

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**WEBROOT, INC. and
OPEN TEXT, INC.,**

Plaintiffs,

v.

AO KASPERSKY LAB,

TREND MICRO, INC.,

SOPHOS LTD.,

**CROWDSTRIKE, INC. AND
CROWDSTRIKE HOLDINGS, INC.,**

FORCEPOINT, LLC,

Defendants.

**W-22-CV-00243-ADA-DTG
(LEAD CASE)**

W-22-CV-00239-ADA-DTG

W-22-CV-00240-ADA-DTG

W-22-CV-00241-ADA-DTG

W-22-CV-00342-ADA-DTG

**OPENING CLAIM CONSTRUCTION BRIEF FROM:
AO KASPERSKY LAB (“KASPERSKY”),
TREND MICRO, INC., (“TREND MICRO”),
SOPHOS LTD. (“SOPHOS”),
CROWDSTRIKE, INC. AND CROWDSTRIKE HOLDINGS, INC. (“CROWDSTRIKE”),
AND FORCEPOINT, LLC (“FORCEPOINT”)**

invention,” as well as every embodiment described in the specification. *See id.* at 5:53–57; 5:15–21.

III. '045/'224 PATENTS

U.S. Patent Nos. 9,578,045 (“the ’045 patent”) and 10,257,224 (“the ’224 patent”) are generally directed to the transmission of an “event line” that contains information about events occurring on a computer. According to the patents, traditional network forensic tools, like packet sniffers, were able to observe from the network edge and capture information associated with network traffic, but did not have insight into how malware acted after it was on a particular computer in the network. ’224 patent at 1:36-51. This meant that the prior-art systems could not provide insight into how malware behaved while on computers in the network. *Id.* at 1:65-67.

The ’045 and ’224 patents gather and transmit information about events occurring *on* a computer system. 2:16-19. A preferred implementation includes multiple modules to gather and transmit event data. *Id.* at 2:33-40. First, system filters intercept events occurring on the system. *Id.* at 2:47-49. Second, a local “aggregator” collects events from the filters. *Id.* at 3:1-6. Third, a context analyzer “correlate[s] events to objects (their originating processes, devices, and users).” *Id.* at 3:44-47. Fourth, a global-perspective module gathers additional information about the event, such as information related to its “age, popularity,” and “whether it is known good, bad, or unknown.” *Id.* at 4:4-6. Optionally, an event-priority module uses logic or rule sets to associate a priority with the event data. *Id.* at 4:11-22. Finally, a “transmission engine” compiles the data into an “event line” and transmits the event line. *Id.* at 4:27-38.

A. “global perspective” (’045 patent, claim 1; ’224 patent, claims 1, 10, and 17)

Plaintiffs	Sophos
Plain and ordinary meaning	Indefinite

All of the asserted claims require obtaining a “global perspective,” but the specification has no description that assists in understanding the scope of that term, rendering it indefinite because it “fails to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014).

As an initial matter, the term “global perspective” does not have a well-understood or common meaning in the field of computer security. Instead, it appears to be a coined term specific to these patents so the meaning of the term must come from the intrinsic record. *See Iridescent Networks, Inc. v. AT&T Mobility, LLC*, 933 F.3d 1345, 1353 (Fed. Cir. 2019) (“[B]ecause the disputed term is a coined term, meaning it has no ordinary and customary meaning, the question is whether the intrinsic evidence provides objective boundaries to the scope of the term.”). The intrinsic record fails to provide the required objective boundaries of the scope of this term.

The claims themselves do not provide any objective boundaries because they inconsistently recite what information may be part of the “global perspective” and therefore fail to clarify any boundaries for the term itself. For example, claim 1 of the ’045 patent recites that the “global perspective for one or more related events to the at least one event across a network.” This phrase is nonsensical as written. Even if it means that the “global perspective” is related to at least one event across a network as proposed by Plaintiff, that is a further recited limitation on that term; it says nothing about the boundaries of the “global perspective” by itself. Indeed, during prosecution, the applicant added this limitation to overcome a rejection over the prior art. *See* Ex. N-1 (’045 FH) at 1. In making this amendment, applicant stressed that the prior art did not teach or suggest a “global perspective” related to multiple events across the network, but did not argue that the term “global perspective” itself required multiple events across a network. *Id.*, 11; *see also* Ex. O-1 (’224 FH) at 1, 11-12 (adding a similar limitation and making similar arguments). In other words,

the prosecution history shows that a “global perspective” by itself is not required to be related to multiple events across a network and therefore fails to provide objective boundaries for that term.

The claims in the ’224 patent likewise fail to clarify the scope of that term. In addition to requiring that the “global perspective” be related to events across the network, claim 1 of the ’224 patent also requires that “the global perspective comprises information associated with one or more of the first object and the originating object.” Although this passage provides examples of the type of information that *may* be in a global perspective, it still does not clarify the boundaries of the term since it does not limit the global perspective to that information. And, more to the point, because this language is not required by all claims that recite a global perspective, the term is not provided objective boundaries. *See Tandon Corp. v. United States Int’l Trade Comm’n*, 831 F.2d 1017, 1023 (Fed. Cir. 1987) (“There is presumed to be a difference in meaning and scope when different words or phrases are used in separate claims.”).

Furthermore, the claims separately require a “contextual state” or “contextual state information,” which is also based upon the event and upon which the “global perspective” must be based. *E.g.*, ’224 patent at cl. 1; *see Bd. of Regents of the Univ. of Tex. Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) (“Different claim terms are presumed to have different meanings.” (citation omitted)). The claims provide no explanation as to the boundaries between what constitutes the “contextual state” versus the “global perspective.” It is therefore unclear how “global perspective” is different from “contextual state,” or if they can be the exact same thing. *See id.*

The specification likewise does not provide any objective boundaries. Though the specification discusses, at a high level, obtaining “global perspective information” from a server, module, or cache and that the “global perspective” may be included in an event line or distributed

across a network; the specification never says what a global perspective actually is or provides any objective boundaries for the term. ’224 patent at 9:12-10:25. For example, the patent explains that:

[A] global perspective is applied to event 520C. The global perspective **may** comprise information for each object in the event and/or the contextual state 524. For example, a global perspective **may be** obtained for Object 2, Object 3, and Object 1 as illustrated. Accordingly, a global perspective 528 indicating the age of Object 2, the popularity of Object 2, the determination of Object 2, and/or additional IP/URL information of Object 2 may be provided. Similar global perspective information 532, 536 **may be** obtained for Object 3 and Object 1 respectfully.

’224 patent at 17:56-66 (emphases added). Although this passage describes what the global perspective “may be” based upon and what information “may be” in a global perspective, it does not set forth any objective boundaries for “global perspective” or inform a person of skill what it means with reasonable certainty. *See also id.*, 9:29-32 (explaining that the global perspective may “indicat[e] a specified age, popularity, malware determination, and/or IP/URL reputation be assigned an event priority representative of a potential risk assigned to the computing device 204 and/or network”), 19:5-10 (similar), 23:8-17 (explaining what “the global perspective field may include”). Compounding this ambiguity, the specification states that the “global perspective may comprise information for each object in the event and/or the contextual state.” *Id.*, 17:56-58. This passage seems to imply that the global perspective may simply be the same as the event information or the contextual state. Put simply, the patent fails to articulate any objective boundaries between what constitutes a “contextual state” and a “global perspective.”

The Federal Circuit has affirmed indefiniteness in similar situations. For example, in *IQASR LLC v. Wendt Corp.*, 825 F. App’x 900 (Fed. Cir. 2020), the Court held that the term “magnetic fuzz” was indefinite. Although the *IQASR* patent provided open-ended, non-limiting examples of “magnetic fuzz,” the Court still found the term indefinite because the specification lacked “a meaningful description of what constitutes magnetic fuzz” such that a person of skill

would not know “when it is present and how to address it.” *Id.* at 906. The Court explained that the “patentee cannot simultaneously use non-modal verbs to avoid limiting the scope of an invention while also arguing that those same examples define the limits of the invention.” *Id.* So too here. Like the *IQASR* patent, the asserted patents here include open-ended, non-limiting examples of what could be part of a “global perspective,” that do not limit the invention and the claims likewise fail to provide any objective boundaries. As in *IQASR*, a person of skill would have no idea when a “global perspective” is present or how the “contextual state” must be modified or used to obtain the claimed “global perspective.” Furthermore, it does not matter how many times “global perspective” is mentioned in the specification; “Additional discussion of a concept may obfuscate the concept just as much as it may clarify it.” *Id.*

Plaintiffs’ proposal to not construe the term does not resolve the ambiguity inherent in this term. *See Pac. Coast Bldg. Prod., Inc. v. CertainTeed Gypsum, Inc.*, 816 F. App’x 454, 457–59 (Fed. Cir. 2020) (finding a term indefinite where “the plain language of the claim and specification did not” provide guidance as to its meaning among more than one potential meaning); *Insituform Techs., Inc. v. Cat Contracting, Inc.*, 99 F.3d 1098, 1106 (Fed. Cir. 1996) (“attorney argument cannot control in light of the language of the claim”). Thus, Sophos requests “global perspective” be found indefinite.

B. “wherein the global perspective for one or more related events to the at least one event across a network” (’045 patent, claim 1)

Plaintiffs	Trend Micro / Sophos / Kaspersky / CrowdStrike
“wherein the global perspective is for one or more related events to the at least one event across other devices on a network”	Indefinite

The term “wherein the global perspective for one or more related events to the at least one event across a network” is nonsensical gibberish. Put most charitably, it is missing a verb,

rendering it meaningless. As a result, the claim fails to inform those skilled in the art about the scope of the invention with reasonable certainty. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). Courts may not rewrite indefinite claims but can, in limited instances, correct “obvious minor typographical and clerical errors.” *Pavo Sol. LLC v. Kingston Tech Co.*, 35 F.4th 1367, 1373 (Fed. Cir. 2022). A district court may correct an obvious error in a patent claim only if: “(1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims.” *Trusted Knight Corp. v. Int’l Bus. Machs. Corp.*, 681 F. App’x 898, 904 (Fed. Cir. 2017) (quoting *Novo Indus. v. Micro Molds Corp.*, 350 F.3d 1348, 1357 (Fed. Cir. 2003)). Correction is not proper here.

Where multiple possible corrections are feasible in light of the patent and prosecution history, correction is impermissible. *Trusted Knight*, 681 F. App’x 904. In *Trusted Knight*, the court found the claim limitation “a process of passing the encrypted data to a 3-ring level where a hook inserted by a hook-based key logger” indefinite as for missing a verb between “hook” and “inserted.” *Id.* The correction was subject to reasonable debate because multiple possible corrections were feasible based on the intrinsic evidence. *Id.* While the plaintiff proposed adding the word “is” to form “... a hook [is] inserted by a hook-based key logger,” the court found that the term could also be corrected as “... a hook [could be] inserted by a hook-based key logger,” which would create a different claim scope than the plaintiff’s proposed correction. *Id.*

Similar to *Trusted Knight*, the phrase “wherein the global perspective for one or more related events to the at least one event across a network” is missing a verb, rendering the claim scope indefinite. And just as in *Trusted Knight*, Plaintiffs’ proposal to add the word “is”—in addition to the phrase “other devices on”—is but one of many possible ways to fill the gap. Indeed,

Webroot’s suggested addition of four extra words in two separate locations indicates something beyond a minor error.

The “wherein” clause at issue was first added to the claims during prosecution in order to overcome prior art. Ex. N-1 (’045 FH) at 1, 10. The applicant’s statements when adding the limitation, in addition to other intrinsic evidence such as the phrasing of similar claim limitations, leave open multiple possible interpretations of what claim 1 of the ’045 patent might actually be supposed to say:

Possible Corrections	Support
“wherein the global perspective for one or more related events [is applied] to the at least one event across a network”	“ A global perspective ... associated with the event may be applied to at least one of the object, the event , the target, and the originating object.” Ex. N-1 at 10; <i>see also</i> ’045 patent at 17:51-52.
“wherein the global perspective for one or more related events [related] to the at least one event across a network [is displayed]”	“The Office Action argues that Kumar’s GUI, reproduced above, teaches this feature. Applicants respectfully disagree. Kumar’s GUI presents information related to the integrity of a single application running on a single device. There is no information displayed about events related to the application integrity across other devices on a network. ” Ex. N-1 at 11; <i>see also</i> ’045 patent at 5:37-45.
“wherein the global perspective for one or more related events [related] to the at least one event across a network [is stored]”	“For example, global perspective information may be cached or otherwise stored in the storage data 320.” ’045 patent at 13:25-27.
“wherein the global perspective for one or more related events [relates] to the at least one event across a network”	“. . . the global perspective relates to one or more other events related to the event across a network” ’224 patent at cl. 1.
“wherein the global perspective [is] for one or more related events to the at least one event across [other devices on] a network”	Plaintiffs’ Proposal ⁶

As shown above, Plaintiffs’ proposal is only **one** of multiple possible corrections of the

⁶ This proposal directly conflicts with the antecedent claim language, which requires “obtaining a global perspective for the at least one event.”

term, each of which is substantially different in claim scope. The “is applied” correction yields a claim where the global perspective of related events is mapped to one or more events across the network. In contrast, the “is stored” correction yields a claim where the global perspective for multiple events is stored. Thus, construction of the term is “subject to reasonable debate,” an additional reason why correction is improper and the clause remains indefinite. Even Plaintiffs’ proposal is still grammatically incorrect as it leaves a prepositional phrase without a corresponding verb (“to the at least one event across other devices on a network”). Further, Plaintiffs’ proposal requires adding four extra words in two separate locations, further showing that the lack of a verb is more than just a minor typographical or clerical error. Accordingly, there is no obvious correction, and as a result claim 1, and its dependent claims 2-7, are invalid under 35 U.S.C. § 112 as indefinite.

C. “event line” (’045 patent, claim 1; ’224 patent, claims 1, 10, and 17)

Plaintiffs	Kaspersky
Plain and ordinary meaning	a line of data containing at least event, contextual state, and global perspective information

The proper construction for “event line” is “a line of data containing at least event, contextual state, and global perspective information.” This construction is supported by and consistent with the ’045 and ’224 patents’ specification and file history. Moreover, “event line” is not a term of art, so it has no plain and ordinary meaning to POSITA.

The ’045 and ’224 patents disclose that the claimed “event line” includes at least event information, contextual state information, and global perspective information. ECF 1-3, Cols. 9:50-58, 13:16-17. 17:61-63; *see also id.*, Cols. 4:1-7, 4:58-62, 5:15-20, 5:32-37, 5:40-43, 5:53-56, 19:10-12, 22:55-60. For further context, the independent claims of both the ’045 and ’224 Patents require assembling/generating an event line. However, the ’045 and ’224 patents refer to

an event line that does not include global perspective information as only a “partially assembled event line;” not an event line. *See id.*, Col. 21:12-18. Accordingly, an event line that does not include global perspective information is not an assembled/generated event line as required by the claims, it is only a partially assembled event line.

Further, a foundational issue purportedly addressed by the '045 and '224 patents is providing forensic visibility into systems and networks such that “events occurring within a computing device are captured and additional *context* and a *global perspective* is provided for each event.” '045 patent at 2:23-27 (emphasis added). The '045 and '224 patents discuss that network edge devices (“network sniffers”) “may receive network events concerning the network from one or more hosts or systems.” But these devices “have no ability to establish any sort of context from within the host or system that is generating the event.” '045 patent at 1:40-46. Accordingly, it is the additional context state and global perspective information for each event that purportedly provides the additional forensic insight described by the '045 and '224 patents. It is the event line that provides information about the event including the additional context and a global perspective to provide the forensic visibility into the systems and networks. Accordingly, based on the '045 and '224 patents, “event line” includes event information, contextual state information, and global perspective information.

The term “event line” has no known meaning in the art and has no specific known meaning beyond the '045 and '224 patents. *Ex. S, Subrahmanian Decl.*, ¶¶ 18-22. A term that has no known meaning to a POSITA should be construed based on intrinsic evidence. *Irdeto Access, Inc., v. Echostar Satellite Corp.*, 383 F.3d 1295, 1299-1300 (Fed. Cir. 2004). Accordingly, the term “event line” is construed as understood based on the '045 and '224 patents, which as stated above is “a line of data containing at least event, contextual state, and global perspective information.”

- D. “gathering an event defining an action of a first object acting on a target, wherein the first object is executed on a device; generating contextual state information for the event by correlating the event to an originating object of the first object; obtaining a global perspective for the event based on the contextual state information, wherein the global perspective comprises information associated with one or more of the first object and the originating object, and wherein the global perspective relates to one or more other events related to the event across a network;” (’045 patent, claims 1, 8, and 16; ’224 patent, claims 1, 10, and 17)

Plaintiffs	Sophos / CrowdStrike
Plain and ordinary meaning	Order of steps: gathering, generating, and obtaining steps must be performed in order

All of the asserted claims of the ’224 and ’045 patents require (a) gathering an event, (b) generating a contextual state, and (c) obtaining a global perspective. While claims are ordinarily presumed to not require an order, the opposition presumption applies when the language of the claims mandates that these steps are performed in the order in which they are recited. *See, e.g., Wi-LAN, Inc. v. Apple, Inc.*, 811 F.3d 455, 460 (Fed. Cir. 2016) (claims have an “ordering requirement” when steps refer back to results of previous steps). Here, each step relies upon input from the previous steps. For example, claim 1 of the ’224 patent recites:

- [1PRE] A method comprising:
- [1A] *gathering an event* defining an action of a first object acting on a target, wherein the first object is executed on a device;
- [1B] *generating contextual state information for the event* by correlating the event to an originating object of the first object;
- [1C] *obtaining a global perspective for the event based on the contextual state information*, wherein the global perspective comprises information associated with one or more of the first object and the originating object, and wherein the global perspective relates to one or more other events related to the event across a network;

As set forth above, the gathering step [1A] recites gathering an event, and the generating step [1B] uses that gathered event to generate contextual state information for that event. The

obtaining step [1C] then uses the generated contextual state information to obtain a global perspective “based on” that contextual information. In sum, based on the unambiguous claim language, [1B] must occur after [1A] since [1B] needs the gathered event from [1A]; and [1C] must occur after [1B] because [1C] needs the generated contextual state information from [1B].

In addition to the unequivocal language of the claims, which is dispositive, every embodiment discussed in the specification requires this order, which confirms the order required by the claims. *See Mformation Techs., Inc. v. Rsch. in Motion Ltd.*, 764 F.3d 1392, 1400 (Fed. Cir. 2014) (noting order of steps “is consistent with the sole embodiment in the specification”). For example, the patent describes this process in connection with Figures 5A through 5C. Figure 5A discusses capturing events. ’224 patent at 17:21-34. Figure 5B recites applying a contextual analysis to those captured events to generate the contextual state. *Id.*, 17:35-55. And Figure 5C recites applying a global perspective to the event and contextual state. *Id.*, 17:56-66; *see also id.*, 4:45-5:23.

Furthermore, the law is clear that apparatus and system claims can have an order of steps when they are similar to the method claim. *See Avago Techs. Gen. IP (Singapore) Pte Ltd. v. Asustek Computer, Inc.*, No. 15-CV-04525-EMC, 2016 WL 3029674, at *12 (N.D. Cal. May 27, 2016) (noting case law supporting, and absence of any case law refuting, that “order can be required by a system/apparatus claim”); *Maxim Integrated Prod., Inc. v. Silicon Mitus Tech., Inc.*, No. 17-CV-03507 NC, 2018 WL 4657384, at *9 (N.D. Cal. July 3, 2018) (collecting cases). Here, apparatus claims 10 and 17 of the ’224 patent, and system claims 8 and 16 of the ’045 patent contain virtually identical limitations to [1A], [1B], and [1C], including the same referential language back to the prior steps.

’224, Claim 1	’224, Claim 10	’224, Claim 17
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<i>gathering an event</i> defining an action of a first object acting on a target, wherein the first object is executed on a device;	<i>gather an event</i> defining an action of a first object acting on a target	<i>gather an event</i> defining an action of a first object acting on a target;
<i>generating contextual state information for the event</i> by correlating the event to an originating object of the first object;	<i>generate contextual state information for the event</i> by correlating the event to an originating object of the first object	determine a global perspective for the event <i>based on contextual state information for the event</i> ,
<i>obtaining a global perspective for the event based on the contextual state information</i> ,	<i>obtain a global perspective for the event based on the contextual state information</i> ,	<i>determine a global perspective for the event based on contextual state information</i> for the event,
'045, Claim 1	'045, Claim 8	'045, Claim 16
<i>gathering one or more events</i> defining an action of a first object acting on a target;	<i>gather one or more events</i> defining an action of a first object acting on a target;	<i>gather one or more events</i> defining an action of a first object acting on a target;
<i>generating a contextual state for at least one of the one or more events</i> by correlating the at least one event to an originating object. . .	<i>generate a contextual state for at least one of the one or more events</i> by correlating the at least one event to an originating object. . .	<i>generate a contextual state for at least one of the one or more events</i> by correlating the at least one event to an originating object. . .
<i>obtaining a global perspective for the at least one event</i> by obtaining information associated with one or more of the first object and the originating object. . .	<i>obtain a global perspective for the at least one event</i> by obtaining information associated with one or more of the first object and the originating object. . .	

Although claim 17 uses passive voice instead of an active step for the generation of the contextual state information, it is still clear that the global perspective is based on the contextual state information, which is based on the gathered event.

The nature of Plaintiffs' dispute with this order of steps is unclear and they failed to articulate any support for these steps being out of order in the parties' meet and confer. As a result, all claims of the '224 and '045 patents should be construed such that the gathering an event, generating a contextual state, and obtaining a global perspective steps be performed in order

E. "a sensor agent . . ." ('224 patent, claims 10, 14, 15, and 17)

Dated: October 28, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 2022, I caused the preceding document to be served on all counsel through the Court's ECF system.

/s/ J. Stephen Ravel
J. Stephen Ravel