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BLUE COAT - EXHIBIT 1016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMANTEC CORPORATION
Requester

v.

FINJAN, INC.
Patent Owner and Appellant

Appeal 2015-007907
Reexamination Control 95/001,836
Patent 6,480,962 B1
Technology Center 3900

Before STEPHEN C. SIU, JERMY J. CURCURI, and IRVIN E. BRANCH, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

Patent Owner appeals the Examiner's decision to reject claims 2–4, 7–11, 13, 14, 16–20, 22–32, 34–36, 39–44, 46–51, 53, and 54. Claims 1, 5, 6, 12, 15, 21, 33, 37, 38, 45, 52, and 55 have been withdrawn from the appeal.

See Patent Owner Appeal Brief (PO App. Br.) 1, Patent Owner Rebuttal Brief (PO Reb. Br.) 3. We have jurisdiction under 35 U.S.C. §§ 134 and 315 (pre-AIA).

Claims 2–4, 7–11, 13, 14, 16–20, 22–32, 34–36, 39–44, 46–51, 53, and 54 are rejected in various grounds of rejections. *See* Right of Appeal Notice (RAN) 9–12.

We affirm.

STATEMENT OF THE CASE

This proceeding arose from a request by Symantec Corporation for an *inter partes* reexamination of U.S. Patent 6,480,962 B1, entitled "System and Method for Protecting a Client During Runtime from Hostile Downloadables" (the '962 patent). Patent Owner and Requester both note related litigation. *See* PO App. Br. 1, Third Party Requester Respondent's Brief (3PR Resp. Br.) 4. The '962 patent relates to "a system and method for protecting clients from hostile Downloadables." '962 patent, col. 1, ll. 22–23. Claim 22 is illustrative are reproduced below:

> 22. A system for determining whether a Downloadable, which is received by a Downloadable engine, is suspicious, comprising:
>
> means for monitoring substantially in parallel a plurality of subsystems of the operating system during runtime for an event caused from a request made by a Downloadable;
>
> means for interrupting processing of the request;
>
> means for comparing information pertaining to the Downloadable against a predetermined security policy; and
>
> means for performing a predetermined responsive action based on the comparison.

ANALYSIS

THE ANTICIPATION REJECTION OF CLAIMS 2, 3, 8, 11, 13, 16, 18, 19, 22–24, 26, 27, 29, 32, 34, 35, 40, 43, 44, 46–51, 53, AND 54 BY JAEGER

The Examiner finds claims 2, 3, 8, 11, 13, 16, 18, 19, 22–24, 26, 27, 29, 32, 34, 35, 40, 43, 44, 46–51, 53, and 54 are invalid under 35 U.S.C. § 102(a) as anticipated by Jaeger (Trent Jaeger, et al., "Building Systems that Flexibly Control Downloaded Executable Content," PROCEEDINGS OF THE SIXTH USENIX UNIX SECURITY SYMPOSIUM, July 1996). RAN 14, 34–36, 63–64 (incorporating Request 31–32 and Claim Chart Exhibit C1 by reference).

Claims 2, 3, 8, 11, 13, 16, 18, 19, 22–24, 26, 27, 29, 32, 34, 35, 40, 43, and 48–51

Patent Owner presents the following principal arguments:

> Nowhere does Jaeger show or suggest MONITORING as variously claimed in independent claims 1, 12, 22, 33, 48, and 50. In stark contrast, Jaeger discloses that **operations within the browser** "are implemented by a call to authorize **which checks the content access rights prior to calling the actual operation**. Since these commands are only available in the browser and are protected by the authorization operation, only authorized accesses to system objects are possible." *See* Third Party Requestor Comments to NFOA, pg. 22 (quoting Jaeger § 7.3) (emphasis added). Thus, by Respondent's own admission, any monitoring performed by Jaeger is of requests in the browser rather than events in subsystems of the operating system. Thus, once again, Respondent and the Examiner (who adopted Respondent's arguments with respect to Jaeger) improperly conflate Appellant's claimed "event" and "request." *See* Section VII.A.2, *supra*.

PO App. Br. 14–15; *see also* PO App. Br. 9 ("Appellant has submitted and

continues to submit that 'an event caused from a request from a Downloadable' should be construed to be an event at the operating system level that results from a request from a Downloadable."); *see also* PO App. Br. Evidence Appendix, Exhibit B, Declaration of Dr. Giovanni Vigna ¶ 43 (Jaeger "focuses on access right by users and/or groups"); *see also* PO Reb. Br. 8–9.

We have considered Patent Owner's arguments and evidence, and we do not see any error in the Examiner's findings.

Claim 22 recites "means for monitoring substantially in parallel a plurality of subsystems of the operating system during runtime for an event caused from a request made by a Downloadable." The '962 patent describes Java class extensions 304 (Figure 3); operating system probes 310, 312, 314, and 316 (Figures 3 and 4); and messages extension 404, Dynamic-Data-Exchange (DDE) extension 405, and Dynamically-Linked-Library (DLL) extension 406 (Figure 4). *See* '962 patent, col. 4, ll. 10–31; col. 5, ll. 23–38. Thus, we conclude the broadest reasonable interpretation of the recited "means for monitoring" includes class extensions, probes, and equivalent-functioning software between an application and the operating system.

We agree with and adopt as our own Requester's explanation:

> Jaeger discloses monitoring events in subsystems in the operating system because it discloses monitoring subsystem calls. Jaeger describes enforcing access control rights at the level of the operating system. *See* Jaeger, § 7.2. In other words, Jaeger describes enforcing access control rights by monitoring calls made by a mobile agent (or other downloaded content) to operating system resources. Thus, Jaeger discloses the "monitoring" limitation of the '962 patent claims. *See, e.g.*, Requester's Initial Comments filed October 10, 2012 ("Initial

> Comments"), p. 22. As discussed above, the claims do not require monitoring of operating system calls to be performed at the operating system level.

3PR Resp. Br. 13; *see also* Third-Party Requester Comments after Non-Final Action, dated October 10, 2012, 22 (Jaeger's authorization operation makes possible only authorized accesses to system objects (citing Jaeger § 7.3)).

Put another way, Jaeger (§ 7.2) describes: "Application-specific interpreters are responsible for deriving access rights within their domain, but the browser still enforces all system object accesses." Jaeger (§ 7.3) describes: "operations are implemented by a call to authorize which checks the content access rights prior to calling the actual operation. Since these commands are only available in the browser and are protected by the authorization operation, only authorized accesses to system objects are possible." Thus, Jaeger describes software between an application and the operating system (Jaeger's browser) for monitoring substantially in parallel a plurality of subsystems of the operating system during runtime for an event (Jaeger's enforcing access control rights by monitoring calls made by downloaded content to operating system resources) caused from a request made by a Downloadable.

Regarding Patent Owner's argument that Jaeger's monitoring is of requests in the browser rather than events in subsystems of the operating system, we do not see any error in the Examiner's findings because claim 22 does not require monitoring of operating system calls to be performed at the operating system level. Jaeger's browser performs the recited monitoring.

Regarding Patent Owner's related argument that claim 22 requires an event at the operating system level that results from a request from a Downloadable, we find this argument without consequence. Jaeger describes an event at the operating system level (Jaeger's accesses to system objects) that results from a request from a Downloadable (Jaeger's call made by downloaded content).

Regarding Patent Owner's related evidence of record explaining that Jaeger focuses on access rights by users and/or groups, we find this explanation without consequence because Jaeger's browser performs the recited monitoring.

We, therefore, sustain the Examiner's rejection of claim 22, as well as claims 2, 3, 8, 11, 13, 16, 18, 19, 23, 24, 26, 27, 29, 32, 34, 35, 40, 43, and 48–51, which are not argued separately with particularity.

Claims 44, 46, and 47

Claim 44, 46, and 47 each recite: "each subsystem includes one of a file system, network system, process system or memory system."

Regarding these claims, Patent Owner further argues: "Jaeger fails to monitor a plurality of subsystems of an operating system, let alone monitoring those subsystems in parallel, let alone each of those subsystems including one of a file system, network system, process system, or memory system." PO App. Br. 16; *see also* PO App. Br. 11 (a plurality of subsystems are monitored).

We do not see any error in the Examiner's findings.

We agree with and adopt as our own Requester's explanation: "the

broadest reasonable interpretation of claims 44[, 46, and] 47 includes monitoring a plurality of subsystems (*e.g.*, 2) wherein each subsystem includes 1 type of subsystem." 3PR Resp. Br. 14; *see also* Jaeger § 5 ("The local system services provide operating systems services for controlling operations external to the interpreters. Also, system-specific information is made available for local system services (e.g., the file system structure).)"; *see also* Jaeger, § 5, Figure 5 (browser accesses network services, local software, local file).

Thus, Jaeger describes each subsystem (for example, Jaeger's network service and Jaeger's local file) includes one of a file system (Jaeger's local file), network system (Jaeger's network service), process system or memory system.

We, therefore, sustain the Examiner's rejection of claims 44, 46, and 47.

Claim 53

Claim 53 recites: "comparing information pertaining to the Downloadable against a predetermined security policy, wherein information pertaining to the Downloadable includes information about requests to the operating system made by the Downloadable."

Regarding claim 53, Patent Owner further argues:

> Jaeger fails to show or suggest information pertaining to the Downloadable including "information about requests to the operating system made by the Downloadable." With respect to this feature, Requestor relies on Jaeger's disclosure of the ability to identify I/O commands, which is completely irrelevant to whether or not information pertaining to a Downloadable

> includes information about a request to the operating system, let alone information about multiple requests to the operating system.

PO App. Br. 15.

We do not see any error in the Examiner's findings.

We agree with and adopt as our own Requester's explanation: "Jaeger discloses comparing information pertaining to the Downloadable against a predetermined security policy. For example, the access rights associated with executing content constitute a 'security policy.'" 3PR Resp. Br. 14; *see also* Jaeger § 5 (identifying I/O commands in the content language of the downloaded content).

We conclude that construing "information pertaining to the Downloadable" to include Jaeger's identified I/O commands is not overly broad or unreasonable because the identified I/O commands are part of the downloaded content.

Thus, Jaeger describes comparing information pertaining to the Downloadable (Jaeger's identified I/O commands) against a predetermined security policy (Jaeger's access rights), wherein information pertaining to the Downloadable includes information about requests (Jaeger's identified I/O commands) to the operating system made by the Downloadable.

We, therefore, sustain the Examiner's rejection of claim 53.

Claim 54

Claim 54 recites: "comparing information pertaining to the downloadable against a predetermined security policy, wherein information

pertaining to the Downloadable includes information about memory usage by the Downloadable."

Regarding claim 54, Patent Owner further argues:

> Jaeger is completely silent with respect to information pertaining to the Downloadable including information about memory usage by the Downloadable. Requestor's reli[es] on Jaeger's disclosure that "[a] process can read and write objects in its memory," which has no bearing on whether information pertaining to a Downloadable includes information about memory usage by the Downloadable.

PO App. Br. 15–16.

We do not see any error in the Examiner's findings.

Jaeger (§ 3) describes: "[a] process can read and write objects in its memory." Thus, Jaeger's identified I/O commands include commands for reading and writing objects in memory.

Thus, Jaeger describes comparing information pertaining to the downloadable (Jaeger's identified I/O commands) against a predetermined security policy (Jaeger's access rights), wherein information pertaining to the Downloadable includes information about memory usage by the Downloadable (Jaeger's commands for reading and writing objects in memory).

We, therefore, sustain the Examiner's rejection of claim 54.

THE OBVIOUSNESS REJECTION OF CLAIMS 11, 32, AND 43 OVER JAEGER

The Examiner finds claims 11, 32, and 43 are invalid under 35 U.S.C. § 103(a) as obvious over Jaeger. RAN 15, 44–45, 67 (incorporating Request 63 and Claim Chart Exhibit C1 by reference). Claims 11, 32, and 43 each

recite: "wherein the predetermined responsive action includes discarding the Downloadable."

Patent Owner presents the following principal arguments:

i. The Examiner provides no support for the assertion that the claimed invention would have been obvious. PO App. Br. 25; PO Reb. Br. 11–12.

ii. Endrijonas (Endrijonas, "Rx PC: The Anti-Virus Handbook," McGraw-Hill, Inc., 1993) is not included in the ground of rejection. PO App. Br. 25.

iii. The Examiner does not explain why it would have been obvious to combine Jaeger and Endrijonas. PO App. Br. 25.

We have considered Patent Owner's arguments and evidence, and we do not see any error in the Examiner's findings.

We agree with and adopt as our own Requester's explanation: "one of ordinary skill in the art would have recognized that modifying Jaeger to discard the executable content would provide more efficient memory allocation by freeing memory space previously taken by the executable content for other uses." 3PR Resp. Br. 18; *see also* Jaeger § 7.3 ("In general, software execution is authorized by determining if the remote principal (i.e., principal group) has execute rights for the first argument in the **exec** call. If so, then the **exec** operation executes the software using the current rights of the principal group").

Regarding Patent Owners argument i, Jaeger (§ 7.3) discloses executing external software with an exec call when authorized. When not authorized, the exec call in the Downloadable is not executed. A skilled

artisan would have recognized that as an alternative to not executing the exec call in the Downloadable, it would have been obvious to discard the Downloadable for the purpose of freeing memory space. *See* Request Claim Chart Exhibit C1.

Regarding Patent Owner's arguments ii and iii, the claims are rejected based on Jaeger. We agree with Requester that the recited discarding would have been obvious in view of Jaeger alone, for reasons explained above. Endrijonas provides evidence that discarding or deleting is well-known. *See* Endrijonas 73.

We, therefore, sustain the Examiner's rejection of claims 11, 32, and 43.

THE OBVIOUSNESS REJECTION OF CLAIMS 4, 14, 25, AND 36 OVER JAEGER AND CHAPPELL

The Examiner finds claims 4, 14, 25, and 36 are invalid under 35 U.S.C. § 103(a) as obvious over Jaeger and Chappell (David Chappell, "Understanding ActiveX and OLE, A Guide for Developers & Managers" Microsoft Press, 1996). RAN 16, 48–49, 69–70 (incorporating Request 40 and Claim Chart Exhibit C1 by reference).

Patent Owner argues that claims 4, 14, 25, and 36 are patentable for their dependency from a patentable base claim. PO App. Br. 26.

Claim 4 depends from withdrawn base claim 1, claim 14 depends from withdrawn base claim 12, claim 25 depends from base claim 22, and claim 36 depends from withdrawn base claim 33.

We sustain the Examiner's rejection of claims 4, 14, 25, and 36 for reasons discussed above with respect to claim 22.

THE OBVIOUSNESS REJECTION OF CLAIMS 7, 9, 10, 17, 20, 28, 30, 31, 39, 41, AND 42 OVER JAEGER AND RASMUSSON

The Examiner finds claims 7, 9, 10, 17, 20, 28, 30, 31, 39, 41, and 42 are invalid under 35 U.S.C. § 103(a) as obvious over Jaeger and Rasmusson (Andreas Rasmusson & Sverker Jansson, "Personal Security Assistance for Secure Internet Commerce," NEW SECURITY PARADIGMS '96 Workshop, Lake Arrowhead, CA, September 16–19, 1996). RAN 16, 49–50, 70 (incorporating Request 40–41 and Claim Chart Exhibit C1 by reference).

Patent Owner argues that claims 7, 9, 10, 17, 20, 28, 30, 31, 39, 41, and 42 are patentable for their dependency from a patentable base claim. PO App. Br. 26.

Claims 7, 9, and 10 depends from withdrawn base claim 1, claims 17 and 20 depend from withdrawn base claim 12, claims 28, 20, and 31 depend from base claim 22, and claims 39, 41, and 42 depend from withdrawn base claim 33.

We sustain the Examiner's rejection of claims 7, 9, 10, 17, 20, 28, 30, 31, 39, 41, and 42 for reasons discussed above with respect to claim 22.

THE REMAINING REJECTIONS

Because we have affirmed the Examiner's rejection of all the claims, we decline to reach the merits of the remaining rejections over the prior art. *See, e.g., In re Gleave*, 560 F.3d 1331, 1338 (Fed. Cir. 2009) (not reaching

rejections based on obviousness when claims already rejected as anticipated).

ORDER

The Examiner's decision rejecting claims 2–4, 7–11, 13, 14, 16–20, 22–32, 34–36, 39–44, 46–51, 53, and 54 is affirmed.

Requests for extensions of time in this *inter partes* reexamination proceeding are governed by 37 C.F.R. § 1.956. *See* 37 C.F.R. § 41.79.

In the event neither party files a request for rehearing within the time provided in 37 C.F.R. § 41.79, and this decision becomes final and appealable under 37 C.F.R. § 41.81, a party seeking judicial review must timely serve notice on the Director of the United States Patent and Trademark Office. *See* 37 C.F.R. §§ 90.1 and 1.983.

AFFIRMED

ELD

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