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Paper 8
Entered: July 17, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VECTOR FLOW, INC.,
Petitioner,

v.

HID GLOBAL CORPORATION,
Patent Owner.

IPR2023-00353
Patent 8,234,704 B2

Before ST. JOHN COURTENAY III, THOMAS L. GIANNETTI, and PATRICK M. BOUCHER, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

Vector Flow, Inc. ("Petitioner") filed a Petition pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 11–15 of U.S. Patent No. 8,234,704 B2 (Ex. 1001, "the '704 patent"). Paper 1 ("Pet.").

HID Global Corporation ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp."). [1]

We have authority under 35 U.S.C. § 314 and 37 C.F.R. § 42.4. For the reasons set forth below, we exercise our discretion under 35 U.S.C. § 314(a) and decline to institute an *inter partes* review.

I. BACKGROUND

A. Real Parties in Interest

The parties identify only themselves as real parties in interest. Pet. 8; Paper 3, 1.

B. Related Matters

The parties identify *HID Global Corp. v. Vector Flow, Inc.*, No. 21-1769 (GBW) (D. Del.) ("the related litigation") as involving the '704 patent. Pet. 8; Paper 3, 1.

C. The '704 Patent

1. Overview

The '704 patent describes "a system for integrating disparate security systems using a rules-based policy engine and normalized data format." Ex. 1001, 1:24–27. Figure 1A of the '704 patent is reproduced below.

[1] We declined Petitioner's request for authorization to file a Reply to Patent Owner's Preliminary Response to address "(1) discretionary denial under section 314(a), and (2) alleged inconsistencies in claim construction positions taken in the pending litigation." Ex. 3001.

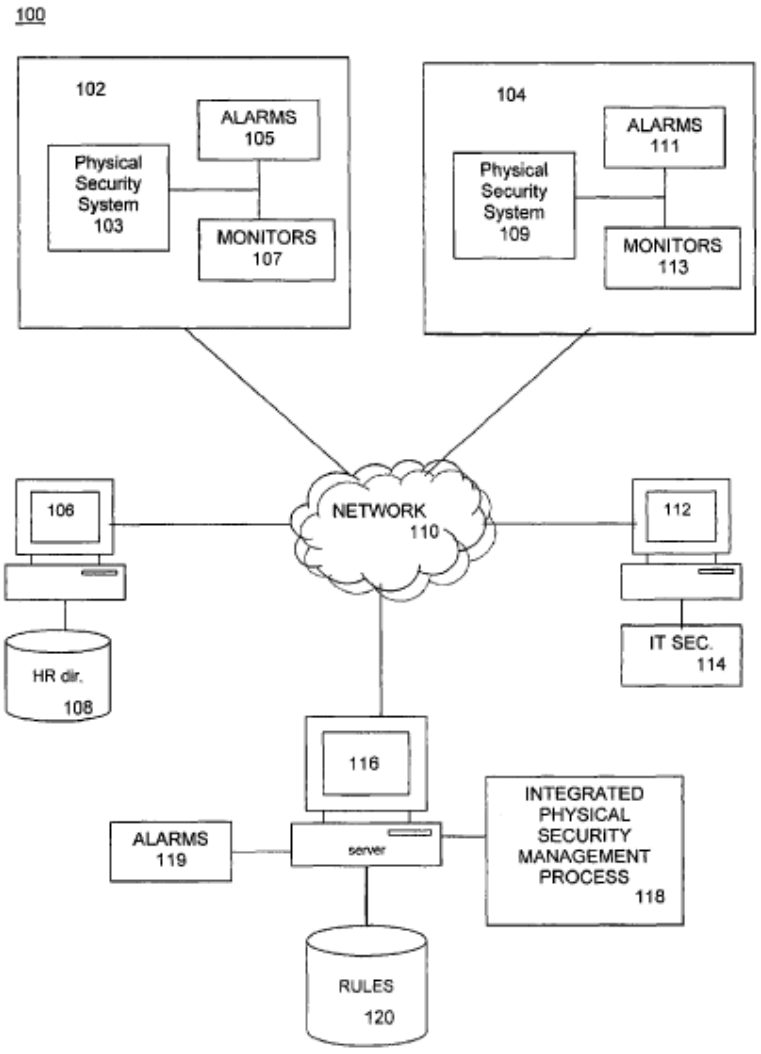


FIG. 1A

Figure 1A is "a block diagram of a computer network that implements an integrated policy-based physical security management system." *Id.* at 2:31–33. In this illustration, computer network system 100 includes two facilities 102 and 104, such as "a house or office building, or any other type of structure that contains some level of physical security infrastructure." *Id.* at 4:6–11, 4:40–42. Facility 102 has physical security system 103 that controls security elements, such as access control, alarms 103, and monitors and

sensors 107. *Id.* at 4:6–9. Facility 104 has its own physical security system 109 that controls respective alarm and monitoring systems 111, 113. *Id.* at 40–42. "In general, the physical security systems deployed by each facility may be provided by different vendors and therefore produce data that is unique or proprietary." *Id.* at 4:42–48.

Computer network system 100 also includes server 116, which executes integrated physical security management process 118. *Id.* "This process generally comprises hardware and/or software components to achieve integration, normalization, rules creation and processing of physical security systems data and events in different facilities, such as facilities 102 and 104." *Id.* at 4:60–64. In particular, physical security management process 118 "normalizes the communication data, commands and events from the disparate physical security systems to a common standard format" that "can be used by applications, rules engines and other standard software components, while still maintaining communication to the respective physical security systems, applications and devices in their native, proprietary format." *Id.* at 7:46–52.

A management function of the physical security management process 118 "provides a mode of visual representation of the normalized physical security systems, data and processes, and visual policy objects that define the design time behavior for flexible and actionable rule creation." *Id.* at 6:55–58. Figure 7 of the '704 patent is reproduced below.

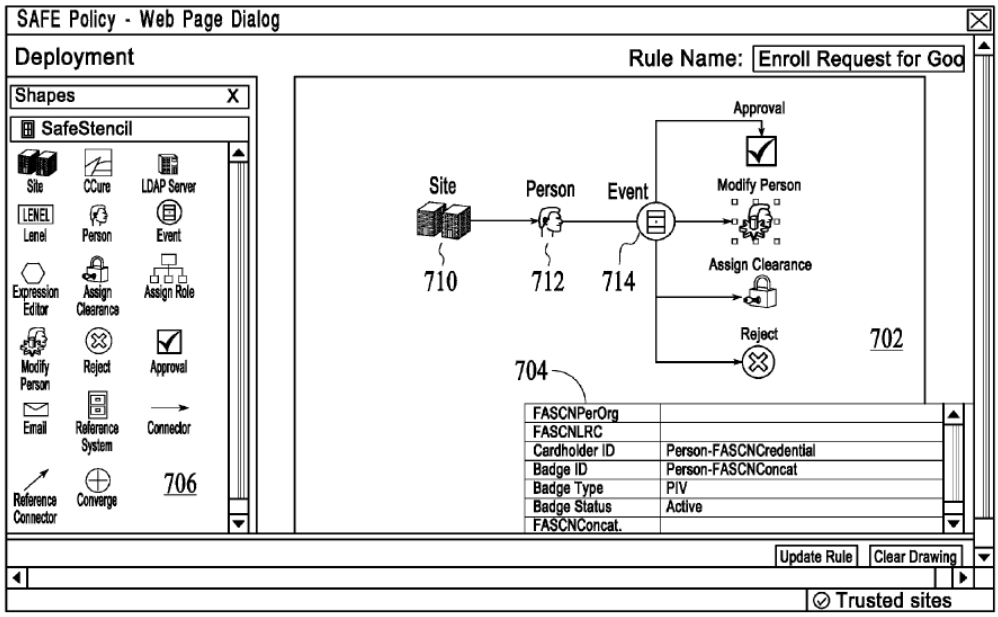


FIG.7 700

Figure 7 is an illustrative web page of a visual policy editor for creating rules that represent managed physical security systems and related processes. *Id.* at 16:65–67. Such a visual policy editor may be used to create standard rules and actions on physical security system data, allowing for "processing of rules in real-time to generate actions affecting access control systems and other integrated network and IT management systems or applications," as well as providing "rules-based workflows across integrated physical security, networking and IT systems." *Id.* at 5:26–35.

2. *Illustrative Claim*

Challenged independent claim 11 is representative of the challenged claims, and is reproduced below.

> 11. A method comprising:
>
> interfacing in a centralized security system, a plurality of security sensor types distributed throughout a plurality of sites, each sensor type configured to respond to a corresponding type

of actionable event, each sensor type provided by a different manufacturer of a plurality of manufacturers;

accepting sensor data from each security sensor [*sic*[2]] an integration module including an agent for each type of security sensor, wherein the sensor data from each security sensor is embodied in a native data representation format of each respective manufacturer of the plurality of manufacturers;

defining individual user profiles and their respective access privileges and credentials in the system;

mapping the sensor data from each security sensor in the native data representation format of each manufacturer of the plurality of manufacturers to a common data representation format, the common data representation format including a data object and processing information for the sensor data;

generating unique physical access privileges and credentials to exclusively map a defined user profile to a spatial hierarchy of physical sites along with security devices of the system, wherein the unique physical access credentials maintain a common representation of the user's identity across the plurality of sites and to associate specific user identities with respective actionable events;

defining physical security policies of the site in the context of user profiles at all sites through actionable representations of physical, network and information technology resources of the site, wherein the security policies define standardized rule definitions through visual rules depicted by live objects that contain attributes to define their spatial relationship to the actionable representations, and that are applied to the actionable events normalized to the common data representation format to produce normalized event data; and

receiving the normalized event data and applying relevant transformation and routing rules comprising condition-

[2] Petitioner treats this limitation as omitting the intended word "by," i.e., "accepting sensor data from each security sensor *by* an integration module . . ." (emphasis added). Pet. 23. Patent Owner does not dispute this treatment, which we find reasonable, and which we accordingly also apply herein.

> action sequences in order to maintain user profiles and physical security states across the plurality of sites and to resolve the actionable events through the associated specific user identities.

Ex. 1001, 22:4–48.

D. Evidence

Petitioner relies on the following references:

Farino	US 2007/0094716 A1	Apr. 26, 2007	Ex. 1003
Richman	US 2010/0207761 A1	Aug. 19, 2010	Ex. 1004
Wiegel	US 6,484,261 B1	Nov. 19, 2002	Ex. 1005
Moore	US 2005/0246352 A1	Nov. 3, 2005	Ex. 1006

In addition, Petitioner relies on a Declaration by Vijay K. Madisetti, Ph.D. Ex. 1002.

E. Asserted Grounds of Unpatentability

Petitioner challenges claims 11–15 on the following grounds. Pet. 10.

Claim(s) Challenged	35 U.S.C. §[3]	References
11–14	103	Farino, Richman, Wiegel
15	103	Farino, Richman, Wiegel, Moore

[3] The '704 patent was filed on August 14, 2007, and claims the benefit of the August 14, 2006, filing date of U.S. Prov. Patent Appl. No. 60/837,755, predating amendments made to 35 U.S.C. §§ 102 and 103 by the Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011). Ex. 1001 at codes (22), (60). We accordingly apply the pre-AIA versions of §§ 102 and 103 herein.

F. Overview of the Prior Art

1. Farino

Farino "relates in general to access control for both physical and network based security." Ex. 1003 ¶ 1. In particular, Farino describes "a unified apparatus and method for providing physical access control and/or network access control to resources such as buildings, homes, physical infrastructure or information and network systems; where legacy physical security devices and/or network-enabled devices are involved in the access control system." *Id.* According to Farino, such an apparatus and method address "a need for unification of physical security (access control) and network access systems that facilitates new security policies and improves both physical and network security." *Id.* ¶ 49.

Figure 6 is reproduced below.

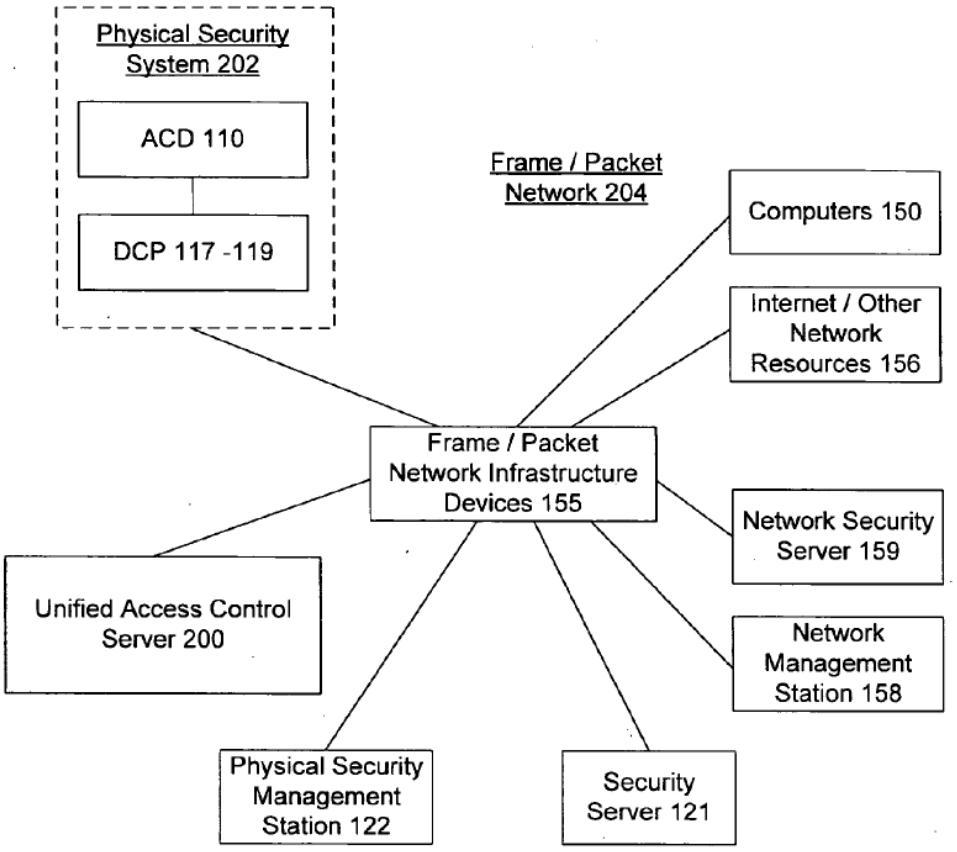


FIGURE 6

Figure 6 "illustrates a unified facility access control and network access control system." *Id.* ¶ 55. Unified access control server 200 interfaces with both legacy physical security system 202 and frame/packet network 204 to control unified physical access and/or network access. *Id.* ¶ 61. Legacy physical security system 202 includes door control panels ("DCPs") 117–119 connected to one or more access control devices ("ACDs") 110, such as electromechanical door locks, readers, door contacts, keypads, door alarms, or motion sensors located at each door or other portal. *Id.* ¶¶ 4, 6–7, 14–16.

Frame/packet network 204 includes frame/packet network infrastructure devices 155, which provide network-edge devices 150 with access to other network resources 156, network management station 158, and network security server 159, as well as to physical security server 121 and physical security management station 122. *Id.* ¶¶ 16–18, 34, 66.

Farino explains that "[t]his system may be adapted to monitor and control access to buildings, homes, physical infrastructure as well as to information and network systems." *Id.* ¶ 61. Unified access control server 200 "unifies credential verification and associated policies and policy enforcement for physical facilities and network-enabled devices," thereby "facilitat[ing] implementation of new security policies." *Id.*

Figure 10 of Farino is reproduced below.

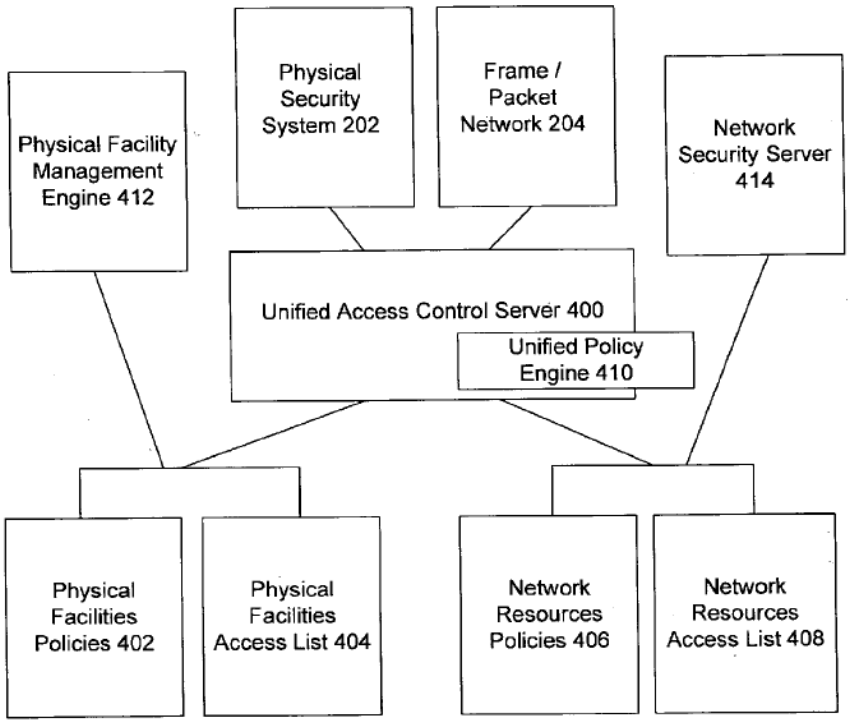


FIGURE 10

Figure 10 "illustrates the use of a unified access control server 400 to control various discrete physical access and network access policies 402 and 406 and lists 404 and 408." *Id.* ¶ 94. Unified policy engine 410, which is part of unified access control server 400, "acts as the point of unification for lists and policies that tie physical access policies and events to network policies and events," and may provide default policies when physical access lists or policies do not logically agree with network access control lists and policies. *Id.* This arrangement may be used for various functions that include (1) generating and transmitting policy-based instructions to physical security system 200 and frame/packet network 204; (2) logging all attempts to access a physical facility or a network resource; (3) implementing policies that associate physical resource access requests; (4) synchronizing authorized entities; and (5) maintaining, distributing, and enforcing access control policies. *Id.* ¶¶ 94–98.

2. Richman

Richman "relates to a multiple site integrated security system method and communications protocol." Ex. 1004 ¶ 3. Figure 6 of Richman is reproduced below.

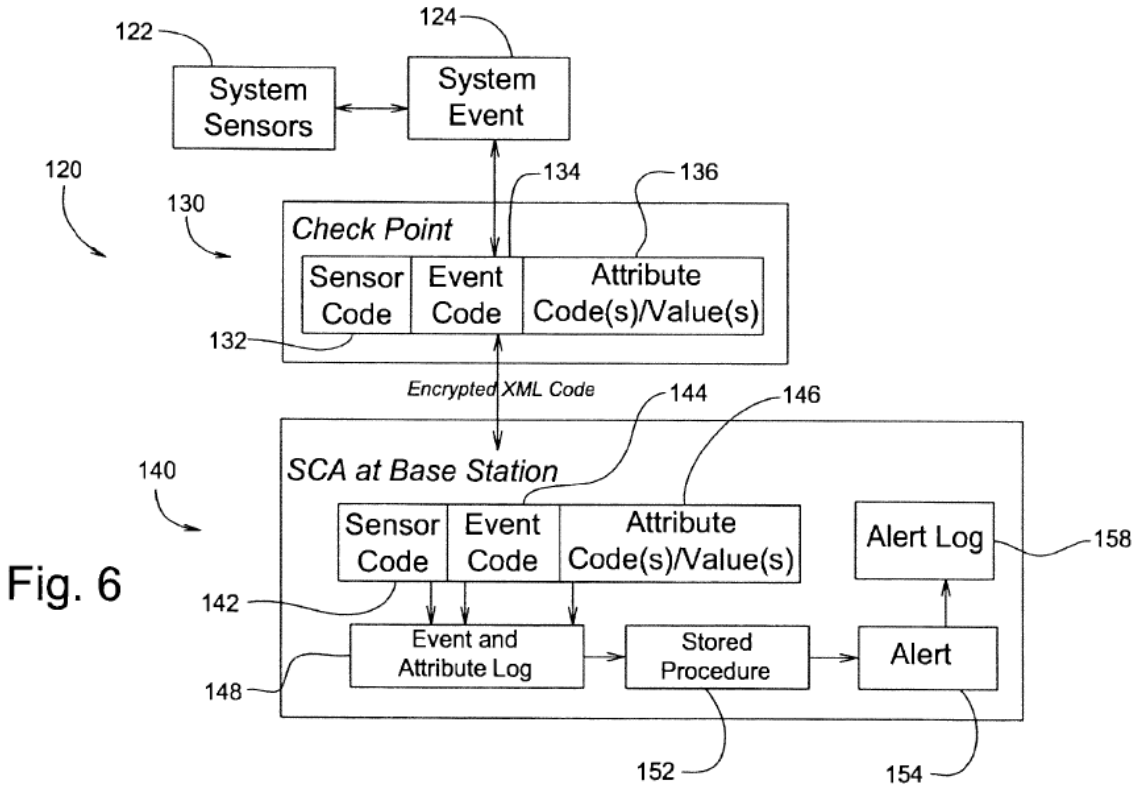


Fig. 6

Figure 6 is "a block diagram of an integrated security system encrypted XML communications protocol illustrating communications between system sensors, checkpoint data processing units and the system core application at a base station." *Id.* ¶ 73. In accordance with XML communications protocol 120, system sensors 122 communicate any "system event" 124 to checkpoint 130 using a custom protocol. *Id.* ¶ 87. Sensor code 132 identifies the transmitting sensor, and event code 134 identifies the actual event, with attribute codes and values 136 together describing software values for the system event. *Id.* "Each system event 124 can have several attributes," with values being "anything from an integer, a string, an image or other data file." *Id.* "[C]heckpoint encrypted XML communications protocol software processes" attribute codes and values 136, together with associated sensor and event codes 132, 134, to generate an encrypted XML

message that is transferred over a network to a "security system core application" at base station 140. *Id.*

Richman contemplates that "security devices and sensors transmit data in device language specific for that device or sensor." *Id.* ¶ 91. To address this, a security site checkpoint computer "translates the device language into standardized converted messages before input into and use by the [security system core application]." *Id.* ¶ 65. Specifically, a conversion module "receives data from security hardware devices of varying types in their own specialized unique data format and converts this data into a standardized XML formatted message." *Id.* ¶ 97. Each hardware device thus provides a varying hardware signal to customized conversion module to translate its data for output as a standardized message in XML format." *Id.*

3. Wiegel

Wiegel "relates to managing data communication policies for network devices." Figure 3 of Wiegel is reproduced below.

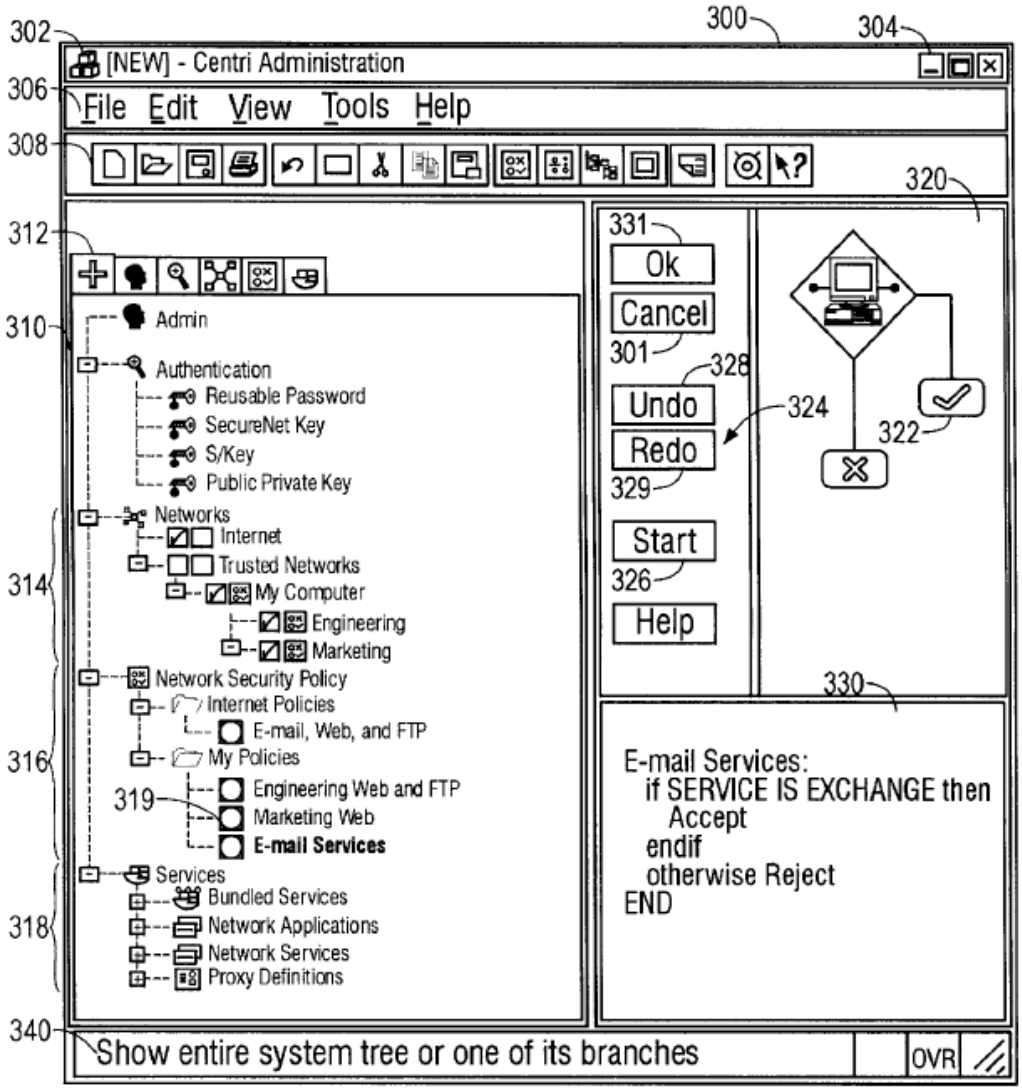


FIG. 3

Figure 3 illustrates a user interface for an administration component of a security management system. Ex. 1005, 6:13–16. Window 300 has network viewer pane 310 (which provides different views of a physical computer network), policy builder pane 320 (which can be used to construct network security policies), and policy script pane 330 (which displays source script that defines the policy in a scripting language). *Id.* 15:18–20, 15:27–29, 16:3–12. Network viewer pane 310 includes network tree 314 (showing the hierarchical relationship of networks available in the user's environment),

policy tree 316 (which represents previously established security policies available to be applied to network nodes), and services tree 318 (which shows services available in networks identified in the network tree). *Id.* at 15:30–56. "To establish a security policy applicable to a network or one of its nodes, the user can drag security policies and drop them onto each icon in the network tree 314." *Id.* at 15:38–41.

4. Moore

Moore "relates generally to data storage in computer systems, and more particularly to methods and apparatus for organizing and locating data items by way of metadata properties." Ex. 1006 ¶ 1. Figure 6 of Moore is reproduced below.

FIG. 6

Figure 6 illustrates a user interface for viewing and organizing stored music data. *Id.* ¶ 17. In this illustration, property tree 203 has nodes that include Artists 221, which has been expanded to show five artists 643, 645, 647, 649, 651. *Id.* ¶ 26. To assign metadata to an item, such as assigning the

artist "Kruder & Dorfmeister" to the song "Encounter," a user can drag and drop the song item from the "Song Title" column onto that artist: "the item does not disappear from the list view; the behavior is more like tagging information to a file." *Id.* ¶ 35.

II. DISCRETION UNDER 35 U.S.C. § 314(a)

Patent Owner asks that we exercise our discretion under 35 U.S.C. § 314(a) to deny the Petition based on the state of the related litigation. Prelim. Resp. 1–2, 6–19. Institution of an *inter partes* review is discretionary. *See* 35 U.S.C. § 314(a) (2018) (stating "[t]he Director *may not* authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition") (emphasis added); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("[T]he PTO is permitted, but never compelled, to institute an IPR proceeding."). The advanced state of a parallel district court action may warrant exercising discretion on behalf of the Director to deny a petition for *inter partes* review. *See NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 20 (PTAB Sept. 12, 2018) (precedential) ("*NHK*"); *Apple Inc. v. Fintiv Inc.*, IPR2020-00019, Paper 11 at 5–6, 8 (PTAB March 20, 2020) (precedential) ("*Fintiv*"); Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) ("Trial Practice Guide"[4]), 58 & n.2. Whether to exercise such discretion is informed by the

[4] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated.

Director's Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation ("Interim Procedure").[5]

We consider the following factors in assessing "whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding":

> 1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
>
> 2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
>
> 3. investment in the parallel proceeding by the court and the parties;
>
> 4. overlap between issues raised in the petition and in the parallel proceeding;
>
> 5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
>
> 6. other circumstances that impact the Board's exercise of discretion, including the merits.

Fintiv at 5–6. In evaluating these factors, we "take[] a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review." *Id.* at 6.

We note that Petitioner addresses the issue of discretionary denial only in cursory fashion. *See* Pet. 11 ("Nor do the *Fintiv* factors support discretionary denial under §314(a). The pending litigation against Petitioner is in early stages, and no claim construction rulings and no significant discovery have occurred."). In denying Petitioner's request for authorization

[5] Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

to file a Reply at this stage, *see supra*, p. 2, n.1, we considered and agreed with Patent Owner's contention that Petitioner had "good reason" to expect a *Fintiv* argument by Patent Owner, at least because "Petitioner knew that it was filing on the last day before the one-year statutory bar, and also knew of the advanced stage of the parallel litigation and the impending claim construction and discovery deadlines." *See* Prelim. Resp. 18–20. We thus agree with Patent Owner that, if Petitioner wished to provide a more complete *Fintiv* analysis for us to consider, it should have done so in the Petition. *See id.*; 37 C.F.R. § 42.108(c) ("A petitioner may seek leave to file a reply to the preliminary response. . . . Any such request must make a showing of good cause.").

A. Possibility of Stay

A stay of a related proceeding pending resolution of the PTAB trial "allays concerns about inefficiency and duplication of efforts." *Fintiv* at 6. According to Patent Owner, multiple considerations indicate that a stay "will almost certainly not be granted" in the related litigation. Prelim. Resp. 7–10. These include the fact that only one of four defendants in the related litigation is a party to this proceeding, and that only one of the "at least five" causes of action in the related litigation would be affected by a decision in this proceeding. *Id.* at 7–8. In addition, Patent Owner contends that "the timing and advanced stage" of the related litigation indicate that a stay is "highly unlikely." *Id.* at 8–9. Patent Owner also draws our attention to statements recently made by the district court judge overseeing the related litigation when considering whether to grant a stay in an unrelated case. *Id.* at 9. Patent Owner construes those statements as an "explanation that [the

district judge] will not stay a case when a trial involves multiple issues not addressed in the IPR (as is the case here) and the pretrial proceedings are to occur 'mere months' after institution (as also is the case here)." *Id.* (citing *CAO Lighting, Inc. v. Gen. Elec. Co.*, 2022 WL 17752270, at *2 (D. Del. Dec. 19, 2022)). Finally, Patent Owner observes that "Petitioner does not even assert that they will file a motion to stay." *Id.* at 10.

Although we agree with Patent Owner that a stay appears unlikely even if we institute trial, there has been no actual denial of a stay as contemplated by *Fintiv* to weigh this factor against exercising discretion to deny institution. *See Fintiv* at 6–7. Also, we do not understand the statements in *CAO Lighting* Patent Owner highlights as setting forth a general policy by the district judge. Rather, in that case, although the timing and issue overlap factors weighed against granting a stay, the court considered other factors as well. *See CAO Lighting*, 2022 WL 17752270 at *2.

We accordingly treat this factor as neutral.

B. Schedules

According to *Fintiv*, "[i]f the court's trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny institution." *Fintiv* at 9. Patent Owner states that the trial in the related litigation is currently set for January 19, 2024, which is about six months before the projected deadline for issuing a Final Written Decision in this proceeding. Prelim. Resp. 10 (citing Ex. 2022, 22); 35 U.S.C. § 316(a)(11). The Interim Procedure advises that, "when analyzing the proximity of the court's trial date under factor two of

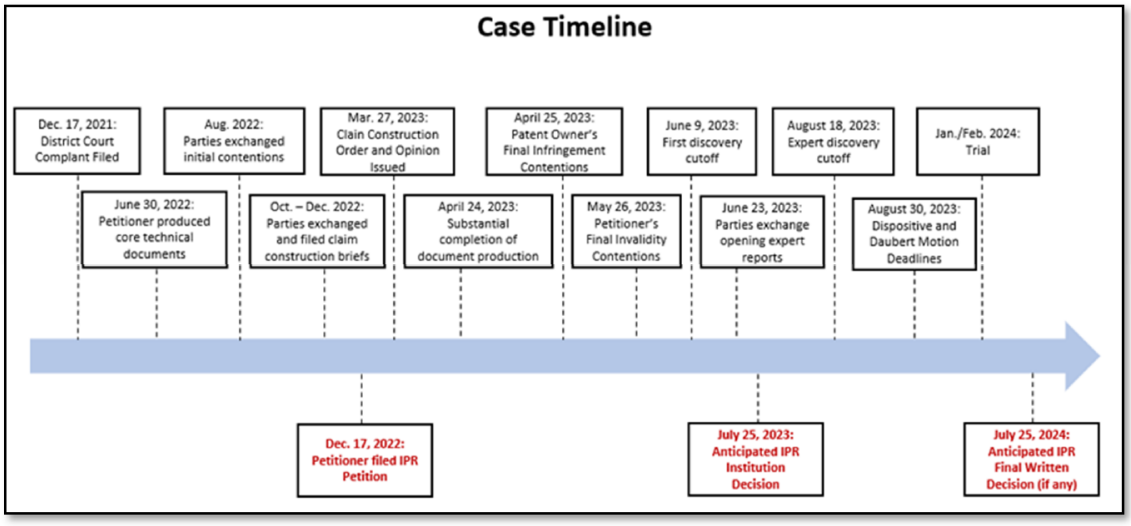
Fintiv, when other relevant factors weigh against exercising discretion to deny institution or are neutral, the proximity to trial should not alone outweigh all of those other factors." Interim Procedure, 8 (citation omitted). Accordingly, "[p]arties may present evidence regarding the most recent statistics on median time-to-trial for civil actions in the district court in which the parallel litigation resides." *Id.* at 8–9 (footnote omitted). The Board "will also consider additional supporting factors such as the number of cases before the judge in the parallel litigation and the speed and availability of other case dispositions." *Id.* at 9 (citation omitted).

In the District of Delaware, where the related litigation is pending, the median time to trial is 33.7 months. Ex. 2007; *see* Prelim. Resp. 12. Patent Owner presents evidence that the assigned judge "was recently confirmed to the bench, and he currently presides over approximately 24% fewer patent cases than the average number of patent cases for the other judges in the district." Prelim. Resp. 12 (citing Ex. 2009). Applying the district's average time to trial projects a trial date around October, 2024 (about 2–3 months after a Final Written Decision in this proceeding); applying a reduced time to trial to account for the judge's 24% fewer patent cases projects a trial date around February, 2024 (about 5–6 months before a Final Written Decision in this proceeding and close to the scheduled trial date).

Considering the fact that a trial date has already been set, and considering these statistical estimates, we treat this factor as weighing in favor of exercising discretion to deny the Petition.

C. Investment in Parallel Proceeding

"[I]f, at the time of the institution decision, the district court has issued substantive orders related to the patent at issue in the petition, this fact favors denial" of the Petition. *Fintiv* at 9–10. According to Patent Owner, Petitioner's statement that "[t]he pending litigation against Petitioner is in early stages, and no claim construction rulings and no significant discovery have occurred" is "incorrect." Pet. 11; Prelim. Resp. 13. Patent Owner provides the following timeline to summarize the progress of the parallel litigation:



Prelim. Resp. 14. Petitioner relies on this timeline to support its assertion that the parallel litigation "has been pending for over 16 months, claim construction is over, document production is substantially complete, and fact discovery is set to close in just over a month [after the Preliminary Response was filed on April 25, 2023]." *Id.* at 13–14.

We have not been informed of any changes to this schedule. We therefore agree with Patent Owner that this represents a "significant investment" in the parallel litigation such that we weigh this factor as favoring discretionary denial of the Petition.

D. Overlap of Issues

"[I]f the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial." *Fintiv* at 12. Patent Owner accurately states that, in the related litigation, "Petitioner challenges the same claims of the '704 patent as in this Petition." Prelim. Resp. 15 (citing Ex. 2004). In the related litigation, Petitioner relies on U.S. Patent No. 7,437,755 B2, which issued from the application published as Farino. While Petitioner thus technically applies different principal references in the related litigation and here, the content of those references is substantively identical. *See id.* at 16 n.5. Petitioner also applies Richman in the related litigation, and, as Patent Owner states, "identified the same or nearly identical disclosures that are relied on in the Petition." *Id.* at 16; *compare, e.g.*, Pet. 25, *with* Ex. 2004, 13. We further agree with Patent Owner that Petitioner relies on Wiegel and Moore in the Petition "for only a few limitations," such that the Petition includes substantial overlap with grounds and evidence presented in the parallel litigation. *See* Prelim. Resp. 16. In addition, Petitioner has not offered a stipulation that would diminish the overlap by limiting its ability to raise the same unpatentability arguments during the parallel proceeding.

We accordingly treat this factor as weighing in favor of exercising discretion to deny the Petition.

E. Overlap of Parties

Both parties to this proceeding are parties in the related litigation. *See* Prelim. Resp. 16–17. The Board determined in *Sand Revolution* that

"[a]lthough it is far from an unusual circumstance that a petitioner in *inter partes* review and a defendant in a parallel district court proceeding are the same, or where a district court is scheduled to go to trial before the Board's final decision would be due in a related *inter partes* review, this factor weighs in favor of discretionary denial." *Sand Revolution*, Paper 24 at 12–13; *see also Fintiv* at 13–14. In denying institution in the *Fintiv* proceeding, the Board determined that "[b]ecause the petitioner and the defendant in the parallel proceeding are the same party, this factor weighs in favor of discretionary denial." *Apple Inc. v. Fintiv Inc.*, IPR2020-00019, Paper 15 at 15 (PTAB May 13, 2020).

We accordingly treat this factor as weighing in favor of exercising discretion to deny institution of an *inter partes* review.

F. Other Circumstances

The final factor takes into account any other relevant circumstances, including the merits. "For example, if the merits of a ground raised in the petition seem particularly strong on the preliminary record, this fact has favored institution." *Fintiv* at 14–15. And "compelling, meritorious challenges will be allowed to proceed at the PTAB even where district court litigation is proceeding in parallel." Interim Procedure, 3–5. "Compelling, meritorious challenges are those in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence." Interim Procedure 4. We have

considered Petitioner's arguments on the merits and find that they do not meet this higher standard for the following reasons.[6]

Petitioner challenges independent claim 11 as unpatentable under 35 U.S.C. § 103(a) over Farino, Richman, and Wiegel. Pet. 16–62. In brief, Petitioner relies principally on Farino's disclosure of what Petitioner characterizes as "a centralized security system . . . that receives and processes sensor data from a variety of security sensors such as card/badge readers." *Id.* at 15. Petitioner combines such disclosure with teachings from Richman that "disclose[] converting vendor-specific sensor data into standard XML format" and with aspects of user-interface features drawn from Wiegel. *Id.*

Particularly relevant to our determination that Petitioner's challenges do not meet the "compelling" standard is claim 11's recitation of "generating unique physical access privileges and credentials to exclusively map a defined user profile to a spatial hierarchy of physical sites along with

[6] Petitioner proposes that a person of ordinary skill in the art "would have possessed a bachelor's degree in software engineering, computer science, computer engineering, or electrical engineering with at least two years' experience in distributed or network-based computer systems, and would have had a working knowledge about various ways to receive data from network-connected devices (such as sensors) and then process and/or act upon that data as needed." Pet. 11. Petitioner adds that "[a] person could also have qualified with more education and less technical experience, or vice versa." *Id.* Petitioner supports its articulation of the level of ordinary skill in the art with testimony by Dr. Madisetti. Ex. 1003 ¶ 16. Patent Owner does not state whether it agrees or disagrees with Petitioner's proposal. Nevertheless, we find Petitioner's proposal consistent with the level of skill reflected by the prior art and accordingly apply it for purposes of this Decision. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

security devices of the system." *See* Ex. 1001, 22:26–29. Patent Owner disputes the sufficiency of Petitioner's treatment of the claim's requirements that the recited "physical access privileges and credentials" be "unique" and that they "exclusively" map the recited "defined user profile" to the recited "spatial hierarchy of physical sites along with security devices of the system." Prelim. Resp. 21–26.

Importantly, Petitioner never advances any firm position on how the terms "unique" and "exclusively" should properly be understood in this context, limiting the basis on which we might fully evaluate Petitioner's argument. Instead, Petitioner's general position is that it "does not believe express claim construction is necessary at this time for this IPR." Pet. 14. More specifically, Petitioner asserts that "*it is possible*" that the terms "*may be interpreted* to require that a defined user profile have access privileges and credentials that are unique and exclusive to the underlying user, *e.g.*, which are not shared by any other user or user profile in the system." *Id.* at 40 (emphases added). Petitioner's expert, Dr. Madisetti, offers no clarification. *See* Ex. 1002 ¶ 103 (asserting that "it is possible that the words '**unique**' and '**exclusively**' could be interpreted" in the same way).

Patent Owner disagrees with Petitioner's speculation as to the "possible" interpretation of the terms. Prelim. Resp. 21–26. But we need not resolve that disagreement to conclude that Petitioner's analysis fails to articulate a "compelling" meritorious challenge. A conclusion of unpatentability cannot "plainly" follow from an analysis that declines to offer nothing more than "possibilities" as to how the claims might be understood.

We accordingly treat this factor as neutral.

G. Assessment

As discussed above, the second, third, fourth, and fifth *Fintiv* factors weigh in favor of exercising discretion to deny the Petition, while the first and sixth factors are neutral. No factor weighs against discretionary denial. In light of the significant investment in the parallel litigation, the likely timing of trial in the district court, and the substantial overlap in issues with those raised in the Petition, we exercise our discretion under 35 U.S.C. § 314(a) to deny the Petition.

III. ORDER

In consideration of the foregoing, it is

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

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