

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AO KASPERSKY LAB
Petitioner

v.

OPEN TEXT INC.
Patent Owner

Case IPR2023-00124
Patent No. 9,578,045

PATENT OWNER'S SUR-REPLY

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<i>Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.</i> , 853 F.3d 1272 (Fed. Cir. 2017)	9

EXHIBIT LIST

Exhibit	Description
2001	Declaration of Professor Nenad Medvidovic, Ph.D.
2002	<i>Curriculum Vitae</i> of Professor Nenad Medvidovic, Ph.D.
2003	<i>Webroot, Inc. and Open Text Inc., v. CrowdStrike, Inc. and CrowdStrike Holdings, Inc.</i> , Case No. 6:22-cv-00241-ADA-DTG, First Amended Complaint for Patent Infringement, Dkt. 60 (W.D. Tex., Sept. 8, 2022) (excerpted)
2004	<i>Sonrai Memory Ltd. v. Kingston Tech. Co. and Kingston Tech. Corp.</i> , Case No. 6:21-cv-1284-ADA, Order Denying Kingston Tech. Co. and Kingston Tech. Corp.'s Opposed Motion to Stay Pending Resolution of <i>Inter Partes</i> Review, Dkt. 94 (W.D. Tex., Oct. 18, 2022)
2005	<i>mCom IP, LLC v. Cisco Systems, Inc.</i> , Case No. 6:22-cv-00261-ADA, Order Denying Defendant's Motion to Stay Pending <i>Inter Partes</i> Review, Dkt. 42 (W.D. Tex., Oct. 20, 2022)
2006	<i>Intellectual Ventures I LLC et al. v. Hewlett Packard Enterprise Co.</i> , No. 6:21-cv-00596-ADA, Order Denying Hewlett Packard Enterprise Company's Opposed Motion to Stay Pending Resolution of <i>Inter Partes</i> Review, Dkt. 104 (W.D. Tex., Dec. 22, 2022)
2007	<i>Webroot, Inc., Open Text Inc., v. AO Kaspersky Lab et al.</i> , Case No. 6:22-cv-00243-ADA-DTG, Order Granting Third Amended Scheduling Order, Dkt. 142 (W.D. Tex., Dec. 27, 2022)
2008	<i>Standing Order Governing Proceedings (OGP) 4.2 – Patent Cases</i> (W.D. Tex., Sept. 16, 2022), available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/Waco/Albright/Standing%20Order%20Governing%20Proceedings%20-%20Patent%20Cases%20091622.pdf (excerpted)

Exhibit	Description
2009	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab et al.</i> , Case No. 6:22-cv-00243-ADA-DTG, Defendants' Opening Claim Construction Brief, Dkt. 86 (W.D. Tex., Oct. 28, 2022) (excerpted)
2010	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab et al.</i> , Case No. 6:22-cv-00243-ADA-DTG, Defendants' Reply Claim Construction Brief, Dkt. 110 (W.D. Tex., Dec. 6, 2022) (excerpted)
2011	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab et al.</i> , Case No. 6:22-cv-00243-ADA-DTG, Scheduling Order, Dkt. 50 (W.D. Tex., Sept. 28, 2022) (excerpted)
2012	<i>Open Text Inc. et al., v. AO Kaspersky Lab</i> , Case No. 6:22-cv-00243-ADA-DTG, Defendant AO Kaspersky Lab's Preliminary Invalidity Contentions Exhibit 4A (W.D. Tex., Sept. 14, 2022) (excerpted)
2013	<i>Webroot, Inc. and Open Text Inc., v. Sophos Ltd.</i> , Case No. 6:22-cv-00240-ADA-DTG, Defendant Sophos Ltd.'s Preliminary Invalidity Contentions (W.D. Tex., Sept. 13, 2022) (excerpted)
2014	<i>Webroot, Inc. and Open Text Inc., v. Trend Micro Inc.</i> , Case No. 6:22-cv-00239-ADA-DTG, Defendant's Preliminary Invalidity Contentions (W.D. Tex., Sept. 13, 2022) (excerpted)
2015	<i>Webroot, Inc. and Open Text Inc., v. CrowdStrike, Inc. and CrowdStrike Holdings, Inc.</i> , Case No. 6:22-cv-00241-ADA, Complaint for Patent Infringement, Dkt. 1 (W.D. Tex., Mar. 4, 2022)
2016	<i>Open Text Inc. et al., v. AO Kaspersky Lab</i> , Case No. 6:22-cv-00243-ADA-DTG, First Amended Complaint for Patent Infringement, Dkt. 80 (W.D. Tex., Oct. 27, 2022)
2017	<i>Webroot, Inc. and Open Text Inc., v. Trend Micro Inc.</i> , Case No. 6:22-cv-00239-ADA-DTG, First Amended Complaint for Patent Infringement, Dkt. 53 (W.D. Tex., Sept. 7, 2022)

Patent Owner's Sur-reply to
Petition for *Inter Partes* Review
Patent No. 9,578,045

Exhibit	Description
2018	<i>Webroot, Inc. and Open Text Inc., v. Sophos, Ltd.</i> , Case No. 6:22-cv-00240-ADA-DTG, Second Amended Complaint for Patent Infringement, Dkt. 76 (W.D. Tex., Oct. 24, 2022)
2019	File History for Continuation Patent, U.S. Patent No. 10,257,224
2020	U.S. Publication No. 20080016570 to Capalik ("Capalik 570")
2021	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, (W.D. Tex. Dec. 9, 2022) Dkt. 133, Transcript of Motions Hearing (excerpted)
2022	U.S. Patent No. 10, 257,224 to Joseph Jaroch ("224 continuation patent")
2023	Joseph Jaroch LinkedIn
2024	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, Claim Construction Order, Dkt. 236 (W.D. Tex. Mar. 16, 2023)
2025	<i>CrowdStrike, Inc. v. Open Text Inc.</i> , IPR2023-00126, Deposition Transcript of Wenke Lee, Ph.D., dated July 17, 2023
2026	Second Declaration of Professor Nenad Medvidovic, Ph.D.
2027	Email chain from Brian Eutermoser to Hunter Horton regarding CrowdStrike, Inc. v. Open Text Inc. IPR2023-00124 - Dr. Lee deposition

Pursuant to the June 15, 2023 Scheduling Order (Paper 12) as modified by the Board's December 21, 2023 Decision Granting Institution of *Inter Partes* Review and Granting Motion for Joinder in IPR2023-01199 (Paper 24), extending Due Date 3, Open Text Inc. ("Patent Owner") submits this Sur-Reply to the Reply (Paper 26) of AO Kaspersky Lab ("Petitioner") in the *inter partes* review ("IPR") of U.S. Patent No. 9,578,045 (EX-1001, "the '045 patent").

I. INTRODUCTION

Petitioner's challenge to the '045 patent should be rejected because the arguments presented in Petitioner's grounds fail to establish that the prior art discloses or renders obvious the claimed invention.

Ground 1 fails because (1) Morris does not disclose or render obvious the "originating object" limitation that is part of each challenged claim, and Petitioner persists in wrongly citing GenesisActor information for this limitation—which the '045 patent expressly distinguishes from the claimed "originating object"; (2) with respect to independent claims 8 and 16 and their dependent claims, Morris does not disclose or render obvious a "sensor agent" that performs all steps required of the sensor agent in claims 8 and 16; (3) with respect to dependent claim 10, Morris does not render obvious the claimed "end recipient device" or transmitting an event line thereto; and (4) with respect to dependent claim 3, van Oorschot's "severity level"

is not based on generated context because it does not include an originating object, so it cannot render obvious the claimed event priority.

In its institution decision, the Board correctly found that Petitioner failed to establish a reasonable likelihood that it would prevail on its Capalik-based Ground 2. (Paper 11 at 44-47.) Capalik's system observes computer objects running on virtual machines and virtual operating systems on a single device that does not correlate events "across a network." A POSITA would not understand Capalik's description of information collected from virtual operating systems on a single device as meeting the "across a network" limitation in the challenged claims.

Accordingly, the Board should hold that Petitioner has not met its burden and that the challenged claims are patentable.

II. MORRIS DOES NOT DISCLOSE OR RENDER OBVIOUS THE "ORIGINATING OBJECT" LIMITATION (GROUND 1, CLAIMS 1-4, 8-10, 12, and 16)

A. Patent Owner's Construction of "Originating Object" Is Consistent with the Specification.

Each challenged claim of the '045 patent requires an "originating object" as contextual state information. The parties dispute the proper construction of "originating object."

There should be no dispute that claim terms are to be read in light of the specification. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005)

(en banc). The '045 patent describes generating contextual state information for each event in a chain of events to create an audit trail. (*See, e.g.*, EX-1001 3:41-58, 12:55-63, 17:30-50.) Contextual state information may include, among other things, an “originating object” (or originating process) and the GenesisActor. Each addresses objects acting at different stages of the chain of events. An “originating object” is determined based on “a previous event that *initiated or otherwise created the current process and/or object*.” (EX-1001 17:40-41 (emphasis added).) In other words, the “originating object” is the immediate parent of the object acting in the event being analyzed. Patent Owner’s proposed construction for “originating object”—*i.e.*, “the object that directly initiated or otherwise created the first object”—is consistent with the specification.

Petitioner does not propose a construction for “originating object,” but argues that the “ultimate parent” of an object, or GenesisActor, is “an example of an originating object within the meaning of the '045 Patent.” (Paper 26 at 3.) This is incorrect because it conflates two distinct concepts. As addressed above, the “originating object” creates the object that is acting in the event being analyzed. In contrast, the GenesisActor is the object that is the “ultimate parent of the event” (*id.* 8:45-48) and “is determined based on a *chain* of previous events” (*id.* 17:42-43 (emphasis added)). While the originating object and GenesisActor may both be

objects that take action, each addresses a distinct part of the chain of events. Thus, an “originating object” is not a genus or broad category of objects that encompasses the GenesisActor.

The specification repeatedly addresses the “originating object” and GenesisActor as distinct pieces of contextual state information. For example, the specification states that “[c]ontextual state information may include...originating processes” and *[a]dditionally*, contextual state information may include GenesisActor information....” (See EX-1001 8:42-45; *see also id.* 17:42-43 (“*Additionally...the GenesisActor is determined based on a chain of previous events.*”) (emphasis added).) The GenesisActor would not be “*additional*[.]” information if it was merely an example of an originating process. Similarly, in connection with Figure 5B, the specification refers to “a context 520B comprising an origination process...and in some instances, a GenesisActor may further *supplement* or enhance” the context. (*Id.* 17:32-35 (emphasis added).) Figure 5B visually depicts separate fields for “Originating Process” and “GenesisActor.” (*Id.* Fig. 5B.) Again, the GenesisActor would not be “*supplement*[al]” information if it was merely an example of an originating process. Thus, the specification consistently presents the originating process and GenesisActor as distinct pieces of information, not as a genus and species.

Petitioner fails to cite any part of the specification that describes the GenesisActor as an *example* of an originating object. Instead, Petitioner argues that originating object encompasses the GenesisActor because the specification suggests the potential for more than one originating object. (Paper 26 at 2-3, citing Abstract, 8:42-43, 12:57-59. 12:63-66, 20:63-65.) However, the specification's reference to multiple originating objects relates to the audit trail used to track an event back across a chain of events to what triggered it. (*See, e.g., id.* 12:63-63.) For example, in Figure 5B and the related discussion, the originating object of the Actor is determined at each step in the chain of events. (*Id.* Fig. 5B, 17:30-50.) This results in identifying multiple originating objects (one for each event in the chain). It does not suggest that the GenesisActor may be substituted for the originating object. On the contrary, the GenesisActor is identified by tracking the originating object for each event back through the chain of events. (*Id.* 17:42-50.) Thus, the originating object is a specific piece of contextual information that is distinct from the GenesisActor.

Petitioner asserts that Patent Owner proposed a “plain and ordinary meaning” construction in the district court and argues that Patent Owner's proposed construction in this proceeding is effectively an attempt to amend the claims. (Paper 26 at 1-2.) This is incorrect. The meaning of the term “originating object” was not

at issue during district court claim construction. (EX-1035 at 6-8 (showing “originating object” not among terms for construction other than as part of an order of steps dispute)) Nevertheless, Patent Owner’s position remains that “originating object” should be construed in accordance with the plain and ordinary meaning in view of the specification. Patent Owner’s proposed construction is not inconsistent with its position in the district court and is not an attempt to amend the claims. Rather, a more specific statement of the plain and ordinary meaning has become necessary to resolve the parties’ dispute based on the development of arguments in this IPR. *See O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) (“A determination that a claim term...has the ‘plain and ordinary meaning’ may be inadequate...when reliance on a term’s ‘ordinary’ meaning does not resolve the parties’ dispute.”); *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe only those terms...that are in controversy, and only to the extent necessary to resolve the controversy.”) (quotation omitted).

Petitioner also appears to argue that Patent Owner must establish a disavowal of claim scope that would exclude the GenesisActor from the meaning of “originating object.” (Paper 26 at 2-3.) But this misconstrues Patent Owner’s argument. As addressed above, the originating object and GenesisActor are directed

to two distinct portions of the audit trail. The originating object created the object acting in the event currently being analyzed, whereas the GenesisActor is the object that created the entire chain of events. Petitioner's argument that GenesisActor is an example of an originating object is incorrect and therefore disavowal of claim scope is inapposite.

B. Morris Does Not Teach an “Originating Object” As Required by Each of the Challenged Claims.

Petitioner's Ground 1 hinges on whether Morris's discussion of the GenesisActor equates to an “originating object” as required by the claims of the '045 patent. (Paper 1 at 14; Paper 26 at 4.) Because the '045 patent plainly distinguishes the GenesisActor from an originating object, Ground 1 fails.

In its Reply, Petitioner argues that the quality of contextual state information provided by the GenesisActor is “irrelevant” to the claims. (Paper 26 at 5.) The Board should reject this red herring argument. As addressed above, the '045 patent distinguishes between an “originating object” (which created the object acting in the event currently being analyzed) from the GenesisActor (which is the ultimate parent of the event). This distinction is significant because the GenesisActor may provide information much less closely related to the event currently being analyzed. (EX-2026 ¶¶54-57.) Thus, the issue is not whether the claims require a certain quality of

information, but rather that the claims require an “originating object”—which is meaningfully different from the GenesisActor.

For the first time in its Reply, Petitioner argues in the alternative that a POSITA would have understood how to use the GenesisActor to facilitate identifying the “originating object.” (Paper 26 at 5-6.) The Board should reject this argument for several reasons.

First, the petition relies on the GenesisActor in Morris as disclosing the “originating object” limitation. (Paper 1 at 15 (“‘Genesisactor’ (i.e., originating object of the first object)”); *id.* (“*Morris’s* disclosure of correlating “Genesisactor” data with an event is consistent with the ’045 Patent’s disclosure of *generating a contextual state*.... Therefore, *Morris* discloses *generating a contextual state for at least one of the one or more events by correlating the at least one event to an originating object.*”).) Petitioner cannot belatedly shift its argument to suggest that a POSITA could use the GenesisActor to identify the “originating object” required by the claims. *See, e.g., 3M Company v. Bay Materials, LLC*, No. IPR2022-01214, 2024 WL 168075, at *15 (P.T.A.B. Jan. 16, 2024) (“The new argument and evidence presented in the Reply, directed to making out that essential aspect of the challenge, is untimely.”); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–70 (Fed. Cir. 2016) (“the expedited nature of IPRs bring with it an obligation

for petitioners to make their case in their petition to institute”); *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286–87 (Fed. Cir. 2017) (“Shifting arguments in this fashion is foreclosed by statute, our precedent, and Board guidelines.”) (citations omitted); *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1330–31 (Fed. Cir. 2019) (“it is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify with particularity the evidence that supports the grounds for the challenge to each claim... [a]ccordingly, an IPR petitioner may not raise in reply an entirely new rationale for why a claim would have been obvious”) (quotations omitted).

Second, Petitioner’s argument that a POSITA would have understood “going ‘forward’” from the GenesisActor to the originating object is not supported by any expert testimony. Rather, Petitioner relies solely on excerpts from a textbook on algorithms. (Paper 26 at 5-6 citing EX-1036 (addressing depth-first search).) Petitioner’s argument is heavily dependent on multiple assumptions not taught by Morris or included in the petition. For example, the depth-first tracking adjacency matrix addressed in EX-1036 requires a large amount of information not disclosed by Morris in order to operate. (EX-1036 at 116 (using steps 2-6, 6-2, 6-4, 4-3, etc., in order to connect 7 to 0).) Moreover, EX-1036 describes using immediate parent information—*not* GenesisActor or ultimate parent object information—to create full

audit trails (*see* EX-1036 115-118, Figs. 18.5 and 18.6 (describing the depth-first search process of tracing each node using 1:1 relationships of interstitial connection)), which is consistent with Patent Owner's construction of "originating object." Petitioner fails to explain how this additional reference would be combined with Morris, much less why a POSITA would have been motivated to combine the references.

In sum, the arguments presented in the petition do not establish that Morris teaches an "originating object" as required by each of the challenged claims. The Board should reject Ground 1 as to all challenged claims on this basis alone.

III. MORRIS DOES NOT DISCLOSE OR RENDER OBVIOUS A "SENSOR AGENT" (GROUND 1, CLAIMS 8-10, 12, 16)

Independent claims 8 and 16 each require a "sensor agent" that is operable to, *inter alia*, (i) gather one or more events; (ii) generate a contextual state information, (iii) obtain a global perspective,¹ and (iv) assemble an event line an event. A single

¹ Claim 16 does not recite a separate limitation of "obtaining" a global perspective. Although "obtaining" is not explicitly recited as a claim limitation, the "assemble an event line" limitation performed by the sensor agent in Claim 16 includes global perspective information, which means that the sensor has "global perspective information" in order to create the event line.

“sensor agent” must meet all of the recited limitations. *See Salazar v. AT&T Mobility LLC*, 64 F.4th 1311, 1317 (Fed. Cir. 2023); *In re Varma*, 816 F.3d 1352, 1363 (Fed. Cir. 2016); *Convolve, Inc. v. Compaq Computer Corp.*, 812 F.3d 1313, 1321 (Fed. Cir. 2016). (Paper 19 at 36-37.)

The petition expressly states that it relies on the “local ‘agent’ software” on Morris’s “remote computer 2” as the “sensor agent.” (Paper 1 at 31-32; EX-2025 186:3-6.) However, the petition does not explain how the local agent software met each of the required limitations. (*See* Paper 19 at 51-52.) In its Reply, Petitioner presents improper and unsupported new arguments in an attempt to remedy the deficiencies of the petition and gaps in the prior art. Each of these new arguments should be rejected.

A. The “Sensor Agent” Must “Generate a Contextual State for At Least One of the One or More Events by Correlating the At Least One Event To an Originating Object” (Claims 8-10, 12, 16).

As addressed in Patent Owner’s Response, the petition does not explain how any specific device in Morris meets the “generate a contextual state” limitation. (Paper 16 at 45-48.) In its Reply, Petitioner argues that this limitation was addressed on page 32 of the petition. (Paper 26 at 9-10.) However, nothing on those pages (or on pages 14-20 of the petition regarding the “generating a contextual state” limitation of claim 1) addresses how the “local agent software” on Morris’s “remote

computer 2,” or any other device, meets this limitation. The portions of Dr. Lee’s declaration that Petitioner cites in the Reply also do not address how any particular device in Morris purportedly meets this limitation. (*Id.*, citing EX-1003 ¶¶83-86, 112-118.)

In an attempt to correct this deficiency of the petition, Petitioner argues that paragraph [0087] of Morris addresses how “remote computer 2” meets this limitation. (Paper 26 at 9-10.) This is a new argument not presented in the petition and should be rejected on that basis alone. *See, e.g., 3M Company*, No. IPR2022-01214, 2024 WL 168075, at *15; *Intelligent Bio-Sys.*, 821 F.3d at 1369–70. Moreover, as addressed above, Petitioner relies on the GenesisActor in Morris as disclosing the “originating object” required by this limitation. Petitioner’s new argument regarding paragraph [0087] of Morris fails to address how the “local ‘agent’ software” on Morris’s “remote computer 2” correlates the event to the GenesisActor.²

² Petitioner also cites two excerpts of Dr. Lee’s deposition regarding the “gather an event” limitation (Reply at 10-11, citing EX-2022 188:17-189:6, 189:12-190:1), which Patent Owner addresses in substance below. Petitioner does not explain how these excerpts relate to the “generate contextual state information” limitation.

Thus, the petition fails to establish that Morris discloses a “sensor agent” that meets the “generate a contextual state” limitation of claims 8 and 16.

B. The “Sensor Agent” Must “Obtain a Global Perspective” (Claim 8) / “Assemble an Event Line” That Includes “Global Perspective Information” (Claim 16).

In its Response to the Petition, Patent Owner explained that petition points to Morris’s *base computer*—not the software on Morris’s remote computer—as the device that purportedly obtains a global perspective/assembles an event line with global perspective information. (Paper 16 at 48-51.) In its Reply, Petitioner fails to identify any portion of the petition arguing that the software on Morris’s remote computer (which Petitioner contends discloses the “sensor agent”) meets this limitation.

In an incongruous portion of Petitioner’s Reply regarding the separate “gather an event” limitation (addressed below), Petitioner quotes certain deposition testimony from Dr. Lee to argue that (other than for claim 12 of the related ’224 patent), a global perspective could be determined at the remote computer instead of at the base computer. (Paper 26 at 11-12.) However, neither Petitioner nor Dr. Lee cite any portion of Morris to support that argument, much less identify where it was

included in the petition.³ The speculative testimony from Dr. Lee is not sufficient for Petitioner to meet its burden.

Moreover, claim 8 requires that the sensor agent “obtain a global perspective for the at least one event by obtaining information associated with one or more of the first object and the originating object” and “the global perspective for one or more related events to the at least one event across a network relates to one or more other events related to the event across the network.” (EX-1001, claim 8.) Petitioner does not explain how the local agent of remote computer 2 obtains global perspective for at least one event by obtaining information associated with one or more of the first object and the originating object, nor does Petitioner explain how the global perspective relates to one or more other events related to the event across a network.

³ In connection with claim 16, the petition contends that, in Morris, “analysis” by the base computer may add global perspective information to a “key” and then copy the key to the remote computer. (Paper 1 at 36.) However, this argument in the petition merely confirms that the Petitioner is relying on Morris’s base computer—not the remote computer—to assemble an event line that includes global perspective information.

Thus, the petition fails to establish that Morris discloses a “sensor agent” that meets the “global perspective” limitation of claims 8 and 16.

C. The “Sensor Agent” Must “Gather One or More Events” (Claims 8 and 16).

In its Response to the Petition, Patent Owner explained how Petitioner failed to articulate clearly whether it contends the software on Morris’s remote computer or Morris’s base computer is the “sensor agent” that “gather[s] an event” as required by claims 8 and 16. In its Reply, Petitioner argues that “Patent Owner is wrong” in pointing out that the petition asserts the *base computer* gathers events. (Paper 26 at 13.) But that is exactly what the petition states:

Morris discloses that ‘the base computer’ gathers ‘events initiated by or involving the object when the object is created, configured or runs on the respective remote computers.’ *Morris*, [0018].

(Paper 1 at 12.) Petitioner offers no explanation for this statement in the petition other than to make different arguments in its Reply about paragraph [0018] of *Morris*. (Paper 26 at 13.) Petitioner’s ambiguous discussion of whether the base computer or remote computer in *Morris* gathers events is insufficient.

In sum, Petitioner fails to meet its burden to state with particularity how *Morris* discloses a single “sensor agent” that meets all of the recited limitations of claims 8 and 16. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (noting petitioners have the “burden from the onset to show with

particularity why the patent it challenges is unpatentable"). Claims 8 and 16, and their dependent claims, should be upheld as patentable.

IV. MORRIS DOES NOT DISCLOSE OR RENDER OBVIOUS AN "END RECIPIENT DEVICE" (GROUND 1, CLAIM 10)

As Patent Owner addressed in its Response, the term "end recipient device" should be construed to mean "a device that is separate from the device that includes the sensor agent and the global perspective information server." (Paper 16 at 18-21.)

Claim 10 requires a sensor agent that is stored on a device, a global perspective information server, and an end recipient device. Claim 10 states that "the sensor agent transmits the event line to the end recipient device." The sensor agent and the end recipient device cannot be on the same device, or the event line would not be "transmit[ed]" from one device to the other. (EX-2026 ¶¶60-61.) And the claim requires both a global perspective information server and an end recipient device. *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)). Patent Owner's proposed construction is further reinforced by the specification, which repeatedly describes the end recipient device as a device that is separate from the device that includes the sensor agent and the global perspective information server. (EX-1001 6:46-50, 14:8-11, 14:48-51.)

In its Reply, Petitioner makes the conclusory statement that the claim language and specification do not “justify Patent Owner’s interpretation,” but does not identify any substantive basis for its opposition.⁴ (Paper 26 at 6-7.) Instead, Petitioner argues that Patent Owner’s proposed construction is “in conflict with the district court’s construction”—seemingly because the district court did not construe this term—and is an attempt to amend the claim. (Paper 26 at 7.) However, the district court was not asked to construe this term because it was not apparent that an express claim construction would be necessary. Patent Owner’s proposed construction is not inconsistent with its position in the district court and is not an attempt to amend the claims. Rather, a claim construction has become necessary to resolve the parties’ dispute as it has developed in this IPR. *See O2 Micro*, 521 F.3d

⁴ Petitioner argues that it is unclear whether Patent Owner’s proposed construction requires the “end recipient device” to be separate from one component or two components. (Reply at 7.) As noted above, Claim 10 requires (i) a sensor agent that is stored on a device and (ii) a global perspective information server (which is itself a device). The context of the claim language and the specification plainly show that the end recipient device is separate from both of these devices.

at 1361; *Realtime Data*, 912 F.3d at 1375. The Board should adopt Patent Owner's proposed construction.

In its Reply, Petitioner appears to rely solely on Morris's base computer 3 as the end recipient device and implicitly abandons its argument that the remote computer 2 is also an end recipient device. (Paper 26 at 8-9.) Based on Patent Owner's proposed construction and as further addressed in Patent Owner's response, Morris's base computer 3 is not an end recipient device. Petitioner relies on base computer 3 as the *global perspective information server* and fails to identify any support in the claims or specification for the base computer 3 simultaneously being an end recipient device. Moreover, nothing in Morris suggests that the base computer 3 is consistent with the function of an end recipient device as described in the '045 patent. (See, e.g., EX-1001 at Figures 2 and 4 (depicting global perspective information server and end recipient device as separate devices); 6:58-63 ("The communication network 212 may include one or more networks capable of supporting communications between nodes of the system 200, including but not limited to a computing devices 204A-C, the global perspective information server 216 and the end recipient 220."); 9:45-49 ("end recipient 220 may be able to more easily identify events, and/or instances of malware, that require more immediate attention"); 12:52-55 ("The context analyzer 348 ensures that a user at the end

recipient 220 is provided with the deepest view of the most important data but still has access to the full range of data if they wish to see it.”); 12:60-63 (“audit trail allows an administrator, at an end recipient 220 for example, to forensically track back any event which occurs to what triggered it”).)

Thus, there is no support for Petitioner's contention that the base computer 3 of Morris is both an end recipient device and a global perspective information server. Accordingly, claim 10 should be upheld as patentable.

V. CAPALIK DOES NOT DISCLOSE OR RENDER OBVIOUS A GLOBAL PERSPECTIVE THAT RELATES TO ONE OR MORE OTHER EVENTS RELATED TO THE EVENT ACROSS A NETWORK (GROUND 2, CLAIMS 1-4, 7-10, 12, 15-18)

In its Reply for Ground 2, Petitioner largely rehashes arguments that the Board has already rejected. For the reasons stated in Patent Owner's Preliminary Response (Paper 7), the Institution Decision (Paper 11), and Patent Owner's Response (Paper 16), the Board should maintain its rejection of those arguments in the final written decision. In a belated attempt to revive Ground 2 based on Capalik, Petitioner also improperly presents a variety of new arguments and theories for the first time in its reply. The Board should reject these arguments as untimely as well as on the merits. *See, e.g., 3M Company*, No. IPR2022-01214, 2024 WL 168075, at *15; *Intelligent Bio-Sys.*, 821 F.3d at 1369–70.

For example, Petitioner argues that Patent Owner does not give proper effect to the term “relates to” in the limitation “wherein the global perspective relates to one or more other events related to the event across a network.” (Paper 26 at 14.) On the contrary, Patent Owner properly identified and analyzes this limitation as it appears in the claims (Paper 16 at 60, 63, 65, 66)—as did the Board in its Institution Decision (Paper 11 at 39-46) and the applicant when successfully distinguishing the Kumar on similar grounds during prosecution of the '224 continuation patent (EX-2019 at 293). Moreover, Petitioner does not explain how its emphasis on the term “relates to” has any meaningful significance to the disclosure in Capalik. In short, both Patent Owner and the Board have applied a proper reading of this limitation when rejecting Petitioner's Capalik-based grounds.

Petitioner for the first time raises new arguments regarding the disclosures in Figures 1 and 2 of Capalik. (Paper 26 at 14-18.) Again, these arguments differ from the petition and should be rejected on that basis alone. *See, e.g., 3M Company*, No. IPR2022-01214, 2024 WL 168075, at *15; *Intelligent Bio-Sys.*, 821 F.3d at 1369–70. The new arguments are also substantively deficient. For example, Patent Owner refers to “the text accompanying Figure 1” but does not identify the text it references. (Reply at 14.) This is insufficient for Petitioner to meet its burden. *See Harmonic*,

815 F.3d at 1363 (petitioners have the “burden from the onset to show with particularity why the patent it challenges is unpatentable”).

Petitioner's new arguments also rely on a series of unsupported assumptions about how a POSITA might transform the actual disclosure in Capalik into one that addresses events across a network. (Paper 26 at 14-15 (“a POSITA would understand that...; [f]urther, a POSITA would understand that...; *Capalik* further teaches that a POSITA would understand that....”) Petitioner does not cite any expert testimony or other evidence beyond Capalik for these assumptions.

In substance, Petitioner argues that Capalik discloses multiple decoy devices within a decoy computer network. (Paper 26 at 15-16.) But even if there are multiple decoy devices (*e.g.*, for load balancing, redundancy), neither Petitioner nor Capalik explain how that teaches or suggests obtaining a global perspective that relates to one or more other events related to the event “across a network.” Rather, each of the decoy devices in Capalik operates as though it was the only decoy device. For example, as addressed in the institution decision, Capalik's determination of whether the objects are malware does not indicate that any of the information used relates an event related to the event across a network. (Paper 11 at 45, citing EX-1008 ¶¶ 75–96, 106.) Instead, Capalik describes determining that activity is malicious if it

performs unauthorized activities *on the decoy network device*, not because it is related to another event across a network. (*Id.*, citing EX-1008 ¶ 106.)

Finally, Petitioner attempts to bootstrap an argument regarding a different claim term, *i.e.*, action of a first object acting on a target, into a new argument for the “across a network” limitation. (Paper 26 at 16.) In particular, Petitioner argues that the activity source 512 and the activity target 514 may involve using “network diagrams in order to identify related events or connections (e.g., common elements of attacks) between networked devices.” (*Id.*) But the “network diagrams” disclosed in Capalik do not identify related events between networked devices. On the contrary, Figures 3A-3D and 4A-4E are the “exemplary network diagrams” disclosed in Capalik, and each of these diagrams depicts the activity of a single virtual machine, not related events between networked devices. (EX-1008 ¶ 67.)

Thus, Petitioner fails to show that Capalik discloses obtaining a global perspective that relates to one or more other events related to the event “across a network.” The Board should maintain its previous rejection of Ground 2.

VI. VAN OORSCHOT DOES NOT RENDER OBVIOUS AN EVENT PRIORITY (GROUNDS 1 AND 2, CLAIM 3).

Petitioner argues that the claim 3 limitation “obtaining an event priority based on . . . the generated contextual state information” is rendered obvious by Van Oorschot’s disclosure of a “severity level.” (Paper 1 at 26-29, 57-58) However, Van

Oorschot's "security level" cannot be the claimed event priority because it is not based on generated contextual state information as required by the claim. (Paper 16 at 56-59, 68-69.)

As addressed in Patent Owner's Response, claim 3 depends from claim 1. Claim 1 requires that generated context include (i) "correlating [the] event to an originating object," (ii) "an indication of the originating object of the first object," and (iii) "an indication of at least one of a device on which the first object is executed and a user associated with the first object." (EX-1001 25:31-37.) The event priority argument in the petition addressed (at most) the third requirement, *i.e.*, a device on which the first object is executed or a user associated with the first object. The petition argued that Van Oorschot's "[rules] related to certain attributes, such as 'who' (e.g., 'only "system administrators" are permitted to modify files') or 'where' (e.g., 'types of clients at which the event can occur')" disclosed "the *generated contextual state* discussed above in claim 1." (Paper 1 at 28, 57.) However, the petition failed to present any argument that Van Oorschot's "security level" is based on information that is indicative of, or correlated with, an ***originating object***. (*Id.*)

In its Reply, Petitioner addresses the originating object aspect of the event priority limitation for the first time. Petitioner argues that Van Oorschot's "attributes" include "the actor, *i.e.*, 'who', which can be a user or a software tool,

etc., the ‘action’, i.e., ‘what’, and the object/victim of the action, i.e., ‘on what.’” (Paper 26 at 18.) Petitioner goes on to argue that “when a user or software tool creates a file, then the user or software tool is an ‘originating object’ of the event (create) and the first object (file).” (*Id.*) The Board should reject Petitioner’s belated argument as untimely. *See, e.g., 3M Company*, No. IPR2022-01214, 2024 WL 168075, at *15; *Intelligent Bio-Sys.*, 821 F.3d at 1369–70.

The Board should also reject Petitioner’s new argument on the merits for multiple reasons. First, Van Oorschot does not state that the above-referenced “attributes” include “a software tool.” (EX-1006 7:7-32.) Second, Petitioner identifies no support for its argument that a “user” can be an originating *object*. And, third, Petitioner conflates the “first object” in an “event” with an “originating object.” An event, as stated in claim 1, refers to an action of a first object acting on a target. As noted above, claim 1 requires “an indication of the originating object of the first object.” In Petitioner’s argument above, the “user or software tool” that creates a file is the *first object*, not the originating object of the first object. Thus, Petitioner’s argument is inconsistent with the claim language and highlights the absence of an originating object in generating the “security level” in Van Oorschot.

Accordingly, Petitioner fails to show that Van Oorschot, in combination with Morris or Capalik, renders obvious the “event priority” limitation of claim 3, and claim 3 should be upheld as patentable.

VII. CONCLUSION

For the foregoing reasons, the Board should find all challenged claims of the '045 patent patentable.

Date: February 8, 2024

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned **PATENT OWNER'S SUR-REPLY** specified in 37 C.F.R. § 42.24 have 5,448 words, in compliance with the 5,600 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word 365 V.2022.

Date: February 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S SUR-REPLY** was served by filing the documents through the Patent Trial and Appeal Case Tracking System (P-TACTS) on February 8, 2024 and were served via electronic mail, in their entirety on the following:

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