

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

F5 NETWORKS, INC.,

Plaintiff,

v.

RADWARE, INC.,

Defendant.

Case No. 17-cv-03166-VC

**ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 149, 151

Radware’s motion for summary judgment of infringement of the ’853 patent is denied, and F5 Networks’s cross-motion for summary judgment of noninfringement is granted. The cross-motions hinge on the interpretation of the claim term “decision function.” The parties previously agreed to construe “decision function” as a “function used to decide which data route is selected based on its parameters.” That construction is ambiguous, because “its” could refer to either “data route” or “function.” In an effort to avoid having the ’853 patent invalidated during inter partes review, Radware unequivocally argued for the former – namely, that “decision function” selects a data route using metrics of the route.

In light of the position Radware took before the Board, the Court concludes that the input for “decision function” is, as a matter of law, limited to data route parameters. As with patent prosecution, statements made by the patent owner during inter partes review put the public on notice of how the patent owner views its patent. *See Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017). Radware cannot abandon its earlier statements to broaden the reach of its patent now that it is arguing for infringement. Even if the PTAB may not have expressly adopted Radware’s interpretation, the public is still entitled to rely on it. *See Am. Piledriving*

Equip., Inc. v. Geoquip, Inc., 637 F.3d 1324, 1336 (Fed. Cir. 2011) (explaining that “regardless of whether the examiner agreed with” a patent owner’s statements, those “statements still inform the proper construction of the term”).

Accordingly, F5’s BIG-IP device only infringes the ’853 patent if it selects a data route using parameters of the route. Because Radware has not presented any evidence of that with respect to the relevant BIG-IP version, F5 is entitled to summary judgment of non-infringement.

IT IS SO ORDERED.

Dated: November 19, 2018



VINCE CHHABRIA
United States District Judge