

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORESCOUT TECHNOLOGIES, INC.,
Petitioner,

v.

FORTINET, INC.,
Patent Owner.

IPR2021-00914
Patent 8,458,314 B1

Before THOMAS L. GIANNETTI, CHARLES J. BOUDREAU, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background

Forescout Technologies, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–13, 15–18, and 20 (the “challenged claims”) of U.S. Patent No. 8,458,314 B1 (Ex. 1001, the “’314 patent”). Paper 2 (“Pet.”). Fortinet, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”). Pursuant to 35 U.S.C. § 314, we instituted this *inter partes* review as to all of the challenged claims and all grounds raised in the Petition. Paper 12 (“Institution Dec.”).

Following institution, Patent Owner filed a Response. Paper 26 (“PO Resp.”). Subsequently, Petitioner filed a Reply to Patent Owner’s Response (Paper 29, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 31, “PO Sur-reply”).

On August 25, 2022, we held an oral hearing. A transcript of the hearing is included in the record. Paper 39 (“Hearing Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This decision is a Final Written Decision, issued pursuant to 35 U.S.C. § 318(a). For the reasons we discuss below, we determine that Petitioner has proven by a preponderance of the evidence that all challenged claims of the ’314 patent are unpatentable.

B. Related Proceedings

The parties identify the following district court proceeding concerning the ’314 patent: *Fortinet, Inc. v. Forescout Technologies, Inc.*, No. 3:20-cv-03343 (N.D. Cal. filed May 15, 2020). Pet. 71; Paper 4, 1.

C. Real Parties-in-Interest

The Petition identifies Forescout Technologies, Inc., as the real party-in-interest. Pet. 71. Patent Owner identifies Fortinet, Inc., as the real party-in-interest. Paper 4, 1.

D. The '314 Patent

The '314 patent relates to “offloading Administrator information technology (IT) network tasks to people such as business/department heads or automated mechanisms within the system.” Ex. 1001, 1:13–15. According to the patent, “[w]ith the explosion of new endpoint device technology and the ever increasing mobile user population, the need to understand who and what is connecting to a corporate network has become critical.” *Id.* at 1:25–28. But “IT departments struggle to ensure that mission-critical network resources are both operational and secure, while allowing network access for endpoint devices.” *Id.* at 1:29–31. The patent thus addresses a need for “a network control system supporting network endpoints including devices and users that delegates control from the Administrator to Sponsors, leveraging their particular skills.” *Id.* at 1:58–61.

Figure 1, reproduced below, illustrates an embodiment of the '314 patent:

100

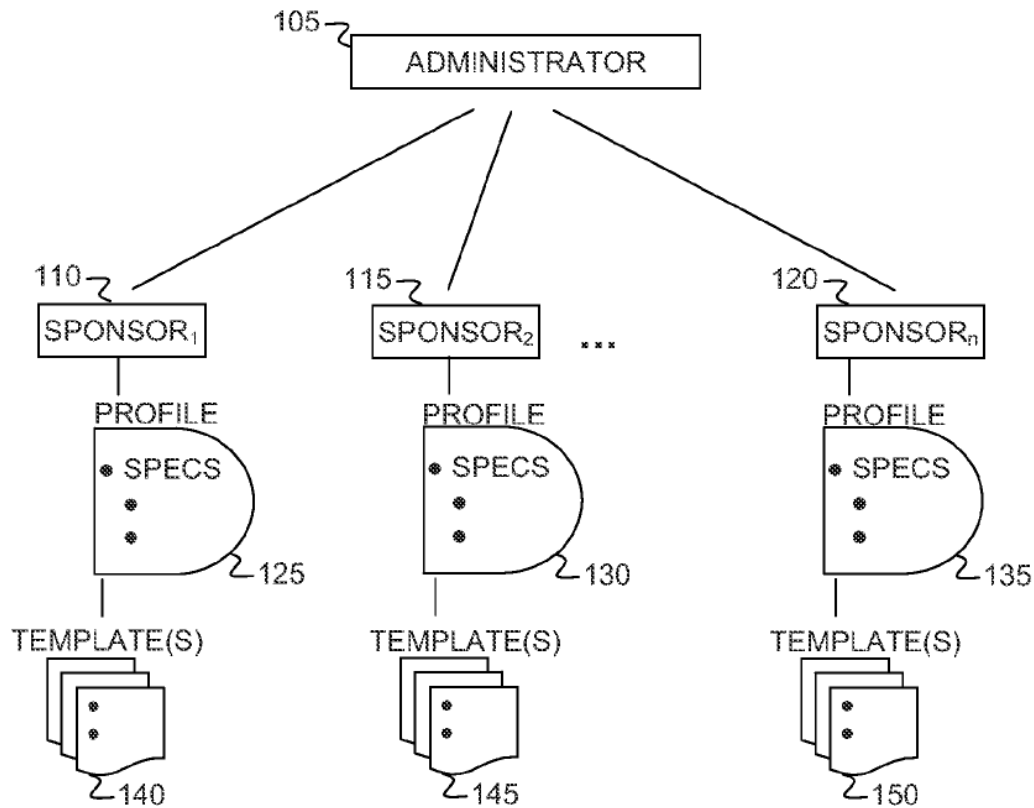


FIG. 1

Figure 1 of the '314 patent is a diagram illustrating a network management control architecture. *Id.* at 4:41–42. Network administrator 105 delegates authority to sponsors 110, 115, and 120, which administer control over network resources. *Id.* at 5:5–10. Profiles 125, 130, and 135 define the scope and limitations of respective sponsors' control. *Id.* at 5:10–12. Templates 140, 145, and 150, which are associated with profiles 125, 130,

and 135, respectively, define the scope and limitations of an IT task. *Id.* at 5:13–15. Sponsors use templates 140, 145, and 150 to manage network endpoints, which can be “devices or users requesting access to the network.” *Id.* at 5:15–18.

E. Illustrative Claim

The '314 patent has 20 claims, of which claims 1–13, 15–18, and 20 are challenged in the Petition. Claims 1, 15, and 20 are independent.

Claim 1 is representative of the challenged claims. Claim 1 recites:¹

1. [preamble] A method for control of computer network resources connected to a computer network supporting network endpoints by delegating control from a network administrator to at least one sponsor comprising the steps of:

[1a] creating templates for users and devices of said computer network by said network administrator at an administrator account on a workstation connected to said computer network;

[1b] creating profiles used to control said resources of said computer network;

[1c] associating said templates with said profiles;

[1d] creating at least one said sponsor by said network administrator;

[1e] associating, by said network administrator, at least one of said profiles with said sponsor;

[1f] delegating, by said network administrator, network management administrative privileges to said sponsor,

[1g] transferring responsibility for said users and devices from said network administrator to said sponsor when said template of

¹ Paragraph numbering provided by Petitioner has been added.

said users and devices is associated with said profile of said sponsor, and

[1h] controlling of said computer network resources by said sponsor, using said templates assigned to said sponsor by said network administrator, wherein said sponsor is constrained by said network administrator by said at least one associated profile, said sponsors not having network management administrative privileges over said network administrator.

Ex. 1001, 7:60–8:20.

F. References and Other Evidence

The Petition relies on the following references:

U.S. Patent App. Pub. No. 2005/0081063 A1 (Ex. 1003, “Patrick”).

U.S. Patent App. Pub. No. 2003/0217122 A1 (Ex. 1004, “Roese”).

U.S. Patent No. 8,520,512 B2 (Ex. 1005, “Gilde”).

In addition, Petitioner submits the Declaration of Dr. Eric Cole (Ex. 1002, “Cole Decl.”). Patent Owner submits the Declaration of Moses Garuba, Ph.D. (Ex. 2002, “Garuba Decl.”). The parties have also submitted deposition transcripts for those witnesses. Ex. 1017 (“Garuba Dep.”); Ex. 2003 (“Cole Dep.”).

G. Asserted Grounds of Unpatentability

Petitioner asserts the challenged claims are unpatentable on the following grounds:

Claims Challenged	35 U.S.C. § ²	Reference(s)
1, 4–6, 8, 15, 16, 18, 20	103(a)	Patrick

² Because the application from which the ’314 patent issued was filed before March 16, 2013, the pre-AIA (“America Invents Act”) version of

Claims Challenged	35 U.S.C. § ²	Reference(s)
2, 3, 7, 10, 11, 13, 17	103(a)	Patrick, Roesse
8, 9, 12	103(a)	Patrick, Gilde

Pet. 8.

II. PRELIMINARY MATTERS

A. Level of Ordinary Skill

Petitioner contends “a person of ordinary skill in the art . . . at the time of the ’314 patent’s effective filing date would typically be a person with a bachelor’s degree in computer science, computer engineering, or electrical engineering and at least three years of experience in networking operating systems and cybersecurity, or a person with a master’s degree in one of the foregoing and at least two years of experience in the aforementioned fields.” Pet. 4 (citing Cole Decl. ¶¶ 26–28). For our Institution Decision, we adopted this definition. Institution Dec. 7.

Patent Owner states that it “does not object” to Petitioner’s definition of the person of ordinary skill. PO Resp. 22.

Petitioner’s definition is consistent with the prior art and patent specification before us and is supported by credible expert testimony. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (prior art itself may reflect an appropriate level of skill). We therefore continue to apply Petitioner’s formulation for this decision.

§ 103 applies. Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011).

B. Claim Construction

In an *inter partes* review, the claims of a patent must be construed using the same claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b), including construing the claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b) (2020); *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005). Under that standard, and absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definitions for claim terms must be set forth with reasonable clarity, deliberateness, and precision. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We construe claim terms only as relevant to the parties’ contentions and only to the extent necessary to resolve the issues in dispute. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999); *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017).

Notwithstanding the parties’ initial position that claim construction is not required, for our Institution Decision we followed the guidance provided by the ’314 patent specification on the meaning of certain terms appearing in the patent. Institution Dec. 8–9. Thus, we construed the following terms:

1. *Administrator/Network Administrator* – “Administrators delegate workload to Sponsors, view reports and audit trails.” Ex. 1001, 2:2–4. “A

Network Administrator has the responsibility of delegating the network management workload.” *Id.* at 2:11–12.

2. *Sponsors* – “Sponsors administer control over endpoints requiring network resources.” *Id.* at 2:4–5.

3. *Profiles* – “Profiles define the scope and limitations of a Sponsor’s control.” *Id.* at 2:5–6.

4. *Templates* – “Templates/Rules are a set of rules or patterns that define the scope of the IT Task.” *Id.* at 2:6–7.

5. *Endpoints* – “Endpoints are devices or Users requesting access to the network.” *Id.* at 2:9–10.

We acknowledged that our constructions “differ[ed] from some of the constructions that the parties proposed in the district court litigation.” *See* Institution Dec. 9 (citing Pet. 5–7; Prelim. Resp. 14).

Post-institution, Patent Owner responds that it agrees with these constructions, “for the purposes of these proceedings.” PO Resp. 19–20.³

Petitioner responds that Patent Owner and Dr. Garuba “misapply the Board’s construction of ‘profiles.’” Pet. Reply 5. Petitioner contends that “[b]oth [Patent Owner and Dr. Garuba] contend that this construction requires a profile ‘define the scope and limitations of . . . control’ *on its own*, without reference to any other structure (e.g., templates).” *Id.* Petitioner

³ Petitioner points out that Patent Owner and Dr. Garuba “repeatedly insert the words ‘at least’ into the constructions for administrator, profiles, templates, and endpoints.” Pet. Reply 4. At the hearing, Patent Owner’s counsel admitted “it’s something we shouldn’t have done,” and that we can “ignore” this language because “it didn’t make a difference.” Hearing Tr. 41:10, 41:19–21. Accordingly, we do not consider this alteration to our constructions.

asserts that “[t]he Board . . . should not alter its construction [of profiles]; nor should it consider argument based on Fortinet’s incorrect application of the Court’s [*sic.*, Board’s] construction.” *Id.* This argument will be discussed further in Section III.B.1.c, *infra*.

C. Description of the Prior Art References

1. Patrick

Patrick describes delegating a capability from a first user to a second user and enforcing the delegation with a security service module when the second user attempts to access a resource protected by the security service module. Ex. 1003, (57). In particular, Patrick uses policies that “dynamically identify resources that need to be protected, privileges or roles allowed each resource, and constraints that apply to each user or group of users that attempt to access the resource.” *Id.* ¶ 61. A “Role Policy” “determines which users and/or groups of users are in a role,” and an “Authorization Policy” “dynamically determines whether a role, user or group of users are permitted to perform an action or access a resource.” *Id.* ¶¶ 64–65. In an example, based on a banking application, a group of bank tellers might have access to the same set of applications to perform specific banking tasks. Thus, there might be a role called Teller that encompasses the bank tellers. Authorization and other policies could then be enacted to restrict access to the applications only to users in the role of Teller.

Id. ¶ 71.

Patrick describes that “[d]elegation is often used by administrative users to control policy for other administrative users or for application users to allow someone else to perform an action for them or in their absence.” *Id.* ¶ 86. In that case, “[a] policy can be used to delegate a role or privilege

from one subject (i.e., the delegator) to another (i.e., the delegate).” *Id.* ¶ 87. A delegate may perform an action if any required constraints are satisfied and the delegator has the ability to perform the action under the same conditions. *Id.* ¶ 88.

In various embodiments, a security service module (SSM) intercepts a client request to perform an operation on a resource and performs resource request processing. *Id.* ¶¶ 104, 106. Figure 3, reproduced below, illustrates “exemplary security service module deployments” for implementing Patrick’s invention. *Id.* ¶ 29.

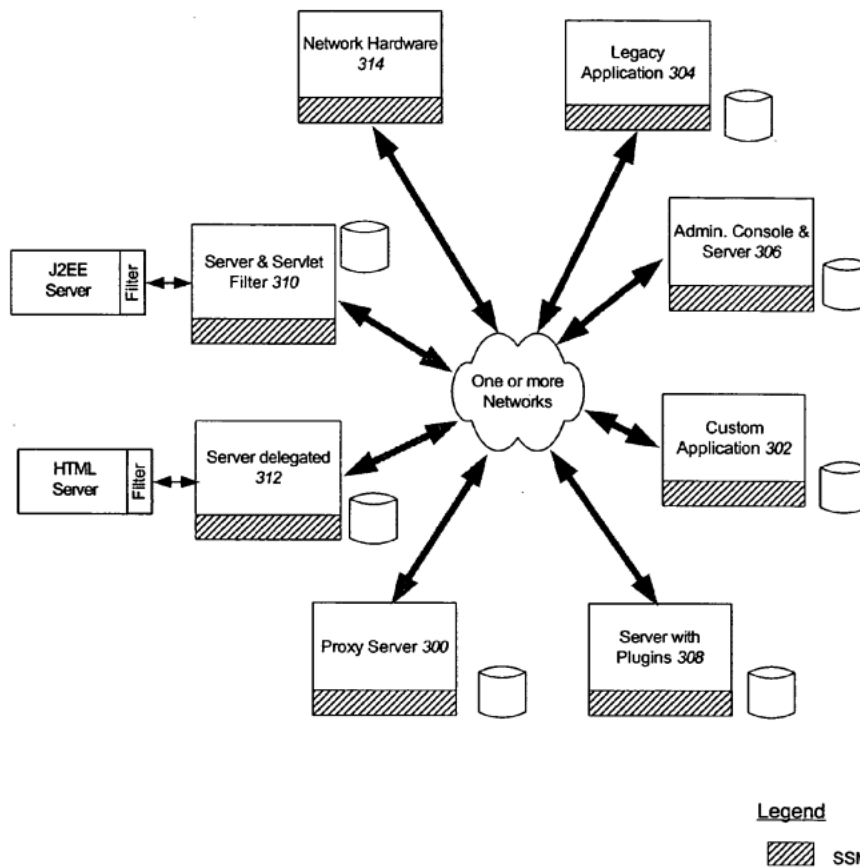


Figure 3 of Patrick shows that “SSMs can be deployed in applications, network hardware components, application servers, web servers, proxy servers, and any other suitable systems requiring security.” *Id.* ¶ 112.

Administrative console and server 306 “allows an administrator or other user to create, modify and delete user, group and policy definitions,” as well as “delegate administrative privileges to other users.” *Id.* ¶ 113.

2. *Roesse*

Roesse describes determining authorization of a client device based on its physical location when receiving a request for network access at a network entry device of a network infrastructure. Ex. 1004, (57).

3. *Gilde*

Gilde describes “managing dynamic network access control” by providing “services and controlled network access that includes quarantining nodes so that they may be identified, audited, and provided an opportunity to be brought into compliance with a security policy.” Ex. 1005, 4:5–11.

Gilde describes an embodiment where “guest internet access is provided.” *Id.* at 24:25–26. Gilde describes that when a device is quarantined, the end user is informed “how the end user may get guest access (e.g. restricted access), or the like.” *Id.* at 24:26–30.

III. ANALYSIS OF THE CHALLENGED CLAIMS

The Petition challenges claims 1–13, 15–18, and 20 of the ’314 patent. Petitioner asserts unpatentability of the claims based on obviousness.

A. *Obviousness*

A claim is unpatentable under 35 U.S.C. § 103(a) 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) 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) (“the *Graham* factors”). Neither the Petition nor the Response presents evidence on the fourth *Graham* factor. We, therefore, do not consider that factor in this decision.

B. Patrick Challenge (Claims 1, 4–6, 8, 15, 16, 18, 20)

Petitioner asserts that claims 1, 4–6, 8, 15, 16, 18, and 20 would have been obvious over Patrick, in view of the knowledge of a person of ordinary skill in the art. Pet. 9.

1. Claim 1

Petitioner provides an element-by-element analysis of claim 1 in relation to Patrick. Pet. 11–26. Petitioner supports this analysis with testimony from Dr. Cole. Cole Decl. ¶¶ 67–129. Petitioner demonstrates that each element of claim 1 is met by Patrick, in view of the knowledge of a

person of ordinary skill in the art. For the following reasons, we agree that Patrick teaches each element of claim 1.

a. Preamble: “A method for control of computer network resources connected to a computer network supporting network endpoints by delegating control from a network administrator to at least one sponsor”

Petitioner contends Patrick discloses the preamble of claim 1.

Pet. 12–14. Referring to Figure 3 of Patrick, reproduced *supra*, Petitioner asserts that “Patrick teaches that networking hardware 314 may include ‘a switch, router, relay, bridge, repeater or a hub.’ A [person of ordinary skill] would thus understand that several of these devices are also endpoints.” *Id.* at 13 (citations omitted).

Petitioner asserts that “Patrick further teaches delegating control from an administrator to a sponsor” by describing that “the rights of an administrator can be delegated by an administrator with greater rights than their own.” *Id.* (quoting Ex. 1003 ¶ 100). Petitioner acknowledges that “Patrick does not use the word ‘sponsor,’” but asserts that a person of ordinary skill “would understand that Patrick is describing delegation by an administrator to another user of specific authority.” *Id.* at 14 (citing Cole Decl. ¶ 74). Further, a person of ordinary skill “would understand Patrick is describing a ‘sponsor’ because the delegate has authority with respect to other users and can further delegate or manage the other users.” *Id.*

Patent Owner does not directly challenge this assertion that the preamble⁴ is met by Patrick, although Patent Owner does challenge the “sponsor” limitation, which we address in connection with claim element 1d, *infra*. As is discussed there, we disagree with this argument, and therefore,

⁴ We express no view on whether the preambles are limiting.

for the reasons given by Petitioner, we find that Petitioner demonstrates that Patrick teaches the preamble of claim 1.

b. Element 1a: “creating templates for users and devices of said computer network by said network administrator at an administrator account on a workstation connected to said computer network”

Templates are described in the ’314 patent as “a set of rules or patterns that define the scope of the IT Task.” *See supra*, Section II.B.4 (citing Ex. 1001, 2:6–7). Petitioner contends Patrick discloses the “creating templates” limitation by describing “‘policies’ that specify certain rights for a particular resource.” Pet. 14–15. Petitioner identifies those policies with the “templates for user and devices” in the claims. *Id.* at 14. Petitioner explains that “Patrick’s policies can be specified with ‘IF’ conditions relating to the network resources, users, and delegation.” *Id.* (citing Ex. 1003 ¶ 80). Further, these “templates (i.e., policies and conditions) can be created by an administrator.” *Id.* at 15 (citing Ex. 1003 ¶ 113).

Patent Owner does not directly address this limitation in its Response. For the reasons given by Petitioner, we find that Patrick teaches element 1a of claim 1.

c. Element 1b: “creating profiles used to control said resources of said computer network”

The ’314 patent describes profiles as defining “the scope and limitations of a Sponsor’s control.” *See supra*, Section II.B.3 (citing Ex. 1001, 2:5–6). Petitioner contends Patrick discloses this limitation by describing “the creation of ‘roles’ for a user and/or group, which are profiles.” Pet. 15 (citing Ex. 1003 ¶ 71). As Patrick explains, “there might be a role called Teller that encompasses the bank tellers. Authorization and

other policies could then be enacted to restrict access to the applications only to users in the role of Teller.” Ex. 1003 ¶ 71 (quoted at Pet. 16).

Petitioner further argues: “Patrick explains a role can be defined by a policy classifying users based on their job position.” *Id.* at 16 (citing Ex. 1003 ¶ 84). Still further, “roles are used in conjunction with users/group identification to control access to resources as implemented by policies and delegations.” *Id.* (citing Ex. 1003 ¶ 71; Cole Decl. ¶¶ 84–86).

Patent Owner challenges this assertion that Patrick teaches profiles. PO Resp. 25–28. According to Patent Owner, the “role” in Patrick identified by Petitioner as a claimed “profile” “merely identifies a user or group of users and does not ‘define the scope and limitations of a Sponsor’s control over endpoints requiring network resources’ as required under the proper construction of *profiles*.” *Id.* at 26. According to Patent Owner, “Petitioner fails to demonstrate how the user(s) identified by a ‘role’ is a sponsor that administers control over endpoints requiring network resources.” *Id.* at 27.

We do not agree with this argument for the following reasons. As Petitioner points out (Pet. Reply 10), this argument is “entirely dependent” on a misapplication of our claim construction for “profiles.” Our construction (“Profiles define the scope and limitations of a Sponsor’s control.”) does not require the profiles *alone* to define the scope and limitation of control. As Patent Owner recognizes, Petitioner’s argument is that profiles, in conjunction with templates, meet the requirement of the claim for defining the scope and content of a sponsor’s control. *See* PO Resp. 26; Pet. Reply 11. Based on our construction of the term “profiles,” we find Petitioner’s argument persuasive, and as supporting evidence we credit the testimony of Dr. Cole. Cole Decl. ¶¶ 87–88. Dr. Cole quotes, as

an example, Patrick’s description of the role “Teller,” which might include bank tellers. Cole Decl. ¶ 84. Dr. Cole testifies that Patrick discloses profiles under Petitioner’s construction, which we have adopted, as well as under the construction urged by Patent Owner in the district court litigation. *Id.* ¶ 87. He testifies that “Patrick’s roles are machine-readable sets of specifications defining the scope and limitations of a sponsor’s allowable actions.” *Id.*

For the reasons given by Petitioner, we find that Patrick discloses the claimed “profiles” and teaches element 1b of claim 1.

d. Element 1c: “associating said templates with said profiles”

Petitioner contends Patrick discloses this limitation by teaching that “policies associate particular roles (profiles) with a template (the policy).” Pet. 17 (citing Ex. 1003 ¶ 61). Petitioner gives as an example “how the role Tellers is linked by a policy defining the role (profile) and a policy defining the actions that can be performed by that role (linking to the template).” *Id.* (citing Ex. 1003 ¶ 84).

Patent Owner does not address this assertion directly. However, as discussed, Patent Owner challenges Petitioner’s identification of the claimed “profiles” in Patrick. We do not agree with Patent Owner’s argument, for reasons discussed in Section III.B.1.c, *supra*. For the reasons given by Petitioner, we find that Patrick teaches element 1c.

e. Element 1d: “creating at least one said sponsor by said network administrator”

The ’314 patent describes the role of sponsors as “administer[ing] control over endpoints requiring network resources.” *See supra*, Section II.B.2 (citing Ex. 1001, 2:4–5). Petitioner contends Patrick discloses this limitation by describing “that the administrator is able to ‘create,

modify, and delete user, group, and policy definitions.” Pet. 18 (quoting Ex. 1003 ¶ 113). Further, “Patrick also teaches specifying a ‘subject’ (any user) to whom authority can be delegated.” *Id.* (citing Ex. 1003 ¶ 78). Therefore, “Patrick teaches creating a sponsor (a specific user), who can then have authority delegated via the policies and delegation described in the other limitations of claim 1.” *Id.* (citing Cole Decl. ¶¶ 96–98).

Patent Owner challenges Petitioner’s identification of the claimed “sponsor.” PO Resp. 32–33. Relying on our construction of “sponsor” (“Sponsors administer control over endpoints requiring network resources.”), Patent Owner contends that “no delegate described by Patrick is identified as a sponsor because no delegate described by Patrick ‘administers control over endpoints requiring network resources.’” PO Resp. 32. We disagree. As Petitioner points out, Dr. Cole testifies that Patrick describes the delegation by an administrator of “specific authority.” Pet. Reply 17 (citing Cole Decl. ¶ 74). Because the delegate has authority to further delegate or manage other users according to the policy definition, a person of ordinary skill would have recognized that the delegate is a sponsor. Cole Decl. ¶ 74. We find, based on this testimony, that a person of ordinary skill in the art would have understood that Patrick discloses this limitation. *Id.* ¶ 75. We further find for the reasons given by Petitioner that Patrick teaches element 1d.

f. Element 1e: “associating, by said network administrator, at least one of said profiles with said sponsor”

Petitioner contends Patrick discloses this limitation. Pet. 18–19. Petitioner argues Patrick describes “creating ‘roles’ (profiles) for specific users and/or groups.” Pet. 18 (quoting Ex. 1003 ¶ 71). Petitioner gives, as an example, the role of Teller described in Patrick. *Id.* (citing Ex. 1003

¶ 84). In addition, “Patrick also specifically teaches using role policies to identify users who should be given administrative rights.” *Id.* at 18–19 (citing Ex. 1003 ¶ 61).

Patent Owner does not challenge this assertion directly. Patent Owner’s argument that Patrick does not disclose a sponsor is addressed in Section III.B.1.e, *supra*. For the reasons given by Petitioner, we find that Patrick teaches element 1e.

g. Element 1f: “delegating, by said network administrator, network management administrative privileges to said sponsor,”

Petitioner contends Patrick discloses this limitation by describing “the use of policies ‘to delegate a role or privilege from one subject (i.e., the delegator) to another (i.e., the delegate).’” Pet. 19 (quoting Ex. 1003 ¶ 87). Further, Patrick also teaches that “the rights of an administrator can be delegated by an administrator with greater rights than their own.” *Id.* (quoting Ex. 1003 ¶ 100). “In addition, the administrator has the capability to delegate administrative privileges to other users.” *Id.* quoting Ex. 1003 ¶ 113).

Patent Owner does not challenge these assertions directly. Patent Owner’s argument that Patrick does not disclose a sponsor is addressed *supra*, in Section III.B.1.e. As discussed there, we do not agree with this argument. For the reasons given, we find that Patrick teaches element 1f.

h. Element 1g: “transferring responsibility for said users and devices from said network administrator to said sponsor when said template of said users and devices is associated with said profile of said sponsor”

Petitioner contends Patrick discloses this limitation by describing “a delegate action [that] allows the administrator to delegate specific resources

and/or roles (profiles) that are delegated pursuant to a specific authorization policy (template), thus allowing the delegate to control the resources and/or roles identified in that policy (subject to any restrictions specified as ‘IF’ conditions).” Pet. 21 (citing Cole Decl. ¶¶ 111–112; Ex. 1003 ¶¶ 73–80).

Patent Owner challenges this assertion. PO Resp. 28–32. Patent Owner argues that “Petitioner has failed to demonstrate that Patrick discloses any transfer of responsibility for users and devices (endpoints) from the network administrator to a sponsor or that any such transfer of responsibility is *concurrent with* the association of the template of the user or device with the profile of the sponsor.” *Id.* at 28 (emphasis added). Patent Owner argues that in Patrick, “any such transfer [of responsibility] is not effective when Patrick’s policy (alleged template) is associated with Patrick’s role (alleged profile) as required by element [1g].” *Id.* at 29. We do not agree with this argument. As Petitioner points out, Dr. Cole’s testimony establishes that “Patrick’s delegate statement transfers responsibility ‘when’ the policy and the sponsor are linked via the delegate statement.” Pet. Reply 12–13 (citing Cole Decl. ¶ 113).

Patent Owner further argues that “the delegation [in Patrick] is effective only when the ‘IF’ conditions are true.” PO Resp. 30; PO Sur-reply 12. Petitioner responds that “‘IF’ conditions are not required by Patrick’s delegation.” Pet. Reply 13. Petitioner points out, and Patent Owner agrees, that the “IF” conditions in Patrick are “entirely optional.” *Id.* (citing Ex. 1017, 74:4–7); *see also* Hearing Tr. 51:24–52:2 (Patent Owner’s counsel agreeing that “Patrick discloses the IF conditions are optional, yes.”). Thus, one reason Patent Owner’s argument is unavailing is that it

does not account for the use of a delegate statement without the optional “IF” condition. *Id.*

In addition, Patent Owner’s argument fails because, as Petitioner points out, “[t]hat a user may not be able to exercise authority because one of the ‘IF’ conditions is not true does not mean the delegation is not ‘effective’; to the contrary, it confirms the delegation worked exactly as intended (i.e., subject to the constraints specified in ‘IF’ conditions).” *Id.* Citing Dr. Garuba’s testimony, Petitioner explains that “the only reason ‘IF’ conditions are considered at a later time is they have already been linked to the sponsor via the delegate statement.” *Id.* (citing Garuba Dep. 80:1–10).

Patent Owner contends further that “[t]he delegation of the role [in Patrick] does not transfer responsibility for other users and devices to a sponsor as required by element [1g].” PO Resp. 31. Patent Owner continues that “in Patrick, responsibility is not transferred from the delegator. Patrick explains that delegates only have authority as long as the delegator has the same authority.” *Id.*

We do not agree with these arguments. As Petitioner points out, the first argument is unavailing because it considers the role described in Patrick “in isolation,” that is, “ignoring the fact that the role is linked via a delegate statement to a policy and to the resources specified in that policy.” Pet. Reply 16 (citing Cole Decl. ¶ 112). The second argument fails because the claims do not “require that the administrator transferring responsibility to be left powerless” for a transfer to occur. *See id.*

Further, we agree with Petitioner that Patent Owner’s argument that this limitation is not met relies on “mischaracterizing” Dr. Cole’s testimony. Pet. Reply 14. Dr. Cole’s testimony supports Petitioner’s position that

Patrick discloses transferring responsibility to a sponsor with specific references to Patrick. Cole Decl. ¶¶ 110–116. Dr. Cole explains how Patrick teaches delegating authorization from one subject to another. *Id.* at ¶ 111. He relies on Figure 11 of Patrick to further illustrate his opinion. *Id.* at ¶ 112.

Citing Dr. Cole’s testimony, Patent Owner argues that “there is no delegate in Patrick’s authorization policy that meets the limitation of a *sponsor* that administers control over endpoints requiring network resources as required by the claim.” PO Resp. 30. We do not agree with this argument. As Petitioner points out, in context, Dr. Cole testified that the claimed sponsor is a user in Patrick. *See* Pet. Reply 14–15 (quoting Cole Dep. 90:5–9).

Petitioner demonstrates also that in Patrick, restrictions may be placed on delegating, specifically, delegation of resources or roles may be subject to restrictions based on policies that correspond to templates. Pet. 20–21 (citing Cole Decl. ¶¶ 111–112). We find, for the reasons given, that Patrick teaches element 1g.

- i. Element 1h: “controlling of said computer network resources by said sponsor, using said templates assigned to said sponsor by said network administrator, wherein said sponsor is constrained by said network administrator by said at least one associated profile, said sponsors not having network management administrative privileges over said network administrator”*

Petitioner contends Patrick discloses this limitation. Pet. 22–26 (citing Cole Decl. ¶¶ 117–129). Referring back to its analysis of claim element 1g, Petitioner asserts Patrick describes “an authorization policy to delegate specific responsibility to a sponsor (the delegate).” *Id.* at 22–23.

Petitioner explains further that in Patrick “[t]he sponsor is constrained by conditions specified in the policy—for example, any ‘IF’ conditions in the policy definition.” *Id.* at 23 (citing Ex. 1003 ¶¶ 80, 86). Petitioner further contends Patrick’s “sponsors do not have network management administrative privileges over said network administrator.” *Id.* at 25 (citing Cole Decl. ¶¶ 124–125; Ex. 1003 ¶ 88). The example cited by Petitioner relates to delegating the ability to be an editor or a reader. *Id.* at 24 (citing Cole Decl. ¶¶ 119–122). Petitioner explains further: “Although this example is not specifically identified as an administrative right, a [person of ordinary skill] would understand that an ‘editor’ role could be considered an administrative role.” *Id.* (citing Cole Decl. ¶ 122).

Patent Owner does not directly challenge this assertion. However, as discussed *supra*, in Sections III.B.1.c. and III.B.1.e., Patent Owner argues that Patrick does not disclose the claimed sponsors or profiles. For the reasons discussed *supra*, we do not agree with those arguments.

We find for the reasons given that Patrick teaches element 1h.

2. Patent Owner’s Other Arguments on Claim 1

Patent Owner contends that “Petitioner avoided mapping the specific language recited in Claim 1 to the disclosure in Patrick relied upon as disclosing each limitation, thus obscuring the material differences between Claim 1 and Patrick.” PO Resp. 33–34. Patent Owner gives, as an example, the Petition’s discussion of the “transferring responsibility” limitation, element 1g. *Id.* at 34.

We disagree with Patent Owner’s argument that the Petition is insufficiently particular as to this or any other limitation. *See* PO Resp. 34–

35. For example, as discussed *supra*, Dr. Cole’s testimony supports Petitioner’s position that Patrick discloses transferring responsibility with specific references to Patrick. Cole Decl. ¶¶ 110–116. Dr. Cole explains how Patrick teaches delegating authorization from one subject to another. *Id.* ¶ 111. He relies on Figure 11 of Patrick to further illustrate his opinion. *Id.* ¶ 112. We do not agree that this testimony is insufficiently specific to show how Patrick meets this limitation or that Petitioner has failed to carry its burden. Moreover, other examples from Dr. Cole’s testimony are presented in the Petition at pages 20–21. There is no improper incorporation by reference to Dr. Cole’s testimony, as suggested by Patent Owner. PO Resp. 35. We therefore do not agree with Patent Owner (*see id.*) that “the Board should reject all grounds” due to lack of specificity in Petitioner’s case.

Patent Owner contends that Patrick discloses “the same role-based resource access model” described by the Ontaneda reference (Ex. 2001) cited during prosecution of the ’314 patent. PO Resp. 17–19. This argument is discussed in the Institution Decision, at pages 15–16. We concluded, there, that “Patent Owner does not provide an adequate comparison of the disclosures of Ontaneda and Patrick to support its argument. Instead, “Patent Owner relies on generalized statements of alleged similarity in using ‘user roles’ to control data presentation or access to system resources.” *Id.* Despite our rejection of this argument in the Institution Decision as unsupported, Patent Owner again fails to provide us with a comparison of Patrick and Ontaneda. We therefore find this argument unavailing for the reasons previously given in our Institution Decision. Institution Dec. 15–16.

3. Summary of Claim 1

We have considered Petitioner's analysis of claim 1 in relation to Patrick and the arguments presented by Patent Owner. Taking into account the entire record, including the Petition, Patent Owner's Response, Petitioner's Reply, and Patent Owner's Sur-reply, as well as the evidence presented by the parties, we determine that Petitioner has demonstrated by a preponderance of the evidence that claim 1 of the '314 patent would have been obvious in light of Patrick.

4. Claims 15 and 20

Petitioner's analysis of claims 15 and 20 substantially tracks its analysis of claim 1, but includes additional, persuasive analysis for the minor variations present in those independent claims. Pet. 32–35, 39–41. Patent Owner does not address claims 15 or 20 in its Response. Accordingly, for the reasons given above for claim 1, and for the further reasons presented by Petitioner specific to claims 15 and 20, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 15 and 20 would have been obvious based on Patrick.

5. Claims 4–6, 8, 16, and 18

Claims 4–6 and 8 depend from claim 1. Claims 16 and 18 depend from claim 15. Petitioner provides an element-by-element analysis of each of these dependent claims in relation to Patrick. Pet. 26–32, 35–38; Cole Decl. ¶¶ 130–155, 180–192. Patent Owner responds separately for claims 8 and 16. PO Resp. 36–37.

For claim 8, which recites “[t]he method of claim 1, wherein said sponsor is authorized to create guest accounts,” Patent Owner contends

Patrick does not disclose creating guest accounts. *Id.* at 36. Petitioner responds that Patent Owner “applies the incorrect legal standard.” Pet. Reply 19. We agree with Petitioner’s argument that although Patrick does not expressly discuss guest accounts, that is not determinative of this issue. *Id.* “[T]he analysis [of obviousness] 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.” *KSR Int’l. Co.*, 550 U.S. at 418; *see also Translogic Tech.*, 504 F.3d at 1262.

We find that Petitioner’s analysis is persuasive. Petitioner’s analysis of claim 8 is supported by Dr. Cole’s testimony. Cole Decl. ¶¶ 152–155. Dr. Cole testifies that claim 8 would have been obvious over Patrick. *Id.* ¶ 153. He testifies that according to Patrick, an administrator can create a “guest user,” which was a well-known type of user at the time of the invention. *Id.* ¶ 154. This testimony is supported by Dr. Garuba. Garuba Dep. 94:1–14 (agreeing that “guest accounts were a well-known type of user account at the time of the invention of the ’314 patent”). We therefore agree with Dr. Cole’s conclusion that “a person of ordinary skill in the art would have understood that Patrick discloses this limitation.” Cole Decl. ¶ 155.

For claim 16, reciting creating “template rules,” Patent Owner contends “the ‘roles’ in Patrick, as set forth above, merely identify one or more users, not devices, and thus Patrick’s ‘roles’ do not meet the limitation of *template rule*.” PO Resp. 37 (citation omitted). Patent Owner contends further that “Petitioner has not shown that Patrick discloses automatically allowing access to devices (or users) via an updated role assignment (template rule).” *Id.*

We do not agree that Patrick fails to teach or suggest these limitations. As Petitioner points out, Dr. Cole’s supporting testimony for this limitation relies on the policies associated with a role as well as the role itself, and explains how users can be automatically permitted on the network based on their roles. Pet. Reply 19–20; Cole Decl. ¶¶ 184–185. Thus, Patent Owner’s arguments are unavailing because they are based on the “mistaken premise” that Patrick’s roles, by themselves, must disclose this limitation. Pet. Reply 19; *see also* Section III.B.1.c., *supra* (discussing claim element 1b).

Patent Owner does not respond further to Petitioner’s analysis of these dependent claims. For the reasons given, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 4–6, 8, 16, and 18 would have been obvious in light of Patrick.

C. Patrick and Roese Challenge (Claims 2, 3, 7, 10, 11, 13, 17)

1. Introduction

With the exception of claim 17 (which depends from claim 15), these claims all depend from claim 1. They add various limitations to claims 1 and 15. For example, claim 2 recites “wherein said step of creating templates comprises: detecting IP range, port on which services are provided, location, and organization unique identifiers (OUIs), whereby endpoint type is determined.” Ex. 1001, 8:21–25. *See* discussion of claim 2, *infra*.

Petitioner relies on Patrick for the elements incorporated from claim 1 and Patrick and Roese for the added limitations. *See, e.g.*, Pet. 45 (addition of limitation of claim 2 would have been obvious in view of Patrick and Roese); Cole Decl. ¶¶ 225–231.

2. Motivation to Combine

Petitioner demonstrates that a person of ordinary skill would have been motivated to combine the teachings of Patrick and Roese: “A [person of ordinary skill] would . . . understand, consistent with Patrick’s express suggestion, that Patrick’s policy definitions and delegations of authority could be used in conjunction with Roese’s network security system to allow for policies specifically focused on managing devices.” Pet. 43 (citing Cole Decl. ¶ 218). Further, Petitioner argues combining Roese’s network security system with Patrick’s policies and delegation “would be a simple, predictable application of known technology to provide a means to delegate and enforce policies relating to devices.” *Id.* at 43–44 (citing Cole Decl. ¶ 219). Finally, Petitioner contends “[t]his combination would have achieved predictable results, i.e., delegating authority relating to devices based on policy definition.” *Id.* at 44 (citing Cole Decl. ¶ 219).

Patent Owner challenges the rationale to combine the teachings of Patrick and Roese. PO Resp. 39–43. Patent Owner argues that “[o]ther than conclusory statements and merely reciting exemplary rationales from the [Manual of Patent Examining Procedure] § 2143, Petitioner offers no application of these rationales to the specific features of Roese it seeks to combine with Patrick.” *Id.* at 42.

We disagree with Patent Owner’s argument and find that Petitioner demonstrates a motivation to combine the teachings of Patrick and Roese. Petitioner provides detailed testimony by Dr. Cole supporting the conclusion that a person of ordinary skill would have been motivated to combine Patrick and Roese. Pet. Reply 20–22 (citing Cole Decl. ¶¶ 216–224). Dr. Cole testifies that “Patrick teaches that its system provides ‘flexible policies’

and ‘allow[s] for simple integration with third-party security products.’” *Id.* ¶ 216 (quoting Ex. 1003 ¶ 41) (alteration in original). He testifies that “Roese describes an exemplary network security system” that is “able to enforce certain restrictions, on an initial and continual basis, based on locations of devices.” *Id.* ¶ 217 (citing Ex. 1004 ¶ 33) (internal quotation marks omitted). He concludes that “Roese is . . . an example of a ‘suitable entity which can be interacted with programmatically’ as identified in Patrick.” *Id.* ¶ 218 (citing Ex. 1003 ¶ 41) (internal quotation marks omitted).

We agree with Dr. Cole that “Patrick provides a specific motivation to combine, by emphasizing its use of ‘flexible policies’ and explaining its invention ‘allow[s] for simple integration with third-party security products.’” *Id.* ¶ 222 (quoting Ex. 1003 ¶ 41). Dr. Cole testifies that a person of ordinary skill “would recognize that Roese’s system is one such third party security product, as suggested by Patrick, and also provides additional benefits relating to managing devices, as described in Roese.” *Id.* ¶ 223.

Dr. Cole’s testimony also persuades us of the existence of a reasonable expectation of success in making the combination. *Id.* ¶ 218 (“A [person of ordinary skill] would therefore understand, consistent with Patrick’s express suggestion, that Patrick’s policy definitions and delegations of authority could be used together with Roese’s network security system to allow for policies specifically focused on managing devices.”).

Patent Owner contends that “Petitioner . . . fails to demonstrate with respect to each of the disparate features of Roese relied upon, what the predictable results would be and how it would ‘provide a means to delegate

and enforce policies relating to devices’ as alleged by Petitioner.” PO Resp. 42. We do not agree that Petitioner’s showing of motivation to combine, summarized *supra*, is insufficient. *KSR* instructs us that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton,” so the fact that it would take some creativity to carry out the combination does not defeat a finding of obviousness. *KSR Int’l Co.*, 550 U.S. at 421, *see also ClassCo, Inc. v. Apple, Inc.*, 838 F.3d 1214, 1219 (Fed. Cir. 2016) (“The rationale of *KSR* does not support [the] theory that a person of ordinary skill can only perform combinations of a puzzle element A with a perfectly fitting puzzle element B.”). We find, for the reasons given, that Petitioner’s showing meets this standard and is sufficient. Petitioner, therefore, has demonstrated a motivation to combine Patrick with Roese with a reasonable expectation of success.

3. Claim 2

For claim 2, which recites that creating templates comprises “detecting. . . [the] port on which services are provided, location, and organization unique identifiers (OUIs),” Patent Owner contends that Petitioner “fails to address whether the referenced port in Roese is one on which services are provided as required by Claim 2.” PO Resp. 44. We disagree with Patent Owner. As Petitioner points out, Dr. Cole testifies that claim 2 would have been obvious because “Roese describes a ‘sequence of steps system 100 performs, from discovering a device’s connection to system 100 to allowing the device access to the network.’” Cole Decl. ¶ 227 (quoting Ex. 1004 ¶ 68). This involves obtaining location information as well as confirming a predefined list of additional parameters including port information and MAC address. *Id.* ¶¶ 227–228. Petitioner explains that

location verification is a “service” provided on this port. Pet. Reply 22. For the reasons given, we find that Patrick and Roesse teach claim 2.

4. Claims 3 and 10

Both claims relate to creation or modification of accounts. Although the heading in Patent Owner’s response refers to both claims, Patent Owner addresses only claim 3. PO Resp. 44–45. Patent Owner contends that “the cited [by Petitioner] portions of Patrick do not disclose a delegate (whether a sponsor or not) having access to view or modify accounts as required by claim element [3d]. Petitioner also fails to cite to any disclosure in Roesse for this limitation.” *Id.* at 45 (citation omitted). We do not agree for the reasons given by Petitioner. As Petitioner points out, Dr. Cole testifies that Patrick teaches viewing and modifying accounts because an administrator can create or update users and groups through an administrative console. Pet. Reply 23 (citing Cole Decl. ¶ 247).

Patent Owner contends also that Patrick and Roesse do not disclose “defining what types of accounts said sponsor can create.” PO Resp. 45. This argument is unavailing because, as Petitioner explains, “Patrick teaches creating account types through its example of delegating the Author role, an account type. The policy can specify whether the delegate is allowed to redelegate such account types, thus defining whether the sponsor can create certain account types.” Pet. Reply 24 (citing Cole Decl. ¶ 254).

We find for the reasons given that Patrick and Roesse teach the limitations of claims 3 and 10.

5. Claim 7

This claim’s recitation of “guest accounts” was addressed in connection with claim 8 in Section III.B.5, *supra*. We find for the reasons given there that Patrick and Roese teach claim 7.

6. Claims 11, 13, and 17

Patent Owner does not separately address these claims. For the reasons given by Petitioner (Pet. 58–63), we find that Patrick and Roese teach the limitations of claims 11, 13, and 17.

7. Summary

As discussed, Petitioner has demonstrated a motivation to combine Patrick and Roese with a reasonable expectation of success. Furthermore, Petitioner has demonstrated that each element of claims 2, 3, 7, 10, 11, 13, and 17 is taught by that combination of references. For the reasons given, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 2, 3, 7, 10, 11, 13, and 17 would have been obvious in light of Patrick and Roese.

D. Patrick and Gilde Challenge (Claims 8, 9, 12)

These claims all depend from claim 1 and add several limitations discussed *supra*. For example, as discussed *supra*, claim 8, recites “wherein said sponsor is authorized to create guest accounts.” Ex. 1001, 8:66–67.

Petitioner relies on Patrick for the elements incorporated from claim 1 and Patrick and Gilde for the added limitations. *See, e.g.*, Pet. 67 (addition of limitation of claim 8 would have been obvious in view of Patrick and Gilde); Cole Decl. ¶¶ 330–334. Addressing claim 8, Petitioner explains:

“Gilde expressly teaches providing ‘guest access.’” Pet. 67. Dr. Cole provides supporting testimony. Cole Decl. ¶ 333. Addressing claim 9, Petitioner contends “Patrick discloses creating templates.” Pet. 68. Addressing claim 12’s recitation of “temporary network users (TNUs),” Petitioner relies on Patrick in view of Gilde. *Id.* at 70–71.

Petitioner demonstrates that a person of ordinary skill would have been motivated to combine the teachings of Patrick and Gilde: “A [person of ordinary skill] would thus understand, consistent with Patrick’s express suggestion, that Patrick’s policy definitions and delegations of authority could be used in conjunction with Gilde’s network security system to allow for policies specifically focused on guest users.” Pet. 65 (citing Cole Decl. ¶ 323). Further, Petitioner asserts combining Patrick and Gilde “would be a simple, predictable application of known technology to provide a means to delegate and enforce policies relating to guest users.” *Id.* (citing Cole Decl. ¶ 324). Finally, Petitioner contends “[t]his combination would have achieved predictable results, i.e., delegating authority relating to guest users based on policy definition.” *Id.* (citing Cole Decl. ¶ 324).

Patent Owner does not challenge the motivation to combine these references. Patent Owner contends that “Gilde does not obviate the deficiencies of Patrick.” PO Resp. 48. Furthermore, as to claim 8, Patent Owner contends “Gilde does not disclose guest accounts.” *Id.* We disagree because the record does not support Patent Owner. Dr. Cole testifies that Gilde “expressly teaches” providing guest access. Cole Decl. ¶ 333 (citing Ex. 1005, 24:26–30). He explains that Gilde teaches that an end user may get “guest access” when a user’s device is quarantined. *Id.* Gilde describes guest access as follows:

In one embodiment, captive web portal 2806 informs an end-user, such as end user 120, why device in question 116 is quarantined, how the end user may get guest access (e.g. restricted access), or the like.

Ex. 1005, 24:25–31. Thus, we find that Gilde teaches guest accounts.

Patent Owner does not separately address claims 9 or 12.

We find that Petitioner has demonstrated by a preponderance of the evidence a motivation to combine Patrick and Gilde with a reasonable expectation of success. Furthermore, Petitioner has demonstrated that each element of claims 8, 9, and 12 is taught by this combination of references. For the reasons given, we determine that Petitioner has demonstrated by a preponderance of the evidence that claims 8, 9, and 12 would have been obvious in light of Patrick and Gilde.

V. CONCLUSION

For the foregoing reasons, we determine Petitioner has demonstrated by a preponderance of the evidence that all challenged claims of the '314 patent would have been obvious and are, therefore, unpatentable. Our conclusions are summarized in the following table.

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not shown Unpatentable
1, 4–6, 8, 15, 16, 18, 20	103(a)	Patrick	1, 4–6, 8, 15, 16, 18, 20	
2, 3, 7, 10, 11, 13, 17	103(a)	Patrick, Roesse	2, 3, 7, 10, 11, 13, 17	
8, 9, 12	103(a)	Patrick, Gilde	8, 9, 12	
Overall Outcome			1–13, 15–18, 20	

VI. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–13, 15–18, and 20 of the '314 patent are unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.⁵

⁵ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

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