Trials@uspto.gov
571-272-7822

Paper 9
Entered: January 14, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMANTEC CORP.,
Petitioner,

v.

FINJAN, INC.,
Patent Owner.

Case IPR2015-01548
Patent 8,015,182 B2

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

QUINN, *Administrative Patent Judge.*

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

Symantec Corp. ("Petitioner") filed a Petition to institute *inter partes* review of claims 8–11 and 13 U.S. of Patent No. 8,015,182 B2 ("the '182 patent") pursuant to 35 U.S.C. §§ 311–319. Paper 1 ("Pet."). Finjan, Inc. ("Patent Owner") timely filed a Preliminary Response. Paper 8 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314.

For the reasons that follow, we deny the Petition.

I. BACKGROUND

A. RELATED MATTERS

Petitioner identifies that the patent-at-issue is the subject matter of a district court case filed in the U.S. District Court for the Northern District of California (Case No. 3:14-cv-02998-RS). Pet. 1. Petitioner also states that petitions for *inter partes* review have been filed regarding patents at issue in the foregoing litigation. *Id.*

B. ASSERTED GROUNDS

Petitioner contends that claims 8–11 and 13 ("the challenged claims") are unpatentable under 35 U.S.C. § 103 based on the following specific grounds:

Reference[s]	**Basis**	**Claims challenged**
Dixon[1] and Bates[2]	§ 103	8–11 and 13

[1] U.S. Patent No. 8,296,664 B2 (Exhibit 1004) ("Dixon").
[2] U.S. Patent No. 6,721,721 B1 (Exhibit 1007 ("Bates").

Reference[s]	Basis	Claims challenged
Rowan[3] and Bates	§ 103	8–11 and 13

C. THE '182 PATENT (EX. 1001)

The '182 patent relates to "a system and method for combining operation of a search engine with operation of a content security filter, so as to provide security assessments for web pages or media content (collectively, web content) located by the search engine." Ex. 1001, 2:12–17. In particular, the '182 patent describes displaying search results with appended security information, as illustrated in Figure 2, reproduced below. *Id.* at 6:3–5.

[3] U.S. Patent No. 7,694,135 B2 (Exhibit 1008) ("Rowan").

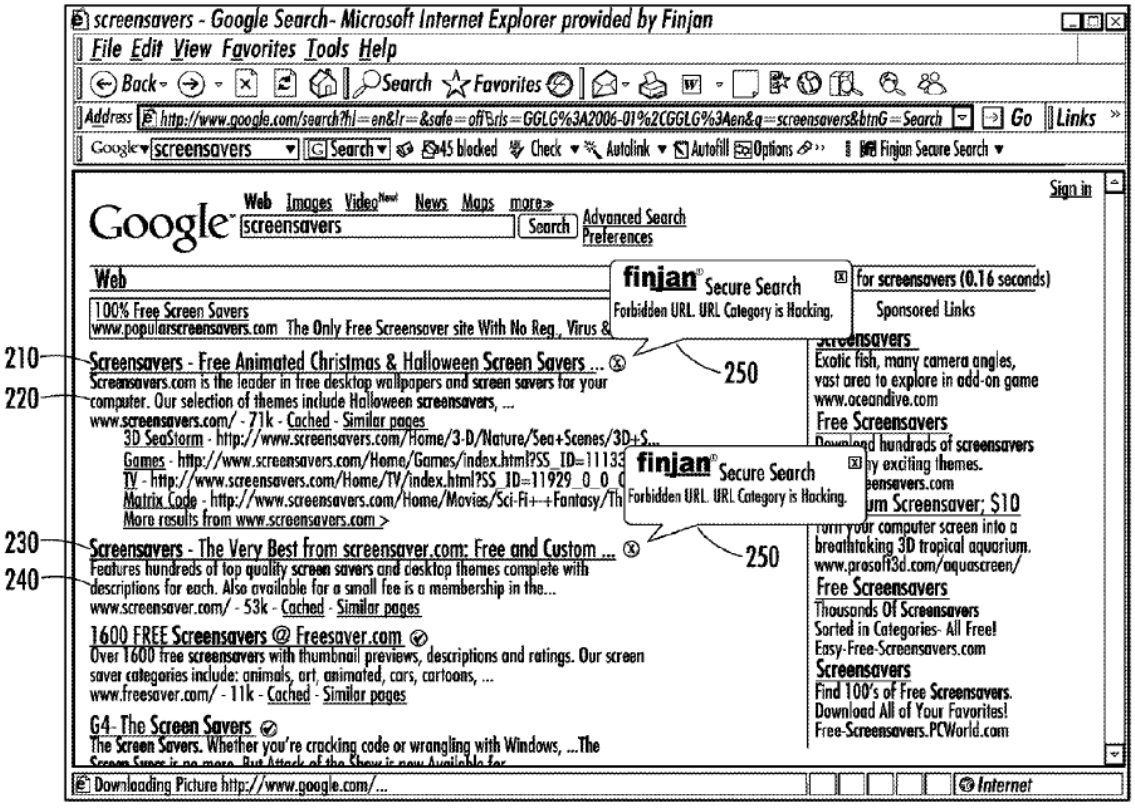

FIG. 2

The display depicted in Figure 2 "was generated by querying a web search engine with the search term "screensavers." *Id.* at 6:6–7. Specifically, Figure 2 shows links 210 and 230, which reference web pages with content that was inspected and found to have potential security risks. *Id.* at 6:7–13. Alerts are provided for both links to state "Forbidden URL. URL Category is Hacking," an alert to a potential spyware risk in following the links to the referenced websites. *Id.* at 6:11–17.

Figure 4, reproduced below, describes a flow chart of a server-side method for appending security information to search results. *Id.* at 7:61–64.

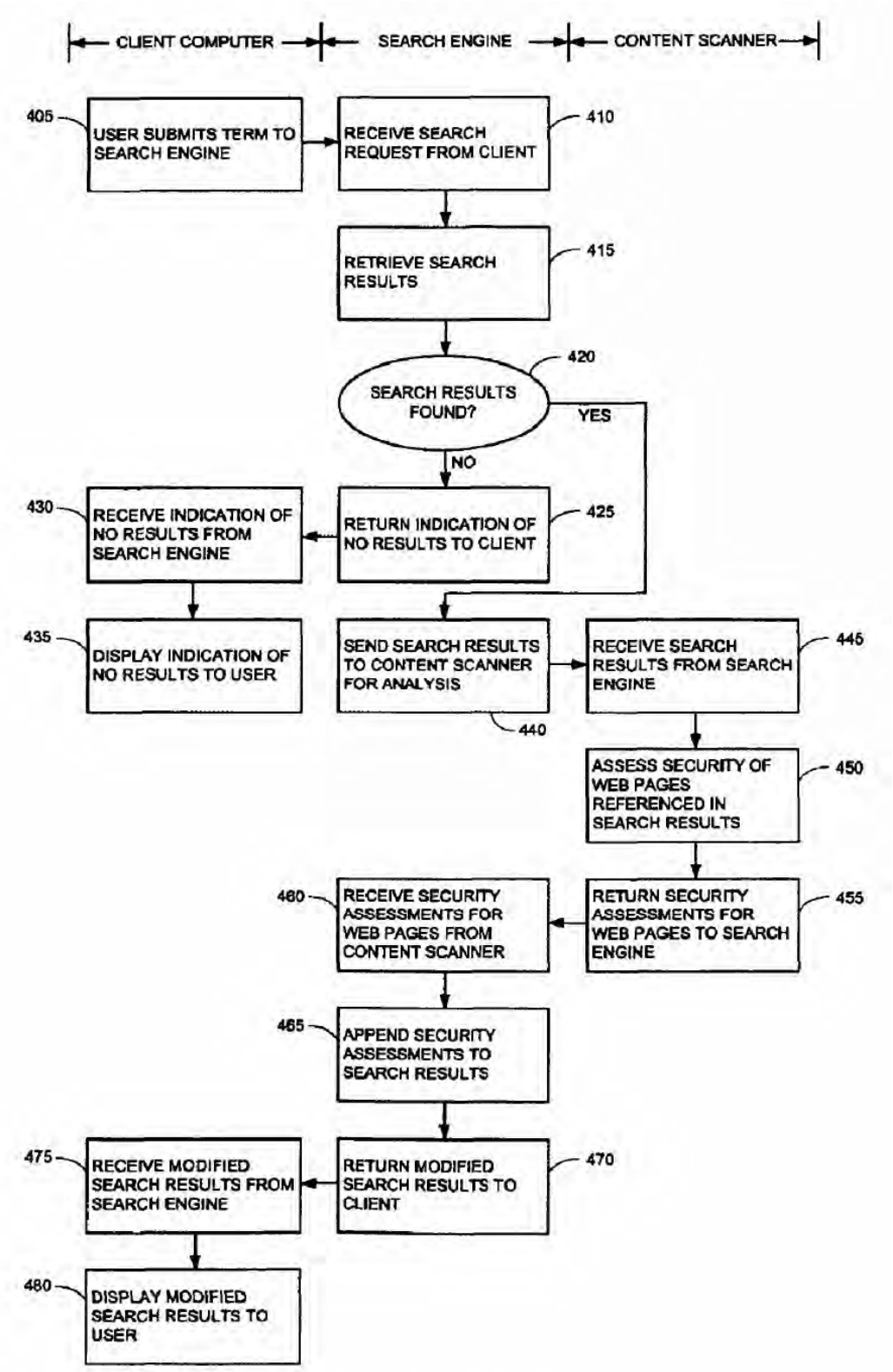
CLIENT COMPUTER
SEARCH ENGINE
CONTENT SCANNER
405
USER SUBMITS TERM TO SEARCH ENGINE
410
RECEIVE SEARCH REQUEST FROM CLIENT
415
RETRIEVE SEARCH RESULTS
420
SEARCH RESULTS FOUND?
YES
NO
425
RETURN INDICATION OF NO RESULTS TO CLIENT
430
RECEIVE INDICATION OF NO RESULTS FROM SEARCH ENGINE
435
DISPLAY INDICATION OF NO RESULTS TO USER
440
SEND SEARCH RESULTS TO CONTENT SCANNER FOR ANALYSIS
445
RECEIVE SEARCH RESULTS FROM SEARCH ENGINE
450
ASSESS SECURITY OF WEB PAGES REFERENCED IN SEARCH RESULTS
455
RETURN SECURITY ASSESSMENTS FOR WEB PAGES TO SEARCH ENGINE
460
RECEIVE SECURITY ASSESSMENTS FOR WEB PAGES FROM CONTENT SCANNER
465
APPEND SECURITY ASSESSMENTS TO SEARCH RESULTS
470
RETURN MODIFIED SEARCH RESULTS TO CLIENT
475
RECEIVE MODIFIED SEARCH RESULTS FROM SEARCH ENGINE
480
DISPLAY MODIFIED SEARCH RESULTS TO USER

FIG. 4

Figure 4 depicts steps performed by a client computer, search engine, and content scanner. *Id.* at 7:65–8:3. In particular, Figure 4 illustrates that when search results are found, the search engine, at step 480, receives security assessments for the web pages referenced in search results. The client computer, thereafter, receives, at step 475, and displays, at step 480, modified search results that include appended security assessments. *Id.* at 8:62–67. "In turn, the client computer updates the search results based on the security assessments." *Id.*

D. ILLUSTRATIVE CLAIM

Challenged claim 8 is independent, and illustrative of the claimed subject matter:

> 8. A system for appending security information to search engine results, comprising:
>
> a search engine for locating web content that includes at least one designated search term, for preparing a search results summary that presents the located web content, and for embedding an active program within the search results summary, wherein the active program, when executed, requests and receives security assessments of web content from a content security scanner;
>
> a client computer communicatively coupled with said search engine for issuing a search request with at least one designated search term to said search engine, for receiving the search results summary with the embedded active program from said search engine, for executing the active program, and for combining the search results summary received from said search engine in response to the search request with security assessments received from said content security scanner in response to executing the active program, by (i) displaying a presentation of the search results summary with a portion

> of the security assessments while some of the security assessments have not yet been received, and (ii) dynamically updating the presentation when additional security assessments are received; and
>
> a content security scanner communicatively coupled with said client computer, which is invoked by the active program to assess security of at least a portion of the located web content for potential security risks.

II. ANALYSIS

A. CLAIM INTERPRETATION

The Board interprets claims using the "broadest reasonable construction in light of the specification of the patent in which [they] appear[]." 37 C.F.R. § 42.100(b). We presume that claim terms have their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) ("The ordinary and customary meaning is the meaning that the term would have to a person of ordinary skill in the art in question.").

Petitioner proposed a construction for one term: "dynamically updating the presentation when additional security assessments are received." *See* Pet. 11–15. Patent Owner submitted that the term has a plain and ordinary meaning understood to a person of ordinary skill in the art and that no construction is needed. Prelim. Resp. 8–10. We do not need to construe a proposed term if the construction is not helpful in our determination of whether to institute trial. Because the construction of the term "dynamically generate[d]" is not germane to our determination whether

to institute trial, we will not consider either of the parties' arguments. No term will be construed.

B. GROUNDS BASED ON DIXON

Petitioner asserts one ground predicated on a combination of Dixon and Bates. Pet. 16–36. In particular, Petitioner asserts that Dixon teaches the "dynamically updating" limitation. Pet. 30–33. Patent Owner disputes the assertion by pointing out that the Dixon features on which Petitioner relies have "nothing to do with the dynamic update of a presentation of when security assessments are received." Prelim. Resp. 14–15. We agree with Patent Owner that Petitioner's assertion lacks merit. A short summary of Dixon is in order.

1. Overview of Dixon (Exhibit 1004)

Dixon relates to improving computer and user security and protection through reputation services. Ex. 1004, 7:18–20. In particular, Dixon describes clients 102 interacting with servers 104 through reputation server 110, such as by making a request through the Internet. *Id.* at 17:51–57. Figure 4, reproduced below, illustrates a reputation information process involving user Internet requests, where a reputation analyis is performed. *Id.* at 17:61–65.

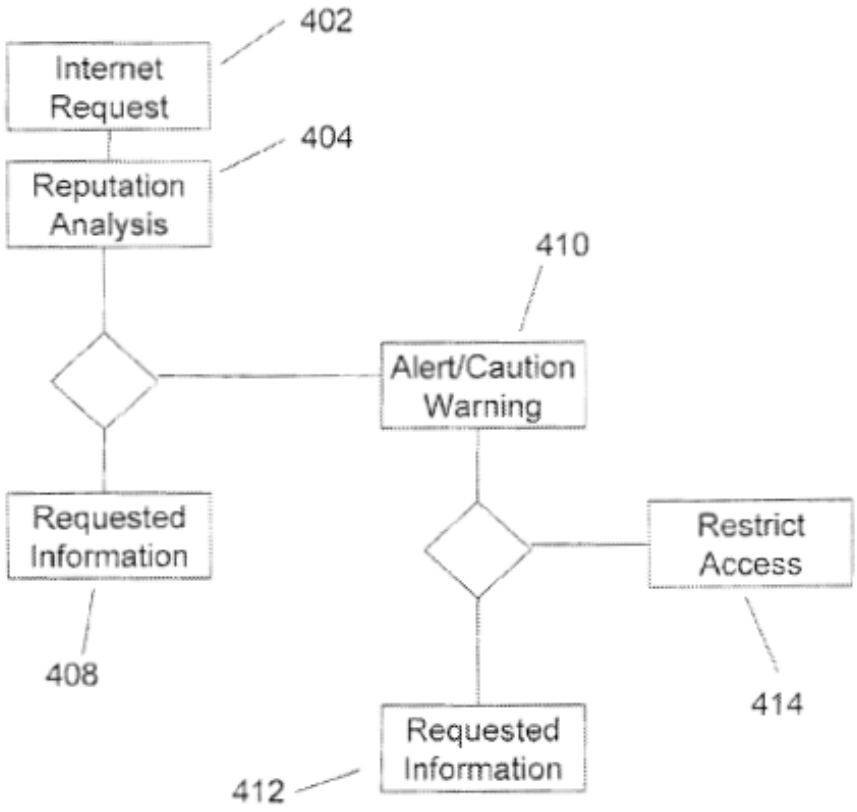

Fig. 4

According to Figure 4, and the accompanying description, reputation analysis 404 may be performed on the results produced. *Id.* at 17:62–66. A decision thereafter may be made to "either provide the requested information (e.g. the site or search results) 408 and or to provide an alert, caution, warning, recommendation, or other reputation service as described herein 410." *Id.* at 18:6–10. According to Dixon, the reputation analysis may be provided, in the example relating to acceptable reputation evaluation in search results, by presenting the search results. *Id.* at 18:14–15. Alternatively, Dixon describes that the user may be presented with search results having "an indication of the reputation of each such result." *Id.* at 18:20–22.

2. Discussion

Petitioner contends that Dixon displays a presentation and dynamically updates the presentation because Dixon teaches that a search result may be presented with indication of reputation and that reputations are iteratively updated. Pet. 29–33 (citing Dixon Abstract, cols. 18, 20, 27, 19, 29, 44, 45, and Ex. 1002, "the Jha Declaration"). Patent Owner challenges Petitioner's contention arguing that Dixon's iterative updates of web site reputations are "completely unrelated to dynamically updating a presentation." Prelim. Resp. 14. In particular, Patent Owner asserts that the only Dixon disclosure that supports the contention of updating a presentation of search results is found in the Abstract of Dixon. *Id.* at 15 ("an indicia of risk associated with the search results is presented, in real-time, within the graphical user interface"). Patent Owner, however, urges that we may draw another inference from Dixon: that Dixon's search engine returns search results with augmented reputations of URLs appearing as a result of a real-time database query. *Id.* (citing in support Dixon at 20:7–10).

We agree with Patent Owner that Petitioner has not demonstrated sufficiently that Dixon's iterative update teaches or suggests an update to the search results presentation. In particular, we agree with Patent Owner that Dixon teaches an update of reputation information, not of a display of search results. Prelim. Resp. 15. The evidence in Dixon cited by Petitioner and Patent Owner leads us to interpret Dixon as providing a reputation service where the queries to the database are performed in real-time, as the search results are prepared. As Patent Owner argues, the reference in Dixon's Abstract to a graphical user interface for presenting an indicia of risk in real-

time is described more fully in Dixon as a real-time database query interface for looking up the reputation of Web sites, programs, Web forms, and other such content. Ex. 1004, Abstract, 20:14–16. We agree with Patent Owner that presenting search results, in real-time utilizing a database query, is different from updating the presentation when additional security assessments are received, as the claims require.

We also agree with Patent Owner that the Jha Declaration on this point is conclusory. *See* Prelim. Resp. 15. Specifically, Dr. Jha, Petitioner's Declarant, states, without factual support, that "once an 'Unknown' site has been iteratively updated to indicate whether it is safe or not, it will be provided to the client computer so as to be added in the presentation of the search results and reputation information." Ex. 1002 ¶ 93. This opinion evidence is unpersuasive, as it is not factually supported by Dixon. *See* 37 C.F.R. § 42.65 (a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."). Also unpersuasive is Dr. Jha's assessment of the disclosure of the provisional application. *Id.* Even if we were to consider the provisional application as part of the disclosure of Dixon, the application, at best, supports the contention that Dixon's database is updated while a search request is requested, and providing a cache in case the service is unavailable. *See* Pet. 30 n.12. That is, the updates in Dixon are of the database reputation, but Dixon has not been shown sufficiently to update the presentation with the reputation.

Accordingly, and for at least the above-identified reason, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of

prevailing in its contention that the challenged claims are unpatentable over Dixon and Bates.

C. GROUND BASED ROWAN

Petitioner asserts one ground predicated on the combination of Rowan and Bates.

1. Overview of Rowan (Ex. 1008)

Rowan describes a general implementation of a service that includes a search site that allows a user or system to provide an address and perform a search. Ex. 1008, 3:28–31. The services check for Secure Socket Layer (SSL) activity, and checks information to assign a trustworthiness score to the address that was searched, "and this information can be displayed or returned to the user in a more detailed trustworthiness report." *Id.* at 3:31–41. Rowan further describes one embodiment of a toolbar that can use the service. *Id.* at 9:9–11. The toolbar can display an indicator, such as a "green" indicator that indicates the location is trustworthy. *Id.* at 9:11–13. "A waiting indicator indicates that the source is trying to locate the site, and that the user should click on that location again." *Id.* at 9:16–18.

Rowan also describes that to reduce the number of accesses to the service and provide greater efficiency, the trustworthiness level of the site can be cached on the user's computer. *Id.* at 11:7–10. The service provides to the user an indication of the trustworthiness level and a period of time for which the site may be considered to have that trustworthiness level. *Id.* at 11:10–14. "The user is thus caching the verification status and the

trustworthiness of the site for some period of time, and the period of time can be controlled or adjusted based on a set of rules." *Id.* at 11:25–28.

2. Discussion

Petitioner contends that Rowan's disclosure of caching a trustworthiness level teaches presenting a previously accessed location's trustworthiness indicator, while other assessments are retrieved. Pet. 50–51 (citing the Jha Declaration, Ex. 1002 ¶¶ 121–122, and Rowan, cols. 7, 8, 9, 11). Petitioner also contends that Rowan's waiting indicator teaches that "once Rowan's service locates the site, it will dynamically update the presentation to the user such that the user will be provided with an updated trustworthiness report." Pet. 52 (citing exclusively the Jha Declaration, Ex. 1002 ¶ 123). Petitioner does not rely on Bates for these limitations. Patent Owner challenges Petitioner's assessments of Rowan, particularly with respect to Petitioner's contention that Rowan's presentation of the search results is dynamically updated. Prelim. Resp. 18. We agree with Patent Owner that Petitioner has not demonstrated sufficiently that Rowan in view of Bates teaches the dynamically updating limitation.

First, Petitioner has shown that Rowan, at best, teaches that the trustworthiness report may be retrieved upon a user requesting it, not that Rowan teaches updating the presentation. For example, as Patent Owner points out, and we agree, when a "waiting indicator" is provided on the toolbar, the indicator "indicates that the source is trying to locate the site, and that the user should click on that location again." Ex. 1008, 9:16–18. Although the trustworthiness report may be retrieved afterwards, Petitioner

does not point out how Rowan's system "updates" the display absent user intervention. In other words, the Petition states in a conclusory fashion that "once Rowan's service locates the site, it will dynamically update the presentation to the user." Pet. 52 (citing the Jha Declaration, Ex. 1002 ¶ 123). The cited paragraph in the Jha Declaration does not elaborate on this point. Nor do we find that Dr. Jha has supported this bare assertion with factual support. Consequently, we agree with Patent Owner that the Petition lacks sufficient factual support for the contention that Rowan in view of Bates teaches the dynamically updating limitation.

Second, we are unpersuaded by Petitioner's attempts to demonstrate that Rowan teaches "displaying a presentation of the search results summary with a portion of the security assessments while some of the security assessments have not yet been received," as recited in claim 8. Pet. 50–51. In particular, we note that the claim requires displaying a search results summary with some, but not all, of the corresponding security assessments. Petitioner relies on Rowan's caching feature to support its contentions regarding this limitation. The caching feature in Rowan is described with respect to the toolbar embodiment. Ex. 1008, 10:61–63. The toolbar provides a single trustworthiness report, for the site accessed. *See* Figs. 7(a)–7(g); *see also* Fig. 9(b) (showing toolbar providing trustworthiness indicator for www.trustwatch.com and no other sites); 11:21–24 (providing that the validity of the trustworthiness indicator may be maintained for a period of time regardless of whether the user visits other sites, or the system may assume the status valid only as long as the user is on that site); 10:64–11:3 (explaining that a user goes to an online bookstore and the

toolbar client requests a trustworthiness indicator for that site). Similarly, Rowan's TrustWatch service uses a Cache List, but that service "runs over the Internet, and provides a trust rating, in the form of a numeric score, for a *specified* location [defined by a fully qualified DNS name] on the Internet." Ex. 1008, 7:9–15 (emphasis added). That is, the cache is used to maintain a list of user-accessed websites and to interact with an application, e.g., the toolbar, on a site-by-site basis.

Rowan's search engine, however, is a different embodiment of implementing access to the trustworthiness reports. *See* Ex. 1008, 6:10–12 ("in the case of another service, for example, a search engine could be used to provide results in response to a query"). Petitioner has pointed to Rowan's search engine embodiment as teaching the recited search engine limitations. *See* Pet. 44 (referring to the embodiments depicted in Figs. 9(a)–9(c) exclusively, and citing the Jha Declaration, Ex. 1002 ¶¶ 115–116 (explaining that the search engine results in Rowan are performed using a standard search engine receiving search requests by a user's web browser)).

The Petition does not explain how, or if, Rowan's search engine embodiment utilizes the cache or Cache List. Nor does Petitioner explain why Rowan's search engine would be modified to use the local cache or Cache List, as described, given the statement in Rowan that the icon presented in the search engine results would indicate "not verified," as shown in Figure 9(c). *See* Ex. 1008, 6:17–20. The indication of "not verified" in Rowan's search engine results appears to contradict Petitioner's contention that a "waiting indicator" would be used. Although all of these separate embodiments are described in the same reference, Petitioner has the

burden of supporting in detail its contentions of how the various embodiments in the prior art reference teach the claimed limitations. *See* 37 C.F.R. § 42.22 (a)(2). Petitioner's piecemeal presentation of the claim limitations, without adequate explanation of how the various embodiments in the prior art tie to the claims, is insufficient to persuade us that the standard for institution has been met.

Accordingly, we are not persuaded that Petitioner has shown sufficiently a reasonable likelihood of prevailing in its contention that the challenged claims are unpatentable as obvious over Rowan and Bates.

III. CONCLUSION

For the foregoing reasons, we do not institute *inter partes* review of the '182 patent.

IV. ORDER

After due consideration of the record before us, it is

ORDERED that the Petition is *denied* and no trial is instituted.

PETITIONER:

Joseph J. Richetti (Lead Counsel)
Daniel A. Crowe (Back-up Counsel)
BRYAN CAVE LLP
joe.richetti@bryancave.com
dacrowe@bryancave.com

PATENT OWNER:

James Hannah (Lead Counsel)
Jeffrey H. Price (Back-up Counsel)
KRAMER LEVIN NAFTALIS & FRANKEL LLP
jhannah@kramerlevin.com
jprice@kramerlevin.com

Michael Kim (Back-up Counsel)
FINJAN INC.
mkim@finjan.com

kis