in the '996 patent or Bavadekar suggesting or recognizing that this was a problem. Instead, Patent Owner's expert relies on a patent to Greaves not identified in the Petition. Neuman Decl. ¶ 131. As Patent Owner points out, Greaves describes a system that does not use HTTP in the same way as the '996 patent. Prelim. Resp. 23.

We have considered Petitioner's other arguments for combining the APA and Bavadekar and find them conclusory and unpersuasive. Although Petitioner provides additional arguments for certain dependent claims (Pet. 27–29), we do not need to address them separately. We conclude, for the foregoing reasons, that Petitioner has not demonstrated that it is reasonably

likely to prevail on this challenge to claims 1–7 based on the APA and
Bavadekar.

B. Asserted Ground Based on APA and Binding

1. Binding Overview

Binding is titled "Piggy-Backed Key Exchange Protocol for Providing
Secure Low-Overhead Browser Connections from a Client to a Server using
a Trusted Third Party." The patent describes a "piggy-back" key exchange
system for setting up a secure browser connection. According to the
Abstract the patent describes:

> A method, system, and computer program product for
> establishing security parameters that are used to exchange data
> on a secure connection. A piggy-backed key exchange protocol
> is defined, with which these security parameters are
> advantageously exchanged. By piggy-backing the key exchange
> onto other already-required messages (such as a client's HTTP
> GET request, or the server's response thereto), the overhead
> associated with setting up a secure browser-to-server
> connection is minimized. This technique is defined for a
> number of different scenarios, where the client and server may
> or may not share an encoding scheme, and is designed to
> maintain the integrity of application layer communication
> protocols. In one scenario, a client and a server exchange secure
> messages using a trusted third party.

Ex. 1004, Abstract.

The basic architecture of the system is illustrated in Figure 3 from Binding, reproduced here:
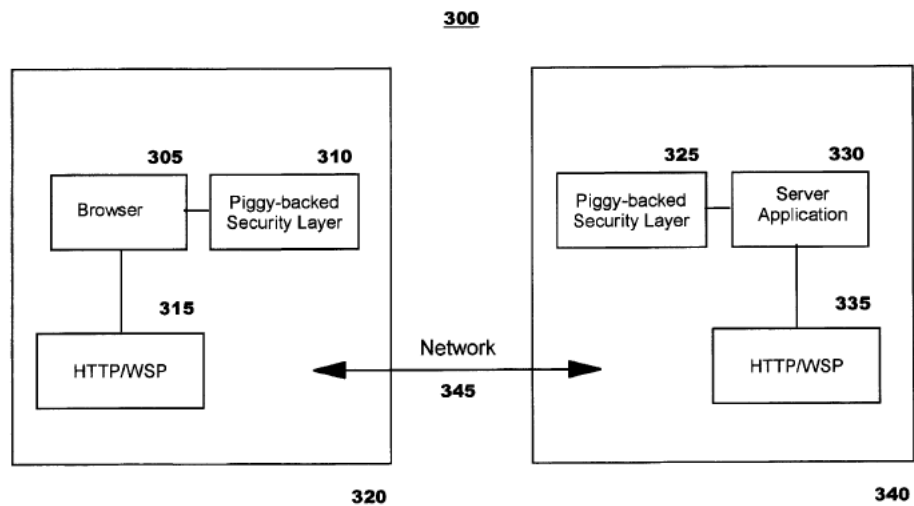

Fig. 3

Figure 3 from Binding depicts the basic architecture of system 300. Ex. 1004, col. 11, ll. 24–25. Client browser 305 is installed on client device 320. HTTP/WSP communication protocol engines 315, 335 operate as a lower layer in client device 320 as well as in server 340. *Id.* at col. 11, ll. 26–31.

Network connection 345, which may pass through a number of gateways and or transcoders, connects client communications protocol engine 315 to the server's corresponding communication protocol engine 335. Server application 330 operates at the application layer level of server 320. Binding states that the invention may be implemented using a client

side HTTP proxy with a security plug-in, which handles encryption and decryption for client side HTTP applications. *Id.* at col. 11, ll. 32–42.

In one embodiment, the client and server do not have a common message and coding scheme with each other. They do, however, share an encoding scheme with a trusted third-party (TTP). *Id.* at col. 14, ll. 53–56. Binding discloses a key-exchange protocol, where secure information transmitted to a server is provided by piggy-backing security parameters onto existing message flows. *Id.* at col. 15, ll. 16–20. This exchange protocol is described in some detail in the patent at column 15, lines 16–63, and will be discussed further below.

2. Obviousness of Claims 1–7

As noted above, Petitioner contends that "the only difference between the challenged claims and the APA is the use of HTTP piggy-backing or tunneling to deliver the management data between a management server and a client using HTTP messages." Pet. 29. Petitioner relies on Binding for this missing feature: "Binding describes systems that use such HTTP piggy-backing techniques to exchange security data between clients, servers, and third-party computing systems and, therefore, teaches this missing feature in the APA." *Id.* Moreover, Petitioner contends that Binding "identifies the very same problem in the prior art described in the '996 patent, namely: that the use of non-HTTP protocols to deliver messages between clients and servers is inefficient because it creates additional network traffic and increased overhead and bandwidth." *Id.* at 31. Petitioner acknowledges, however, that "the APA does not explicitly teach that the non-HTTP management data is received by the gateway computer." *Id.* at 37.

Patent Owner responds that the APA/Binding combination does not render claims 1–7 obvious because Petitioner's analysis of Binding is deficient. Prelim. Resp. 24–26. For example, Patent Owner contends that Binding "fatally" does not teach the gateway "receiving non-HTTP management data intended for at least one client computer," as the claims require but which is missing from the APA. *Id.* at 24. Patent Owner contends also that Petitioner has failed to demonstrate how Binding's security information and parameters meet the definition of "non-HTTP management data." *Id.* Patent Owner additionally contends that Binding's "encoding schemes" and "parameters" sent from the TTP to the server are not intended for the client device as the claims require. *Id.* at 25.

We are persuaded that Petitioner has failed to demonstrate that the requirements of the '996 patent claims absent from the APA are met by Binding. We agree with Patent Owner that the parameters sent by the TTP to the server in Binding's example, at column 15, lines 16–25, reproduced at page 25 of the Preliminary Response, are not non-HTTP management data "intended for at least one client computer" for the reasons discussed by Patent Owner. Prelim. Resp. 25. Petitioner has not shown that, in Binding, the "piggy-backing" security parameters sent by the TTP to the server ever reach the client. *See* Ex. 1004, col. 15, ll. 16–63.

Moreover, we are not persuaded by the Petition or Neuman Declaration that these features would have been obvious in view of Binding or the APA. In discussing the TTP embodiment of Binding, the Neuman Declaration does not explain how the encoding information received at the server from the TTP in Binding would be intended for the client. In fact, the

example in Binding demonstrates that it is not, as Dr. Neuman acknowledges. Neuman Decl. ¶ 158 ("[E]ven if Binding does not explicitly disclose that management data that has been embedded within an HTTP message and sent to a client is management data that has been received from the management computer, this feature would have been obvious to a person of ordinary skill.").

Dr. Neuman does not explain how the piggy-backed "parameters" sent from the TTP to the server in Binding ever reach the client. *See* Ex. 1004, col. 15, ll. 16–25. Dr. Neuman discusses, instead, hypothetical "other parameters" (not the encoding information identified in the Petition) forwarded from the TTP to the server. Neuman Decl. ¶¶ 177-79. Dr. Neuman does not show where Binding teaches or suggests that such "other parameters from the TTP" exist, or that such information was intended for the client. We, therefore, are not persuaded by Dr. Neuman's opinions (Neuman Decl. ¶¶ 177–80; 229) on this issue. Nor are we persuaded by Dr. Neuman's lengthy analysis of Greaves (*id.* ¶¶ 254–89), or other matters that are not discussed in the Petition.

It follows from Petitioner's failure to show that Binding's alleged management data is intended for a client that Binding also fails to describe inserting "the non-HTTP management data within an HTTP message," as the claims require. Prelim. Resp. 26. Thus, even if APA and Binding were combined, these limitations of the claims would not be met. As each of claims 1–7 contains these limitations, we conclude that for at least the foregoing reasons, Petitioner has not demonstrated that it is reasonably likely to prevail on this challenge.

III. ORDER

In view of the foregoing, it is

ORDERED that Petitioner's request for *inter partes* review of claims 1–7 of US Patent No. 7,756,996 B2 is *denied*.

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