

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KEYSIGHT TECHNOLOGIES, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, INC.,
Patent Owner.

IPR2023-00446
Patent 10,567,343 B2

Before KEVIN F. TURNER, AARON W. MOORE, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background*

Keysight Technologies, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) to institute an *inter partes* review of claims 1–20 (the “challenged claims”) of U.S. Patent No. 10,567,343 B2 (Ex. 1001, “the ’343 Patent”). Centripetal Networks, Inc. (“Patent Owner”) timely filed a Preliminary Response (Paper 6, “Prelim. Resp.”) contending that the Petition should be denied as to all challenged claims. We additionally authorized the filing of a Reply by Petitioner to Patent Owner’s Preliminary Response (Paper 7, “Reply”) and a Sur-reply by Patent Owner (Paper 8, “Sur-reply”) to further consider the arguments of the parties with respect to the application of our discretion under 35 U.S.C. § 314(a).

An *inter partes* review may be instituted only if “the information presented in the petition . . . and any [preliminary] response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (2018). For the reasons given below, Petitioner has established a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims of the ’343 Patent. Accordingly, we institute an *inter partes* review of claims 1–20 of the ’343 Patent on the grounds of unpatentability raised in the Petition.

B. *Real Party-in-Interest*

Petitioner identifies itself as the sole real party-in-interest. Pet. 4. Patent Owner identifies itself as the sole real party-in-interest. Paper 3, 1.

C. Related Proceedings

The Petition states that the '343 Patent is asserted in the following litigation: *Centripetal Networks, LLC v. Keysight Technologies, Inc.*, 2:22-cv-00002 (E.D. Va.) (filed Jan. 1, 2022). Pet. 4; Paper 3, 1.

D. The '343 Patent

The '343 Patent is directed to “filtering network data transfers” to protect data from being stolen by “exfiltrations.” Ex. 1001, code (57). Exfiltrations are often facilitated using popular data transfer protocols, such as the Hypertext Transfer Protocol (HTTP), and such attacks may appear to be “normal network behavior” and interpreted by firewalls as “trusted operations.” Ex. 1001, 1:28–51.

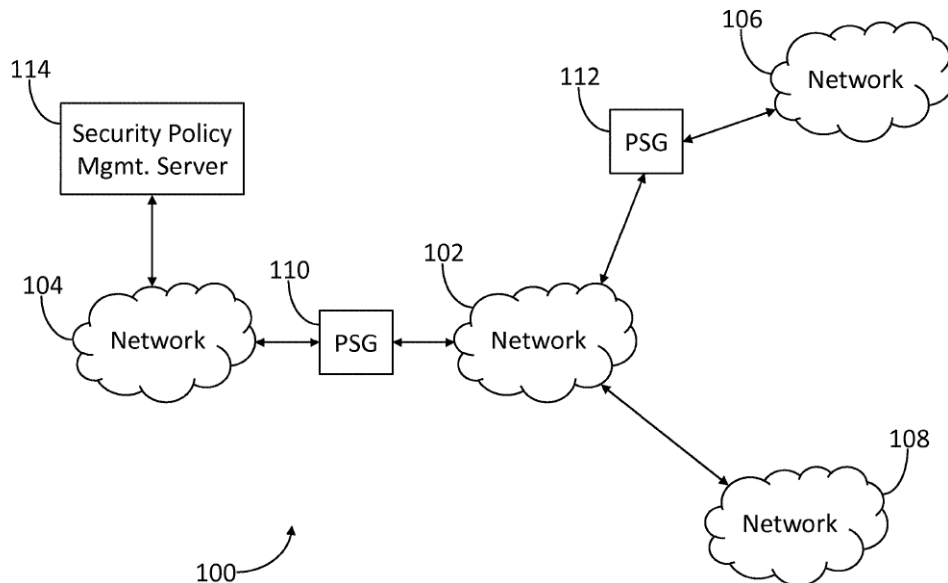


Figure 1 of the '343 Patent illustrates an exemplary network environment

The '343 Patent describes a two-stage filtering process for stopping such attacks implemented at Packet Security Gateways (PSGs, 110, 112), in network environment 100, placed at boundaries of networks they protect, and security policy management server 114. Ex. 1001, 3:62–4:41, 5:29–49,

8:39–52. As the PSG receives packets, it applies packet-filtering rules, which may implement “operators.” *Id.* at 3:62–4:14, 8:39–52. In the first stage, the “5-tuple” of packet header fields (source and destination IPs and ports and transport protocol) are filtered, and in the second stage, the operators may filter application packet header field values. *Id.* at 5:20–49, 8:39–52. Exemplary packet-filtering rules are provided in Figure 3 and reproduced below:

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Five-tuple

Rule #	IP Protocol	Source IP Address	Source Port	Destination IP Address	Destination Port	Operator
1 (302)	TCP	140.210.*	*	140.212.*	22	ALLOW
2 (304)	TCP	140.210.*	*	140.212.*	25	ALLOW
3 (306)	TCP	140.210.*	*	140.212.*	110	ALLOW
4 (308)	TCP	140.210.*	*	140.212.*	143	ALLOW
5 (310)	TCP	140.210.*	*	140.212.*	443	REQUIRE-TLS-1.1-1.2
6 (312)	TCP	140.210.*	*	214.*	80	HTTP-EXFIL
7 (314)	*	*	*	*	*	BLOCK

The rules may specify criteria and one or more operators that may be applied to packets matching specified criteria. For example, rule 1 specifies that IP packets containing TCP packets from an IP 140.210.*, having any source port, destined for an IP 140.212.*, and destined for port 22, have an ALLOW operator. Ex. 1001, 5:63–6:24. Rules 5 and 6 have both 5-tuple criteria (first stage) and application-header-field-value criteria (second stage), where rule 6 specifies that a PSG applies an HTTP-EXFIL operator to IP packets containing TCP packets from the same sources and ports as rule 1 but destined for port 80 (associated with HTTP) on an IP address 214.*. *Id.* at 6:25–7:23, 7:41–47, 8:11–38, Fig. 3. The HTTP-EXFIL operator allows HTTP packets containing a GET method, but blocks HTTP packets containing other HTTP methods (e.g., PUT, POST, CONNECT,

etc.), where attackers may often use HTTP PUT or POST methods to exfiltrate sensitive data, so that “operators such as HTTP-EXFIL [of rule 6] may be used to stop such exfiltrations.” *Id.* at 7:4–23, 7:41–8:6.

E. Illustrative Claim

As noted above, Petitioner challenges claims 1–20, with claims 1, 8, and 15 being independent claims. Claim 1 is illustrative of the challenged claims and is reproduced below:

1. **[1pre]** A method comprising:

[1a] receiving, by a computing system comprising memory and at least one processor, a plurality of packets, wherein the plurality of packets comprises a first portion of packets and a second portion of packets;

[1b] determining, based on a packet header field value, whether each packet of the plurality of packets comprises data corresponding to first criterion specified by one or more packet-filtering rules;

[1c] responsive to a determination by the computing system that a packet header field value of the first portion of packets comprises data corresponding to the first criterion specified by at least one matching packet-filtering rule, applying, by the computing system and to each packet in the first portion of packets, one or more operators specified by the at least one matching packet-filtering rule;

[1d] determining, based on an application header field value, the second portion of packets based on whether the first portion of packets comprises data corresponding to second criterion specified by one or more operators specified by the at least one matching packet-filtering rule; and

[1e] responsive to determining the second portion of packets that comprises data corresponding to the second criterion specified by one or more operators specified by the at least one matching packet-filtering rule, applying, by the computing system and to each packet in the second portion

of packets that match the second criterion, at least one packet transformation function configured to prevent an exfiltration operation, wherein the at least one packet transformation function indicates whether each packet in the second portion of packets is allowed to continue toward its destination.

Ex. 1001, 11:28–61 (with annotations provided by Petitioner, Pet. xvii).

F. The Asserted Ground of Unpatentability

Petitioner challenges the patentability of the challenged claims of the '343 Patent based on the following ground under 35 U.S.C. § 103, relying on the Declaration from Dr. Stuart Staniford (Ex. 1003). Pet. 17, 27–70.

References	Basis 35 U.S.C. §	Claims Challenged
Sourcefire ¹ , Emerging Threats ²	103	1–20

G. Procedural History

The '343 Patent was previously subject to a petition for *inter partes* review filed by Palo Alto Networks, Inc. (“PAN”), challenging claims 1–6, 8–13, and 15–19 as being unpatentable in view of Sourcefire; and claims 7, 14, and 20 in view of Sourcefire and published application 2009/0103524 (“Mantripragada”). Ex. 1077, 1, 9 (IPR2021-01155). We determined that Sourcefire was considered during prosecution of the '343 Patent and Mantripragada was cumulative of a considered reference, such that the same

¹ Sourcefire 3D System User Guide Version 4.10 (Ex. 1004, “Sourcefire”).

² Emerging Threats, *available at* <https://web.archive.org/web/20101202025325/http://rules.emergingthreats.net/open/snort-2.8.4/emerging-all.rules> (Dec. 2, 2010). (Ex. 1020, “Emerging Threats”).

or substantially the same prior art, and the same or substantially the same arguments, previously were presented to the Office. *Id.* at 14–16. We further determined that prior-petitioner PAN had not identified any material error on the part of the Examiner, and, accordingly, exercised our discretion not to institute under § 325(d). *Id.* at 16–20.

The '343 Patent is a continuation of US Application 14/625,486, which issued as US 9,686,193 B2 (“the '193 patent,” Ex. 1063). Ex. 1001, code (63). The '193 patent's claims do not recite explicitly “to prevent an exfiltration operation” like the '343 patent's do. *Compare* Ex. 1063, 11:27–15:10, *with* Ex. 1001, 11:27–15:8. However, the '193 patent claims apply packet-filtering rules to prevent data transfer from a first network to a second network, so the '193 patent is similar to the '343 Patent in this respect. *See* Ex. 1063, 11:27–62. A petitioner challenged the '193 patent in IPR2018-01559, but the Board denied institution because the petitioner had not shown that the claimed operator was taught or suggested by Sourcefire. *See* Ex. 1070. The '193 patent was also reexamined. Ex. 1085. The Office issued a reexamination certificate confirming the patentability of all claims of the '193 patent. *Id.* at 1–2. The claims were confirmed as patentable over Sourcefire because they recite a filtering process applying a first operator to drop packets associated with a particular type of data transfer (i.e., preventing exfiltration) and a second operator to forward packets not associated with a particular type of data transfer toward a third network. *Id.* at 6–7, 11–13.

The '193 patent is a continuation of US Application 13/795,822, which issued as US 9,124,552 B2 (“the '552 patent”). Ex. 1001, code (63). US 9,160,713 B2 (“the '713 patent”) is also a continuation of this

application. IPR2018-01437, Ex. 1001, code (63). The '552 patent was challenged by a petitioner in IPR2018-01436 (“the '552 IPR”), and the Board determined all of the '552 patent’s claims were unpatentable over Sourcefire. Ex. 1067, 2, 15–17, 66–67. The Board also found all claims of the '713 patent unpatentable over Sourcefire in IPR2018-01437. Ex. 1068. These decisions were affirmed by the U.S. Court of Appeals for the Federal Circuit. *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, 847 F. App’x 869 (Fed. Cir. 2021). Ex. 1069.

II. DISCUSSION

A. *Discretion Under 35 U.S.C. §§ 314(a), 325(d)*

Institution of *inter partes* review is discretionary. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”); 35 U.S.C. § 314(a) (2018).

1. *Discretion Under 35 U.S.C. § 314(a)*

The Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) (“CTPG”)³ states that generally “one petition should be sufficient to challenge the claims of a patent in most situations” and that “multiple petitions by a petitioner are not necessary in the vast majority of cases.” CTPG 59. “[T]o aid the Board’s assessment of ‘the potential impacts on both the efficiency of the *inter partes* review process and the fundamental fairness of the process for all parties,’” we consider a number of non-exclusive factors, “especially as to ‘follow-on’ petitions challenging

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

the same patent as challenged previously in an IPR.” *Id.* at 56. Those factors are:

1. whether the same petitioner previously filed a petition directed to the same claims of the same patent;
2. whether at the time of filing of the first petition the petitioner knew of the prior art asserted in the second petition or should have known of it;
3. whether at the time of filing of the second petition the petitioner already received the patent owner’s preliminary response to the first petition or received the Board’s decision on whether to institute review in the first petition;
4. the length of time that elapsed between the time the petitioner learned of the prior art asserted in the second petition and the filing of the second petition;
5. whether the petitioner provides adequate explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent;
6. the finite resources of the Board; and
7. the requirement under 35 U.S.C. § 316(a)(11) to issue a final determination not later than 1 year after the date on which the Director notices institution of review.

Id. at 57 (citing *General Plastic Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, slip op. 16–17 (PTAB Sept. 6, 2017) (Paper 19) (precedential) (“*General Plastic*”)) (footnote omitted). Additionally, “when different petitioners challenge the same patent” at different times, the Board has considered “any relationship between those petitioners when weighing the *General Plastic* factors.” *Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00062, Paper 11 at 9 (PTAB Apr. 2, 2019) (precedential) (“*Valve*”).

Patent Owner argues that the *General Plastic* factors favor discretionary denial under § 314(a). Prelim. Resp. 11–22; Sur-reply 1–5.

Petitioner responds to those arguments. Prelim. Reply 1–5. We consider the parties’ arguments regarding each factor below.

With respect to *General Plastic* factor (1), Patent Owner argues that it weighs in favor of discretionary denial because the same claims of the same patent were challenged by a prior petitioner, and the instant Petitioner used the prior decision, denying institution, “as a roadmap to address the deficiencies” of that prior decision. Prelim. Resp. 12 (citing IPR2021-01155, with PAN as the prior petitioner; *see* Ex. 1077). Patent Owner also asserts that a significant relationship exists between the prior petitioner and the instant Petitioner because the instant Petitioner “created an implicit relationship” with the prior petitioner. *Id.* Patent Owner also cites to prior Board decisions that it says support finding a significant relationship between different petitioners. *Id.* at 12–13 (citing *Valve*, IPR2019-00062, Paper 11 at 10; *Ericsson Inc. v. Uniloc 2017, LLC*, IPR2019-01550, Paper 8 at 12 (PTAB Mar. 17, 2020); *Samsung Elecs. Co. v. Elm 3DS Innovations, LLC*, IPR2017-01305, Paper 11 at 20 (PTAB Oct. 17, 2017); *Mitek Sys., Inc. v. United Servs. Auto. Assoc.*, IPR2020-01101, Paper 29 at 3 (PTAB Jan. 26, 2021)). Patent Owner also argues that even when no relationship exists between petitioners, *General Plastic* can be used to restrict follow-on petitions. Prelim. Resp. 14–15; Sur-Reply 1–5.

Petitioner asserts that Patent Owner is attempting to apply *Valve*, but the relationship between petitioners is nothing like the one in that case. Reply 1. Petitioner also asserts that it and the prior petitioner have “no relationship whatsoever, let alone a significant one.” *Id.* Petitioner continues that unlike in *Valve*, Petitioner and PAN are not co-defendants in the same litigation, nor are their accused products related to one another, and

asserts that they did not coordinate in any way in preparing their respective petitions. *Id.* at 1–2. Petitioner further asserts that for unrelated parties who have been separately sued for making, using, or selling different accused products, *General Plastic*, factor 1, weighs strongly against discretionary denial. *Id.* (citing *Sony Mobile Comms. AB v. Ancora Tech., Inc.*, IPR2021-00663, Paper 17 at 10–11 (PTAB Jun. 10, 2021)).

We agree with Petitioner’s arguments. The fact that the disclosures of cited references are the same or similar is unremarkable in that they are applied against the same claims. Additionally, Patent Owner has not presented evidence that the instant Petitioner applied the prior petition, and its non-institution, as a roadmap to try and correct errors of the prior petition. As such, we agree with Petitioner that factor (1) weighs strongly against discretionary denial.

With respect to *General Plastic* factor (2), Patent Owner acknowledges that this factor is neutral because the instant Petitioner is not the same petitioner as in the prior proceeding. Prelim. Resp. 15. Petitioner asserts that this factor weighs against discretionary denial or is neutral. Reply 4. Given the difference in the petitioners, we agree with Petitioner. As such, we find factor (2) weighs against discretionary denial.

With respect to *General Plastic* factor (3), Patent Owner argues that Petitioner had the benefit of the Patent Owner’s preliminary response in the prior proceeding, and the Board’s denial, such that this factor should weigh strongly in favor of discretionary denial. Prelim. Resp. 15–17. Petitioner responds that it did not use the prior IPR petition as a roadmap, and that “the discretionary denial of PAN’s petition presents no roadmapping concern.” Reply 5 (citing *Code200, UAB v. Bright Data Ltd.*, IPR2022-00861, Paper

18 at 4–5 (PTAB Aug. 23, 2022) (precedential)). Although Petitioner was aware of the prior petition, and its denial, it is not clear that the Petitioner used those findings in the production of the instant Petition. Overall, we conclude this factor is neutral with respect to discretionary denial.

With respect to *General Plastic* factor (4), Patent Owner argues that this factor weighs in favor of discretionary denial because Petitioner had the references Sourcefire and Emerging Threats and knew of their relevance for almost seven months before the instant Petition was filed. Prelim. Resp. 17. Patent Owner also asserts that Petitioner’s delay in filing the instant Petition is unexplained, and that Petitioner waited until the last possible day to file. *Id.* at 17–18. Petitioner asserts that this factor weighs against discretionary denial. Reply 5.

We note that it is not clear that the relevance of Sourcefire and Emerging Threats to the instant Patent would have been immediately apparent once Petitioner learned of the reference. Nonetheless, given that the delay is unexplained, we determine this factor to mildly favor discretionary denial.

With respect to *General Plastic* factor (5), Patent Owner argues that this factor weighs strongly for discretionary denial because Petitioner was served with a complaint asserting infringement of the ’343 Patent shortly after the prior petition was denied, and “waited an entire year to file this Petition,” and Petitioner provides no explanation for the delay. Prelim. Resp. 19–20. Petitioner asserts that this factor weighs against discretionary denial, given that Petitioner was sued long after the July 2021 date that PAN filed its petition. Reply 5. We agree with Petitioner that any delay in filing of the instant Petition can at least be partially mitigated due to the timing of

Patent Owner's actions. As such, we determine this factor to be neutral with respect to discretionary denial.

With respect to *General Plastic* factors (6) and (7), Patent Owner asserts that “[t]he validity of the ’343 Patent and the related ’193 Patent have been thoroughly tested during the initial prosecution and the ’1155 IPR, with the Board determining that a reconsideration of the patent grant is not warranted.” Prelim. Resp. 21. Patent Owner also speculates that our “resources would be more fairly expended on initial petitions rather than on follow-on petitions that use earlier cases as a roadmap,” and acknowledges that factor (7) is neutral because there is no impediment to timely issue a final determination. *Id.* at 21–22. Petitioner asserts that factor (6) favors institution because this challenge has not been previously considered. Reply 5. Petitioner does not appear to address *General Plastic* factor (7). *See* Reply.

With respect to these latter factors, we note that the denial of the prior petition was made on a discretionary basis (Ex. 1077, 20) and not necessarily related to the “strength” of the instant Patent. We determine that the merits of Petitioner’s challenge appear strong based on the present record, as discussed below. Thus, we determine the merits of Petitioner’s challenge weigh against discretionary denial and determine institution of the instant Petition to be a useful utilization of the Board’s resources under the rationale for *inter partes* review. As such, we determine factors six and seven weigh against discretionary denial.

In sum, we conclude that, on balance, the *General Plastic* factors weigh against discretionary denial here. We determine that in view of these factors, the efficiency and integrity of the system are best served by

declining to exercise our discretion to deny institution of review under 35 U.S.C. § 314(a).

2. *Discretion Under 35 U.S.C. § 325(d)*

Under § 325(d), in determining whether to institute an *inter partes* review, “the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). In evaluating arguments under § 325(d), we use a two-part framework:

(1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of the first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential) (“*Advanced Bionics*”). We also consider the non-exclusive factors set forth in *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (PTAB Dec. 15, 2017) (precedential in relevant part) (“*Becton, Dickinson*”), which “provide useful insight into how to apply the framework” under § 325(d). *Advanced Bionics* at 9. Those non-exclusive factors are the following:

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination;
- (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;

- (d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art;
- (e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and
- (f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.

Becton, Dickinson at 17–18 (footnote omitted). “If, after review of factors (a), (b), and (d), it is determined that the same or substantially the same art or arguments previously were presented to the Office, then factors (c), (e), and (f) relate to whether the petitioner has demonstrated a material error by the Office.” *Advanced Bionics* at 10.

Patent Owner contends that the Board should deny institution under § 325(d) because the Petition reuses the same art and arguments that were previously presented to the Office. Prelim. Resp. 22. Patent Owner contends the Office issued the ’343 Patent over Sourcefire, and multiple references that show the use of Snort[®]-based intrusion detection systems to detect exfiltrations, as well as the Board’s institution decision in IPR2018-01436, involving the ’552 patent, which included the Board’s application of Sourcefire to a similar set of claims. *Id.* at 23–24 (citing Ex. 1002, 127–28, 167–69, 256–57, 363, 372–75).

Patent Owner also argues that the relied-on aspects of Emerging Threats are substantially the same as teachings in multiple references of record during prosecution, including Stolfo (Ex. 2001), which was applied in a rejection during examination of the ’343 Patent. Prelim. Resp. 25 (citing Ex. 1002, 99–101). Patent Owner further argues that “[t]he Office was persuaded by Patent Owner’s amendments and arguments that the nuanced

approach of preventing exfiltration operations while allowing other outbound traffic to pass distinguished the claimed invention over Stolfo.” *Id.* at 28 (citing Ex. 1002, 35–40). Additionally, Patent Owner argues that the Board has previously considered petitions alleging that it would have been obvious to modify Sourcefire to include rules that detect or prevent exfiltrations, but determined such arguments to be substantially similar to the arguments in the Reexamination Request of the ’193 patent. *Id.* at 30–31 (citing Ex. 1077, 10, 16–19). Lastly, Patent Owner argues that Petitioner has not demonstrated any material error in the Office’s extensive prior considerations of Sourcefire and other references. *Id.* at 32–36.

Turning to the first part of the *Advanced Bionics* framework, we consider whether the same or substantially the same art or arguments previously were presented to the Office. Sourcefire was submitted to the Office in an IDS during prosecution of the ’343 Patent. Ex. 1002, 167–69, 372–75. The Examiner acknowledged having considered Sourcefire by signing the IDS. *Id.* at 127–28, 256–57, 363. In addition, the ’343 Patent lists Sourcefire as a cited reference. Ex. 1001, code (56) (listing Sourcefire on page 5). It is beyond dispute that Sourcefire was before the Office during prosecution of the ’343 Patent.

We next consider the cumulative nature of other asserted art and prior art evaluated during examination under *Becton, Dickinson*. Petitioner relies on the combination of Sourcefire and Emerging Threats as teaching or suggesting all claims of the ’343 Patent. Pet. 17. Although Emerging Threats was not considered during prosecution of the ’343 Patent, Patent Owner contends that Stolfo (US 2012/0084866 A1, published Apr. 5, 2012, Ex. 2001), which was expressly considered by the Examiner, is cumulative

to Emerging Threats in disclosing a detection system that may detect keywords, password information, and social security information during egress or exfiltration of a document in network traffic. Prelim. Resp. 27 (citing Ex. 2001 ¶¶ 40, 47, 51, 58, 75, 81, 96–97, 140, 155, Figs. 17–18). Patent Owner argues that the techniques in *Stolfo* are identical, or at least substantially similar, to the Emerging Threats rules cited in the Petition. *Id.* at 27–28 (citing Pet. 37–40). Patent Owner also argues that “*Stolfo* was overcome, in part, by amending the claims to clarify that the at least one packet transformation function is configured to prevent an exfiltration operation, while allowing other outbound traffic to continue towards its destination.” *Id.* at 28 (citing Ex. 1002, 77, 79–82, 86–88).

After reviewing the evidence, we do not agree with Patent Owner’s assessment that Emerging Threats is cumulative to *Stolfo*, which the Examiner considered during prosecution. Patent Owner previously distinguished its claims from *Stolfo* by arguing, in part, that “*Stolfo* describes that network statistics may be used to ‘modify the decoy traffic such that it appears statistically similar to normal traffic,’” and that “*Stolfo* describes generating decoy traffic and not applying a transformation to existing network traffic.” Ex. 1002, 87 (quoting Ex. 2001 ¶ 124). Patent Owner also argued that “the decoy traffic used in *Stolfo* does not prevent an exfiltration operation[, but instead,] *Stolfo* explains that ‘[t]hese traps use decoy information . . . to attract, deceive, and/or confuse attackers (e.g., inside attackers, external attackers, etc.) and/or malware.’” *Id.* (quoting Ex. 2001 ¶ 124).

In contrast, as Petitioner asserts, Emerging Threats discloses its rules to be Snort rules for preventing exfiltration. Pet. 37–43. Petitioner’s

explanations of the different rules disclosed in Emerging Threats illustrate their use in preventing exfiltration, and not merely applying processes to decoy traffic. *Id.* Petitioner also discusses the correspondences between specific rules provided in Emerging Threats and operators disclosed in the '343 Patent. *Id.* As such, we are not persuaded by Patent Owner that Emerging Threats is merely cumulative to Stolfo. Therefore, we are not persuaded that Petitioner's combination of Sourcefire and Emerging Threats is cumulative to the art previously considered by the Examiner in the prosecution of the application that issued as the '343 Patent, or that the proposed grounds are based on the same or substantially the same art or arguments previously presented to the Office.

In conjunction with Patent Owner's contention that Petitioner has not shown that the Office erred, we conclude that, given the circumstances presented here, Patent Owner has not demonstrated that Petitioner's proposed grounds are based on the same or substantially the same art or arguments previously presented to the Office. As a result, we need not further consider whether Petitioner has shown error on the part of the Office.

Accordingly, although we have considered Patent Owner's request for our exercise of discretion to deny institution under 35 U.S.C. § 325(d), on the record before us, we conclude that denial of institution on that basis is not warranted. We proceed to consider the merits of Petitioner's proposed grounds of unpatentability below.

B. The Level of Ordinary Skill in the Art

Petitioner, supported by Dr. Staniford's testimony, proposes that a person of ordinary skill in the art at the time of the invention "would have had a bachelor's degree in computer science, computer engineering, or an

equivalent, and four years of industry experience,” and “would have had a working knowledge of packet-switched networking, firewalls, security policies, communication protocols and layers, and the use of customized rules to address cyber-attacks.” Pet. 16 (citing Ex. 1003 ¶¶ 23, 25). Patent Owner does not challenge the qualifications proposed by Petitioner for a person of ordinary skill in the art. *See generally* Prelim. Resp.

At this stage of the proceeding, we find Petitioner’s proposal consistent with the level of ordinary skill in the art reflected by the prior art of record, *see Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978), and, therefore, we adopt Petitioner’s unopposed position as to the level of ordinary skill in the art for purposes of this Decision.

C. Claim Construction

In this *inter partes* review, claims are 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). *See* 37 C.F.R. § 42.100(b) (2023). The claim construction standard includes construing claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art at the time of the invention. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc). In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Phillips*, 415 F.3d at 1315–17.

Petitioner asserts that “no express claim construction is required for this proceeding and claims should be given their plain and ordinary

meaning.” Pet. 20 (footnote omitted). Petitioner does, however, indicate that the term “operator” requires discussion, in view of “its history in prior challenges to related patents.” *Id.* Petitioner points out that the Federal Circuit affirmed the Board’s finding that Sourcefire disclosed applying the operator claimed in the two-stage packet filtering of the related ’552 patent, but “the Board denied institution of the ’193 IPR finding that the petition lacked a sufficiently clear explanation of the term ‘operator,’ and in the ’193 *ex parte* reexamination Patent Owner argued that the ’193 claimed operator was different than the ’552 claimed operator.” *Id.* at 20–21 (citing Ex. 1003 ¶¶ 146–150; Ex. 1067, 17, 50–52; Ex. 1069, 21; Ex. 1070, 6–12; Ex. 1085 127–28). Petitioner goes on to discuss the general meaning of “operator,” and argues that, although they do not use the same language, both Sourcefire and Emerging Threats disclose operators that perform the same exfiltration protection disclosed and claimed in the ’343 Patent. *Id.* at 21–23.

Patent Owner acknowledges Petitioner’s discussion of “operator,” and asserts, “[a]t this preliminary stage, no express construction of any term is required to resolve any controversy in this proceeding.” Prelim. Resp. 10. Given the lack of controversy, we need not explicitly adopt or discuss the constructions agreed to by the parties. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”). We address the claim term “operator” in the analysis below, and do not deem it necessary to provide an explicit construction of the term.

D. Legal Standards – Obviousness

The U.S. Supreme Court sets forth the framework for applying the statutory language of 35 U.S.C. § 103 in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966):

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

As explained by the Supreme Court in *KSR International Co. v. Teleflex Inc.*,

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.

550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”)).

“Whether an ordinarily skilled artisan would have been motivated to modify the teachings of a reference is a question of fact.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1327 (Fed. Cir. 2016) (citations omitted).

“[W]here a party argues a skilled artisan would have been motivated to combine references, it must show the artisan ‘would have had a reasonable expectation of success from doing so.’” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1360–61 (Fed. Cir. 2017) (quoting *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 676 F.3d 1063, 1068–69 (Fed. Cir. 2012)).

E. Obviousness over Sourcefire and Emerging Threats

Petitioner asserts that claim 1–20 are unpatentable over Sourcefire and Emerging Threats. Pet. 17. Petitioner addresses each limitation of claim 1 and provides the testimony of Dr. Staniford in support of its position with respect to them. Pet. 46–58; Ex. 1003 ¶¶ 236–268. Petitioner also addresses the limitations of independent claims 8 and 15, referencing the analysis of independent claim 1. *Id.* In addition, Petitioner argues that collateral estoppel applies to specific issues in this proceeding based on issues decided against Patent Owner in a prior proceeding. Pet. 44–46.

Patent Owner does not contest Petitioner’s assertions for limitations [1pre] through [1d] of claim 1. *See generally* Prelim. Resp. For the uncontested limitations ([1pre]–[1d]), we have considered Petitioner’s evidence and arguments with respect to these limitations, including the relevant testimony of Dr. Staniford and find it to be sufficient to show that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that Sourcefire and Emerging Threats teach or suggest these limitations. Accordingly, we focus our discussion on contested limitation [1e], and Patent Owner’s arguments regarding this limitation, as well as Patent Owner’s arguments regarding whether Emerging Threats is a printed publication. We begin with brief discussions of Sourcefire and Emerging

Threats, the status of Emerging Threats as a printed publication, Petitioner's collateral estoppel arguments, and then consider Petitioner's arguments with respect to limitation [1e], as well as Patent Owner's arguments asserting deficiencies with respect to that limitation.

1. *Sourcefire*

Sourcefire is a user guide for the Sourcefire 3D System, a system that provides "real-time network intelligence for real-time network defense."

Ex. 1004, 32.⁴ The system operates via "3D Sensors" that can each run the Sourcefire "Intrusion Prevention System" (IPS), which allows monitoring of networks for attacks by examining packets for malicious activity. *Id.* at 33–34. Users can create custom "intrusion rules" to examine packets for attacks and manage the rules across all the 3D Sensors in the system through a centralized "Defense Center." *Id.* at 34, 254.

Intrusion rules can be "pass" rules, "alert" rules, or "drop" rules. *Id.* at 761. If a pass rule is met, the network traffic in question is ignored (and allowed to continue). *Id.* Conversely, if a drop rule is met, the packet is dropped and an "event" is generated. *Id.* Rules can be written based on "keywords" and their "arguments," i.e., the possible values of the keyword. *Id.* at 762–63.

The rule header consists of parameters including 5-tuple criteria values (protocol, source and destination IP addresses, and source and destination ports), the rule's action or type (e.g., alert and allow, drop, or ignore and allow), and direction indicating the flow of traffic. The following figure illustrates the parts of a rule header:

⁴ All citations to Sourcefire refer to the document's original pagination.



Ex. 1004, 764.

Sourcefire also explains that users may import rules from local rule files, which are ASCII text files from a local machine. Ex. 1004, 1857–59. Sourcefire explains that once imported, a user would need to select whether rules should provide alerts, or block and provide alerts, and references the “Setting Rule States” portion of Sourcefire. *Id.* at 435–38, 1858.

2. *Emerging Threats*

Emerging Threats (Ex. 1020) is a text file of rules designed to be imported into and used with SNORT® systems. The text file contains numerous rules, where specific rules can be located therein by searching for a unique Snort ID (“SID”). Exemplary rules include SID:2002526 (search the HTTP request packets to search for the strings “TOP SECRET” or “TS” along with “NOFORN” separated by appropriate spaces and punctuation, Ex. 1020, 87), SID:2002034 (configured to detect and block unauthorized transmission of the password file from Unix/Linux systems out of an organization via a web request, Ex. 1020, 8), SID:2001328 (searching for application layer information containing social security numbers with the familiar “-XX-XXXX” ending pattern, Ex. 1020, 109), and SID:2003021 (to detect/prevent transmissions of encrypted data on an usual port via SSL v3, Ex. 1020, 109).

3. *Status of Emerging Threats as a Printed Publication*

With respect to Emerging Threats, Petitioner asserts that the text file qualifies as a “printed publication” under § 102(b) as it has been “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” Pet. 18 (quoting *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008) (quoting *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006))). Petitioner further asserts that the Internet Archive’s Wayback Machine shows the public accessibility of Emerging Threats on December 2, 2010 by preserving Emerging Threats as it was “made available to the public” on that date. *Id.* Petitioner also cites to the testimony of Dr. Staniford, detailing that, based on his experience, the Emerging Threats rules appear to be true copies of rules that existed in 2010. *Id.* at 19 (citing Ex. 1003 ¶¶ 204–206). Petitioner also asserts that Emerging Threats was a well-known independent clearinghouse of Snort rules that were available to persons of ordinary skill in the art. *Id.* (citing Ex. 1003 ¶¶ 202–203, 206; Ex. 1018; Ex. 1050, Ex. 1051; Ex. 1082).

Patent Owner argues that Petitioner has not met its burden to prove that Emerging Threats is a prior art printed publication. Prelim. Resp. 37. Patent Owner argues that the Emerging Threats website is not “prominent” or well known, the Emerging Threats reference was not meaningfully indexed and located on the Emerging Threats website, and the Emerging Threats website lacked any search functionality. *Id.* at 39–41. Patent Owner also argues that the reference was not meaningfully indexed or available via any search function, such that an interested artisan exercising reasonable

diligence would have found it. *Id.* at 41. Patent Owner also argues that while the existence of a WayBack Machine archive might mean the Emerging Threats reference was technically accessible, public accessibility requires more than technical accessibility. *Id.* at 41–43 (citing *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019)). Patent Owner also argues that Dr. Staniford’s statements about the public accessibility of Emerging Threats are conclusory and should be afforded little weight. *Id.* at 43–45 (citing Ex. 1003 ¶¶ 202–206). Lastly, Patent Owner argues that Petitioner relies on an unsupported link between Bleeding Snort and Emerging Threats, and improperly relies on evidence that post-dates the time of the invention to show knowledge by persons of ordinary skill in the relevant timeframe. *Id.* at 45–47.

Weighing the evidence of the public accessibility of Emerging Threats in the relevant timeframe, we determine that Petitioner has established that Emerging Threats qualifies as a printed publication under § 102(b) for purposes of institution. The presence of the Internet Archive’s Wayback Machine copy suggests that the document was available and was accessible on December 2, 2010, prior to the March 12, 2013 effective filing date of the ’343 Patent. We have concerns that Dr. Staniford is only able to vaguely assert that the rules provided in the text document appear to be true copies of the rules that existed in 2010. *See* Ex. 1003 ¶ 204. Given the nature of *inter partes* review, however, we can be concerned only with the publication itself; we cannot rely on or inquire into how some system performed or was used in the relevant timeframe. Nonetheless, we are persuaded by Dr. Staniford’s un rebutted testimony that Snort was begun as an open source project in the late 1990s, that the Bleeding Snort project launched in 2004 as

an independent clearing house for Snort rules, and that the project continues as Emerging Threats. *See* Ex. 1003 ¶¶ 202–203. This testimony is sufficient, for purposes of institution, to show that one of ordinary skill in the art, at and prior to the effective filing date of the '343 Patent, would have known to look to the Emerging Threats website for Snort rules that could be applied to conventional cyber defense systems. We determine this to be a reasonable showing, at this stage of the proceeding, that Emerging Threats was sufficiently publicly accessible to be a printed publication.

With respect to Patent Owner's arguments regarding searchability of the Emerging Threats website, given its notoriety, we are unpersuaded that persons of ordinary skill in the art proceeding to the website would not have been able to search its contents and find the rules logged thereon that would have been applicable to the users' network security concerns. Even based on Patent Owner's presentation of the website (Prelim. Resp. 40 (citing Ex. 1030, 11; Ex. 1054)), we are persuaded that it would only have required the exercise of reasonable diligence to find the rules list, given the knowledge that one of ordinary skill would have had regarding Emerging Threats. Petitioner asserts that specific rules can be located within Emerging Threats by searching for their unique SID (Pet. 38 n.9), but persons proceeding to the website without knowledge of a specific SID would have found this to be of little help. Nonetheless, the number of locations that the rules may be located on the Emerging Threats website is still limited and users would have been able to utilize the "Last Modified" indicator, showing which directories had been modified recently, to narrow down any search, assuming that items that had not been modified for some time would be less worthy of search. As such, we are not persuaded that persons of ordinary

skill in the art, proceeding to the Emerging Threats website, would not have been able to have searched its contents and find the rules contained thereon.

4. *Collateral Estoppel with Respect to Certain Issues*

Petitioner asserts that the issues decided in the '552 IPR against Patent Owner and affirmed by the Federal Circuit are binding in this proceeding. Pet. 45–46 (citing *Amazon.com, Inc., v. M2M Solutions LLC*, IPR2019-01205, Paper 43 at 45 (PTAB Jan. 25, 2021); *Webpower, Inc. v. WAG Acquisition, LLC*, IPR2016-01239, Paper 21 at 27 (PTAB July 8, 2020); *Alphatec Holdings, Inc. v. Nuvasive, Inc.*, 2020 Pat.App. LEXIS 12487, *31 (PTAB July 8, 2020)). Based on this, Petitioner asserts that the findings that Sourcefire is prior art and that it teaches materially similar elements of the '552 patent claims are binding in this proceeding.

Patent Owner does not appear to contradict Petitioner's position, but does assert that whether the second “determining” step of claim 1 is taught or suggested by Sourcefire was not litigated in the '552 IPR in the context of the discussion of limitation [1e]. Prelim. Resp. 50–51. We respond to Patent Owner's argument below, in the discussion of limitation [1e].

With respect to Petitioner's assertions of collateral estoppel, notably in the Petition at pages 47, 49, 51, 52, and 54, with respect to limitations [1a] through [1d], we agree with Petitioner that Patent Owner is estopped from asserting that Sourcefire is not prior art to the challenged claims, and also estopped from asserting that those limitations are not taught or suggested by Sourcefire, to the extent that the limitations “do not materially alter the question” of patentability relative to the elements of the claims of the '552 patent. See *Soverain Software LLC v. Victoria's Secret Direct Brand Mgmt., LLC*, 778 F.3d 1311, 1319 (Fed. Cir. 2015).

5. *Claim Limitation [1e]*

i) *Petitioner's Assertions*

Claim limitation [1e] is directed to applying at least one packet transformation function configured to prevent an exfiltration operation, wherein the at least one packet transformation function indicates whether each packet in the second portion of packets is allowed to continue toward its destination, when the packet in the second portion of packets matches the second criterion. Petitioner asserts that Sourcefire discloses that rules may be set to alert (i.e., generate events) or drop (i.e., drop packets that trigger the rule), such that the “Sourcefire rules specify a packet transformation function that will ‘indicate whether each packet in the second portion of packets is allowed to continue toward its destination’ as claimed.” Pet. 56 (citing Ex. 1004, 435–38; Ex. 1003 ¶¶ 162, 262).

Petitioner also asserts that Emerging Threats contains numerous rules targeting exfiltration operations, including rule SID:2003021, that determines whether a second portion of packets comprise data corresponding to the second criterion specified by operators specified by the matching packet-filtering rule. Pet. 56–57 (citing Ex. 1003 ¶¶ 211–229, 263–267). Petitioner asserts that persons of ordinary skill in the art would have recognized the cited rule as a rule configured to prevent an exfiltration operation by detecting attempts to transmit traffic to unusual ports using an out-of-date and insecure encryption protocol. *Id.* at 57 (citing Ex. 1003 ¶¶ 128, 228–229, 263–264).

Petitioner also asserts that while Emerging Threats ships all rules set to “alert” for initial evaluation on a user network, an ordinarily skilled artisan would have been motivated to change rules to “drop” — and

therefore prevent an exfiltration operation — when tuning the rules to their network environment. Pet. 57 (citing Ex. 1003 ¶¶ 268–269). Once done, Petitioner asserts that this would have the effect of blocking suspected exfiltration operations of this particular kind, while packets in connections that match the same 5-tuple, but that did not show this pattern would be allowed through. *Id.* at 57–58 (citing Ex. 1003 ¶ 268).

Petitioner further asserts that the Board previously found, in the ’552 IPR, that Sourcefire discloses applying an operator that specifies one or more application-header-field-value criteria and a packet transformation function. Pet. 58 (citing Ex. 1067, 16–17, 48–49). Based on this, Petitioner asserts that an Emerging Threats rule imported into Sourcefire therefore also includes an operator that specifies one or more application-header-field-criteria (i.e., second criteria) and a packet transformation function, and that persons of ordinary skill in the art would have understood that numerous of those Emerging Threats rules are configured to detect or prevent exfiltration operations, and would have found it obvious to configure Sourcefire using such rules to prevent exfiltration operations. *Id.*

ii) Patent Owner’s Arguments

Patent Owner argues the Office recognized that a key distinction over Sourcefire was its failure to disclose any techniques for preventing a class of network threats known as “exfiltrations.” Prelim. Resp. 48. Patent Owner points out that Petitioner relies on Emerging Threats to address this deficiency, but Petitioner does not show that the rules of Emerging Threats prevent exfiltrations or that the rules prevent exfiltrations based on an application header field value matching a criterion specified by an operator. *Id.* at 49.

Looking at the first three cited rules (SID:2002526, SID:2002034, SID:2001328), Patent Owner argues that these rules do not act on the basis of an application header field value matching criterion specified by an operator, as required by the claims. Prelim. Resp. 49–50. Patent Owner argues that Petitioner fails to explain how the three rules would be combined with the operator the Board previously found in the '552 IPR, because the rules are explicitly crafted to alert an administrator when sensitive data are transmitted outside of a protected network, and Petitioner does not explain how they would have been modified to also target an application header field. *Id.* at 50 (citing Pet. 58).

We are not persuaded by Patent Owner's arguments with respect to the first three cited rules. With respect to those first three rules, Petitioner has not argued their applicability with respect to this limitation. *See* Pet. 56–58. Patent Owner has acknowledged that. *See* Prelim. Resp. 50. As such, Patent Owner's arguments are immaterial to the ground and discussion made with respect to limitation [1e] in the Petition.

Patent Owner also argues that the fourth rule (SID:2003021) does not prevent exfiltration operations because it does not monitor normal traffic, but rather monitors traffic on unusual ports and alerts based on an SSL version being used on an unusual port. *Id.* at 51–52 (citing Pet. 41–42). Lastly, Patent Owner argues that Petitioner's analysis is also tainted by hindsight bias because Petitioner reveals that it used the '343 Patent to find an example of an exfiltration rule, thus being unsupported by any knowledge that was within the level of ordinary skill at the time the claimed invention was made, and instead relies on knowledge gleaned only from the patent's disclosure. *Id.* at 52–53.

We are not persuaded by Patent Owner's arguments. Patent Owner's citation to the '343 Patent's specification for a definition of "exfiltration" only cites to a "first cause." Prelim. Resp. 52 (citing Ex. 1001, 1:28–36). The rest of the relevant section of the specification discusses additional causes, such as typical network trust models, human-engaged network activities, and scalability of conventional cyber defense systems (Ex. 1001, 1:36–45), that do not rely on the monitoring of normal traffic. Additionally, Dr. Staniford's un rebutted testimony provides that one of ordinary skill in the art would have understood that "this rule was not directed to looking for instances of exploits or attacks (which would be invisible within the encryption) but rather was looking for exfiltration of some kind of encrypted data." Ex. 1003 ¶ 228.

Petitioner additionally provides that a correspondence exists between the REQUIRE-TLS-1.1-1.2 operator in the '343 Patent and SID:2003021 in Emerging Threats, in that both detect an SSL/TLS version in application packet header field values to detect exfiltration attempts using out-of-date encryption protocols. Pet. 43 (citing Ex. 1003 ¶¶ 229–230). We are persuaded that this correspondence can be made, i.e., to determine if the '343 Patent discloses the interruption of a similar type of exfiltration, without resorting to impermissible hindsight bias, that Patent Owner asserts. Patent Owner has provided no evidence that Petitioner used the specification of the '343 Patent to find an applicable rule in Emerging Threats, as opposed to the testified-version provided by Dr. Staniford that he recalls "working on a similar feature where we looked for large encrypted transmissions outbound from the network on non-HTTP ports as a possible symptom of

exfiltration of large amounts of data.” Ex. 1003 ¶ 228. Thus, we are not persuaded by Patent Owner’s arguments.

We have considered Petitioner’s evidence and arguments with respect to limitation [1e], including the relevant testimony of Dr. Staniford, and Patent Owner’s traversing arguments, and find Petitioner’s evidence and arguments to be sufficient to show that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that Sourcefire and Emerging Threats teach or suggest this limitation.

6. *Independent Claims 8 and 15*

As noted above, Petitioner also addresses the limitations of independent claims 8 and 15, referencing the analysis of independent claim 1. Pet. 46–58. Patent Owner does not separately address the limitations of the other independent claims, other than asserting that they recite the same or similar recitations as recited by independent claim 1. Prelim. Resp. 48–53. We have considered Petitioner’s evidence and arguments with respect to these limitations and find Petitioner’s evidence and arguments to be sufficient to show that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that Sourcefire and Emerging Threats teach or suggest the limitations of independent claims 8 and 15.

7. *Dependent Claims 2–7, 9–14, and 16–20*

Petitioner also addresses the limitations of dependent claims 2–7, 9–14, and 16–20. Pet. 59–69. Patent Owner does not separately address the limitations of the dependent claims. *See generally* Prelim. Resp. We have considered Petitioner’s evidence and arguments with respect to the limitations of the dependent claims and find Petitioner’s evidence and arguments to be sufficient to show that Petitioner has demonstrated a

reasonable likelihood of prevailing in showing that Sourcefire and Emerging Threats teach or suggest the limitations of dependent claims 2–7, 9–14, and 16–20.

III. CONCLUSION

For the foregoing reasons, Petitioner has demonstrated a reasonable likelihood that it would prevail in showing that at least one claim of the '343 Patent is unpatentable.

III. ORDER

Accordingly, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is hereby instituted as to claims 1–20 of the '343 Patent on the following asserted ground:

Claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Sourcefire and Emerging Threats; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, the trial commencing on the entry date of this Decision.

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Patent 10,567,343 B2

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