

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

CORRIGENT CORPORATION
Patent Owner.

IPR2023-00447
Patent 9,118,602 B2

Record of Oral Hearing
Held Virtually: May 7, 2024

Before KRISTEN L. DROESCH, NATHAN A. ENGELS, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

IPR2023-00447
Patent 9,118,602 B2

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P R O C E E D I N G S

JUDGE ENGELS: Hello. Welcome to the Patent Trial and Appeal Board. This is a hearing for IPR2023-00447 between Petitioner Cisco, Incorporated, and Patent Owner, Corrigent Corporation. The challenged patent is U.S. Patent Number 9,118,602 B2. I'm Judge Engels. With me on the panel today are Judge Droesch and Judge Ogden. Can we begin with introductions for the parties? Who is here on behalf of Petitioner?

MR. BLAKE: Good afternoon, Judge Engels, and the rest of the panel. This is Jeffrey Blake of Merchant & Gould on behalf of the Petitioner, Cisco Systems, Inc.

JUDGE ENGELS: Thank you. And who's here on behalf of Patent Owner?

MR. SUAREZ: Good afternoon, Your Honors. My name is Christopher Suarez on behalf of Corrigent Corporation. With me on the call is Ben Holt. We're both of the Steptoe Law Firm. My colleague, Jay Nuttall, may also be joining during the proceeding, although he's not on the line right now.

JUDGE ENGELS: Okay.

TECH: This is Charlie from the VTCT. I apologize for the interruption. I think we might have a technical issue with Judge Ogden.

JUDGE ENGELS: We can see you now; Judge Ogden, can you hear us?

JUDGE OGDEN: Yes, I can hear, but I can't see anything. It's just a black screen.

TECH: Would you -- this is Charlie again from the VTCT.

1 Would you be able to disconnect and reconnect, please, if possible?

2 JUDGE OGDEN: Okay, sure. Thank you.

3 JUDGE ENGELS: Can we go off the record while we wait for
4 Judge Ogden to return?

5 MS. GARCIA: Yes, we're going off the record. The time is 2:02
6 p.m. Eastern Standard.

7 JUDGE ENGELS: So, let's go back on the record.

8 MS. GARCIA: We're back on the record at 2:03 p.m.

9 JUDGE ENGELS: Each party has been allocated 60 minutes to
10 present these arguments. Petitioner, as the party with the burden of
11 persuasion, will go first, followed by Patent Owner. Petitioner, would you
12 like to reserve any of your time for rebuttal?

13 MR. BLAKE: Yes, Your Honor. I'd like to reserve 15 minutes.

14 JUDGE ENGELS: Mr. Suarez, would you like to reserve any time
15 for rebuttal? You can change your mind later, but we'll ask later. Just a few
16 ground rules. Please don't interrupt during a party's presentation. Any
17 objections can be addressed during your own time or after the hearing. And
18 with that in mind, Petitioner, you may begin when you're ready.

19 MR. BLAKE: Thank you, Your Honor. I know that you have
20 copies of my demonstratives. Would you like me to put them on the screen
21 as well?

22 JUDGE ENGELS: However you'd like. We have the entire record
23 with us, including the demonstratives, but if you'd like to, you're welcome
24 to.

25 MR. BLAKE: Thank you, Your Honor. I will share them on the

1 screen, and can you see them?

2 JUDGE ENGELS: Yes.

3 MR. BLAKE: Okay. Your Honor, Petitioner comes before you
4 being in a position of having described already the reasons throughout its
5 Petition and Reply that the challenged claims of the '602 patent claims 1
6 through 26 are unpatentable on one of two grounds. The first ground being
7 in light of the Raz reference itself, and in view of the knowledge of a person
8 of ordinary skill in the art. And second ground being in light obvious in
9 view of the combination of the Raz reference and the separate Ferguson
10 reference. And before I get into those specific references, I'd like just first to
11 talk about the '602 patent and what it does purport to disclose as an invention
12 and what it does not purport to disclose as an invention. Because I think
13 that's important for setting the grounds of the later discussion of the art. In
14 particular, Patent Owner's Sur-Reply covers some of the same arguments
15 that were covered in its Patent Owner Response.

16 And so, in setting the ground here for the discussion, the field of
17 the invention of the '602 patent, which is discussed in slide 2 of our
18 demonstratives, which is up on the screen, explains that the focus here is on
19 a method in communication networks for using network tunnels in order to
20 communicate high stream packet, high speed package streams. And if I go
21 to slide 3, it can best be seen from looking at Figure 1A of the '602 patent.
22 And Figure 1A discusses an MPLS tunnel through a series of two
23 MPLS/LAG switches, referred to as switch A, which is shown in green here,
24 and switch B, which is shown in blue. Now, as far as I referenced earlier,
25 what is not disclosed to be the invention? First is the MPLS architecture,

1 which refers to an acronym for multi-protocol label switching. This was
2 known in the art. Neither side has challenged the fact that MPLS and the
3 use of it to transmit data packets was known in the art. Similarly, you see
4 here the reference of an acronym for LAG, Link Aggregation Group. This
5 was likewise known in the art. It is an architecture for taking multiple ports.
6 Here you see them, for example, in Figure 1A of the '602 patent, as Port 1,
7 Port 2, Port 3, up to Port N.

8 Taking these multiple ports, and you see the dotted circle here for
9 the LAG 25 and treating multiple ports as a single logical entity for the
10 purpose of transmitting data package streams. And the idea here is that any
11 one port only has enough bandwidth to transmit so much of a package
12 stream, and that has become more and more -- that became more and more
13 difficult prior to the time of the '602 patent, as you got higher and higher
14 speed package streams, particularly as the Internet grew more and more
15 robust, and the transfer of information, such as video information, became
16 more demanding. The idea of using a LAG, again, which was known in the
17 art, decided that what you could take is multiple slower speed links, transmit
18 packets over the multiple links, and treat them as a single logical entity of
19 one high-speed link. Now, why is this important? Because we'll see, when
20 we talk about the Raz reference later, that the Raz reference has a single link
21 between its label-switched routers, which are the MPLS less LAG switch
22 here, and switch A and the '602 and switch B, they're both to be thought of
23 as label-switched routers as part of the MPLS system. The LAG between
24 them is thought of as a single logical link, just as you'll see Raz later has a
25 single link between its devices, and that becomes important as we look at the

1 prior art. So, what do we have? We have MPLS was known, we have LAG
2 was known. The purported invention here is simply a way of deciding
3 along what path, commonly referred to as an MPLS tunnel, you're going to
4 send a package stream through this LAG environment. How to pick a
5 particular path on which to send it. And the way that it was done, according
6 to the patent, is that this switch A, shown in green, would pick a particular
7 path to use based on available bandwidth. And all of this is concerned with
8 bandwidth because we're dealing with higher and higher package streams.
9 And in picking a particular bandwidth, or a particular path that has
10 effectively available bandwidth, you use a label, which is part of a packet,
11 and you encode serial bits in that label to say, this is the path we're going to
12 use. And you send that to a preceding node, and you say, if I get packets
13 when I get them, I want you to assign them, according to this label, to a
14 particular path, which we'll refer to as a network tunnel, and a network
15 tunnel, again, also not new. That was known part of the MPLS architecture.

16 The only purportedly new thing is how to assign encoded bits in a
17 label and send it to a preceding node so that you have a way to identify
18 which path in the known LAG you're going to use. And that's what the '602
19 patent describes. Well, if we go down and look at Raz, the Raz prior art
20 reference, and I'll refer to and use, for example, slide 20 of our
21 demonstratives, because it has a nice view of Raz. Figure 1 of the Raz
22 environment, you will see, looks quite similar to the earlier figure from the
23 '602 patent. Similar in this way, one, you're dealing with an MPLS
24 environment, and you're using labels to assign a path through which you are
25 going to travel in the MPLS environment. And whereas the '602 patent

1 showed a number of ports that can be selected among when going from the
2 first MPLS/LAG switch to the second MPLS/LAG switch, Raz discloses the
3 same concept, the difference being it discloses it as subports within the
4 particular label switch router as opposed to ports between the label switch
5 router.

6 And Petitioner has always been open and up front from the very
7 beginning of the Petition about the fact that what Raz is talking about is
8 subports within an LSR, and the claims of the '602 patent talk about
9 communications between MPLS/LAG switches. But that is a distinction
10 without a difference, because the real teaching is how to select the path
11 along which you are going to transmit high-speed package streams, how to
12 pick a path that has available bandwidth using label assignment as shown in
13 Figure 1 of Raz here. And what Raz teaches is that a particular LSR, and if I
14 go down a little bit to slide 26 of our demonstratives and use Figure 3 of
15 Raz, a particular LSR such as LSR B, shown here, number 76 in Figure 3 of
16 Raz, can decide what subport it wants to receive packets on. It is disclosed
17 and unchallenged that the selection of that subport will be dedicated to
18 particular bits in a label and that label will be assigned to a packet and sent
19 back to the previous node. As in the '602 patent, you saw that the label was
20 sent back to what's referred to as a preceding node in Figure 1A of that
21 patent.

22 Here in Figure 3 of Raz you see that in the specification
23 disclosures you send it back to the previous node, this was disclosed on
24 pages 20 to 22 of our Petition, and that previous node assigns the support
25 that is used to then transmit the packet. Here it will be shown as a

1 representative example. Subport zero is used to transmit out of the first
2 device and onto the second device. Again, the same decision will be made
3 again going from LSR B on to LSR C, again Raz discloses that LSR C
4 would identify a label. It may be Raz discloses that the selection of the
5 label, this is in column 7 around line 20, that the selection of the labels
6 driven by bandwidth concerns. And the bandwidth that you're going to use
7 determines what -- what bits you enclose -- excuse me, the selection of the
8 subport you're going to use is determined by bandwidth concerns and
9 whatever stuff --

10 JUDGE OGDEN: Counsel? As I understand it in Raz when it's
11 talking about Figure 3.

12 MR. BLAKE: Sure.

13 JUDGE OGDEN: There's a selection made in LSR B in this
14 particular example showing it's -- it's a subport zero which is sent back to
15 LSR A. But then there's a separate decision in LSR C as to which support to
16 use which is sent back to LSR B, right? And those -- but those aren't, at
17 least as disclosed in Raz, those are not necessarily the same subport, right?

18 MR. BLAKE: Your honor, it's good question and it is a crux of
19 the dispute between the parties. As it relates to limitation 1.5, for example
20 of claim 1. Column 7 contains the discussion of this, but there's also a
21 relevant part in column 2 lines 9 to 20. So, you'll see them both and in both
22 locations, it says that the subports may be different along each hop. You are
23 correct that Raz discloses that, for example, LSR A determines the subport
24 that may be used to send it from LSR B to terms of subport to go from LSR
25 A to B. Raz discloses that LSR C may or may not pick the same subport to

1 go from LSR B to C. It depends on bandwidth concerns. Now, our expert,
2 Dr. Bhattacharjee, he makes two points. One, there's no reason that you
3 couldn't decide to have the same subport used all the way through. It would
4 be obvious, and that was acknowledged.

5 JUDGE OGDEN: To say that there's no reason that you couldn't
6 make that decision doesn't necessarily make it obvious, right? It's one thing
7 that you could do it. It's not giving a reason why you should do it, right?

8 MR. BLAKE: I don't -- I would disagree in this regard. If you
9 look at why Raz is making its decisions, it's making the decisions based on
10 bandwidth concerns, right? If you go to column, let me get the right line for
11 you in column 7, when we're talking about Figure 3, this is a paragraph from
12 line 17 through 29, where it's talking about when you make the next
13 decision, you look at bandwidth considerations and what might be available
14 as far as bandwidth. If that's the discussion, if the system is able to
15 determine that there's sufficient bandwidth along a particular network tunnel
16 all the way through the LSRs, then a single decision can be made to use a
17 network tunnel all the way through the LSRs. That would have been
18 obvious to a person of ordinary skill in the art. And this is even assuming
19 that the claim requires the second MPLS/LAG switch to assign the -- to be
20 the one that -- or the first MPLS/LAG switch to be the one that makes the
21 assignment.

22 If you look at the language of claim 1, it says that the physical
23 tunnel port that is sent to the preceding node is assigned by the first
24 MPLS/LAG switch. But the later limitation discussing sending the data
25 packet from the first switch to the second switch, it says you have to use the

1 same physical tunnel port. It doesn't say that the assignment of that same
2 physical tunnel port has to have done by -- been done by the first
3 MPLS/LAG switch when it goes to the second MPLS/LAG switch. What it
4 says is, the language is it has to use said physical tunnel port. You have to
5 use the same tunnel port. It doesn't necessarily say you need the assignment
6 decision that you couldn't have a second assignment decision to use the same
7 physical tunnel port. But again, even if it -- that is how the claim is
8 construed or required to be read, a person of ordinary skill in the art, when
9 you think of it from the perspective of bandwidth, if there's available
10 bandwidth, why would you change the subports that you're going to use
11 between LSRs? You would continue to use the same one. Does that address
12 your question?

13 JUDGE OGDEN: Well, I'm not -- I'm wondering if you could sort
14 of explain to me you referred to a passage in column 7 of Raz.

15 MR. BLAKE: Sure.

16 JUDGE OGDEN: To sort of justify the idea that it could be, you
17 know, that there's a reason that it would be the same subport as you go
18 downstream. For example, you know, between LSR B and LSR C that there
19 is between LSR A and B. But it seems like this passage in column 7 is
20 talking about a different embodiment than the one that's described in Figure
21 3. So, have you explained the reason to combine those two embodiments
22 and explain why, you know, as I understand it, it seems like this
23 embodiment in column 7 is just talking about two LSRs potentially, right?
24 And then later it talks about three. So, have you really explained in the
25 briefs the reason for combining those two embodiments and, you know, why

1 this teaching in column 7 about two LSRs would be applicable when you
2 add a third LSR?

3 MR. BLAKE: Sure, I'd be happy to address it. So, if we look at
4 column 7 and start at line 17, it states, in accordance with the invention, the
5 assignment of traffic to 1G subports is based on label switched paths or
6 LSPs. Thus, the MPLS label is used in order to assign an incoming packet
7 to one of the subports. The selected subport is the same for both sides of a
8 10G link. This, I think, is the key sentence or key part, in the next link on
9 the path, which to me connotes if you're thinking about another LSR further
10 down, however, the subport may be different. This is because the next link
11 may have other connections in addition to the 10G link. And therefore, it
12 may be the case that a different subport is the only subport or the subport
13 best suited that can accept the LSP with the required bandwidth.

14 Note that it is the downstream receiving node that determines the
15 subport it wants to receive the LSP on. What the discussion here is saying,
16 look, in the next link on the path, you're first talking about between a
17 preceding node and an MPLS/LAG switch or an LSR. But in the next link
18 on the path, you may, or you may not need a different subport that you're
19 used to receive packets and then forward the packets through the LSR. It
20 depends on the available bandwidth that you have. So, if your bandwidth is
21 available and you make that decision, you can use it. And then it goes into
22 the example of Figure 3, but it's building into the concept of how you're
23 going to handle different hops.

24 JUDGE OGDEN: But it seems it seems like that decision of which
25 subport to use is, based on, you know, it's an independent decision on either

1 hop. There's -- I don't see anything here, anything that says that gives a
2 particular reason why you should keep it the same as you go downstream.
3 It's just saying it may be different. And it doesn't specifically say that it may
4 be the same. I guess that's the implication. But it doesn't seem to give a
5 particular reason to keep it the same.

6 MR. BLAKE: Our expert, Dr. Bhattacharjee has opined, and I
7 think the word implication may be the right word here. While it doesn't say
8 it explicitly, the use of the word may states the fact that it may be the same
9 or it may be different. It's going to be dependent on bandwidth
10 considerations. That's the whole underlying implication for both the '602
11 patent and Raz and Ferguson, for that matter, is that you're considering how
12 to deal with bandwidth allocation as you get higher and higher data speeds.
13 And this portion of Raz is stating that you look at that bandwidth to make
14 the decisions about what subports you might want to use. And it explicitly
15 discloses that the next hop will make the assignment. And again, limitation
16 1.5 says you have to use the same port. It doesn't necessarily say that the
17 next device is not the one that assigns that port. It has to be the assignment
18 is done by the first MPLS/LAG switch. I would agree that the claim
19 requires the MPLS/LAG switch has to assign it the label that's sent to the
20 preceding node. But the claim language just says you have to use the same
21 next subport, which respectfully, when you have bandwidth considerations
22 here, it's known that you could use the same subport. Figure 3 shows it.
23 While it shows --

24 JUDGE ENGELS: Does the Petition explain your reading of claim
25 1 that it is not required that it's the first switch that makes the decision on the

1 physical tunnel port to send to the second MPLS/LAGs?

2 MR. BLAKE: Yes, the Petition at page 25 states that a POSA
3 would have understood that the data pack in an LSR B could be sent to
4 another LSR, open parentheses, which would correspond to the claimed
5 second MPLS/LAG switch, close parentheses, via a physical tunnel subport,
6 open parentheses, subport three close parentheses, having the port serial
7 number encoded in the data packet label. And it cites this portion of column
8 7 of Raz. And it also obviously cites Dr. Bhattacharjee at paragraph 107 of
9 his declaration.

10 JUDGE ENGELS: I guess I'm not sure that that's answering my
11 question. So, it seems to me that today you're presenting an argument that
12 the claim can be read to include the physical tunnel port selected by, in the
13 example of Figure 3, it would be LSR C. Am I understanding your position
14 correctly?

15 MR. BLAKE: I think my position is that in the Patent Owner
16 Reply, Patent Owner took the position that the claim language requires the
17 assignment of the network tunnel to have been determined by the first
18 MPLS/LAG switch, and that assignment to stay all the way through. And in
19 our Reply, we said, well, the claim doesn't necessarily read that way as to
20 the assignment of the tunnel. It does say you have to use the same tunnel. I
21 would agree with that. But even putting that aside, Your Honor, even if you
22 read the claim to say that the assignment has to be done by the first
23 MPLS/LAG switch, the Petition says that a person of ordinary skill in the art
24 would have considered it obvious that the assignment could have been made
25 given the bandwidth considerations, that the assignment could have been

1 made by the first MPLS/LAG switch and maintained all the way through.

2 JUDGE ENGELS: So, help me understand how you're mapping
3 whether you'd use Figure 3 or whatever part of Raz to the challenged claim,
4 and in particular, I suppose, to elements 1.1 and 1.5.

5 MR. BLAKE: Okay. So, if we look to element 1.1, I'm going to
6 put the claim language here in front of me to make sure I read it correctly. It
7 states, and I'll use Figure 3 of Raz. Assigning by a first MPLS/LAG switch,
8 that would be LSR B in Figure 3 of Raz, a single physical tunnel port of a
9 LAG to a network tunnel. So, in Raz, you are selecting one of the subports.
10 It is a disagreement between the parties, but something that the parties have
11 well discussed that we believe the teachings related to subports within the
12 LSR are applicable to ports between the LSR. So, you're assigning in LSR
13 B the subport that you're going to use, for example, subport 0. Wherein, the
14 single physical tunnel port of the LAG meets a bandwidth requirement of the
15 network tunnel.

16 That language in Raz that we looked at in column 7, starting with
17 lines 17 going on through the discussion of the example of Figure 3 in line
18 48, discusses that you're going to select a subport that has sufficient
19 bandwidth so that you meet the bandwidth requirement of the tunnel and the
20 single physical tunnel port has a port serial number which the Petition
21 disclosed in Raz that, and it is not really questioned that there's a port serial
22 number, that is disclosed in I believe it's column 9, lines 41 to 48, and again
23 in Figure 4 of Raz. So, you assign a subport that has sufficient bandwidth,
24 and a physical tunnel port number has a port serial number. I'll stop there
25 briefly having gone through 1.1 and ask if you have any questions.

1 JUDGE ENGELS: So, I think I understand that. And then I
2 suppose if you could continue with 1.2 and in particular, for example, on
3 page 20 of the Petition you address both LSR C and LSR B as the first
4 MPLS/LAG switch.

5 MR. BLAKE: I'm just looking at that for a moment to determine -
6 - so what that is the term saying is in on page 20 when you're talking to LSR
7 C in the example because LSR C, also in Figure 3 as it's shown, makes an
8 assignment it dedicate -- it would make an assignment of the subport of the
9 bits and send them back to LSR B. And the discussion of dedicating the
10 subport of the bits there refers to bits 16 to 13 to indicate that you would
11 send it through subport 1.

12 JUDGE ENGELS: And so, that's to say that what's shown in
13 Figure 3 does not meet the claim language, is that correct?

14 MR. BLAKE: Insofar as what's actually shown in Figure 3 shows
15 that you use different subports as far as the dotted line going through the
16 LSR A to LSR B to LSR C. It is correct that it shows subport 0 between
17 LSR A and LSR B and subport 1 between LSR B and C. However, I would
18 submit that Figure 3 shows all of subports 0 through 9 are available for
19 selection between the various LSRs. And there's no reason if bandwidth was
20 available that you couldn't have also used, where you used subport 0
21 between LSR A and LSR B, you could have likewise used subport 0
22 between LSR B and LSR C. I think that's why the language --

23 JUDGE ENGELS: So, do I understand correctly, and I think
24 Judge Ogden asked earlier, so Raz teaches that LSR C selects the subport
25 and passes that information to LSR B. That's the subport that would be used

1 for communication between those two?

2 MR. BLAKE: That is what Raz explicitly teaches.

3 JUDGE ENGELS: And similarly, LSR B dictates the subport for
4 LSR A, is that correct?

5 MR. BLAKE: That is what Raz explicitly teaches, correct.

6 JUDGE ENGELS: And so, if those are based on bandwidth
7 considerations doesn't that at least suggest that it's different bandwidth
8 considerations between LSR A and LSR B, and different considerations
9 between LSR B and LSR C?

10 MR. BLAKE: I think that's one way that you could think of the
11 bandwidth considerations. I think you could also think of the bandwidth
12 considerations on it as a whole. I think what a person of ordinary skill in the
13 art would understand from it is that you have to consider the bandwidth at
14 each hop, but it would have been obvious that you could have made the
15 bandwidth determination at the beginning and had the same subport selected
16 to go through all of the LSRs.

17 JUDGE ENGELS: And just to make sure that I understand
18 correctly, so you do not contend that LSR B is dictating the subport for
19 communication between LSR B and LSR C?

20 MR. BLAKE: That is not what is explicitly stated. What I am
21 contending is that that would have been an obvious variation. It would have
22 been obvious to modify Raz given the knowledge of a person of ordinary
23 skill in the art. If what you are concerned about is bandwidth through the
24 system, LSR B could have been used to make the decision that we're going
25 to use subport 0, for example, between A and B, and we're going to continue

1 to use subport 0 between B and C.

2 JUDGE ENGELS: Does the Petition describe modifications of
3 Raz?

4 MR. BLAKE: The Petition does describe modifications of Raz.
5 There is that language that I read earlier from page 25.

6 JUDGE ENGELS: Where in 25 does it describe modifying Raz?

7 MR. BLAKE: It says a person -- a POSA would have understood
8 that the data packet in the LSR B could be sent to another LSR which would
9 correspond to the claimed MPLS/LAG switch via a physical tunnel subport,
10 subport 3 having the port serial number encoded in the data packet label.
11 And it refers to the Raz columns 7, 9, and 14 and it also refers to paragraph
12 107 of Dr. Bhattacharjee's declaration.

13 JUDGE ENGELS: I guess help me understand what the
14 modification is here.

15 MR. BLAKE: To the extent that is required by the claim, the
16 modification is that LSR B would make the determination as to what subport
17 is going to be assigned in the label, so what network tunnel you're going to
18 use in the label, and that label would be sent back to LSR A to determine to
19 use a subport 0 between the first two LSRs and then the same subport in that
20 label would be used to send it between the second two LSRs.

21 JUDGE OGDEN: So, is what I hear you saying is that the
22 modification is that you start with the example of Figure 3 in Raz, and then
23 you modify it by applying the passage in column 7 which I guess is in the
24 context of Figure 1. And so, you're combining two different embodiments in
25 Raz?

1 MR. BLAKE: I would believe that the discussion in column 7 is
2 applicable, equally applicable to column 3 as it immediately precedes the
3 discussion of Figure 3.

4 JUDGE ENGELS: So, I guess I don't understand then why, how
5 we're getting from what Raz describes in Figure 3 in which LSR C dictates
6 and sends to LSR B the port assignment. But we're trying to get to LSR B
7 dictating the port assignment all the way through.

8 MR. BLAKE: LSR B -- if our concern is with the bandwidth of
9 the network tunnel that's going to be required to send the high speed data
10 stream through, and we're using a label assignment process to select a
11 network tunnel. LSR B, it would have been obvious to a person of ordinary
12 skill in the art then. In this paradigm, LSR B could determine that we're
13 going to use tunnel 0, subport 0, to make the network tunnel, pass that back
14 to LSR A, and use the same subport all the way through from LSR A to LSR
15 B to LSR C. It is shown that zero is an option there, and while the
16 representative example shows subport 1 between B and C, it would have
17 been obvious to a POSA that you could have made the original decision in
18 LSR B that you're going to use zero all the way through.

19 JUDGE ENGELS: I suppose that still though doesn't seem
20 consistent with Raz's disclosure that it is LSR C that's dictating the
21 connection between LSR B and LSR C.

22 MR. BLAKE: Raz does disclose that LSR C makes the decision
23 about which label LSR B is going to use. But there's no reason a POSA
24 could not have relied upon LSR B. Instead of having to make two decisions,
25 you can make one decision if bandwidth is determined to be available.

1 JUDGE ENGELS: Is there any discussion in Raz about LSR B
2 assessing the bandwidth between LSR B and LSR C?

3 MR. BLAKE: There is -- the discussion I would go back to
4 column 7, where it's talking about the fact that the next link around line 22
5 may have other connections in addition to the 10G link, and that you're
6 going to look at what's available in the next link in making that decision.
7 For saying you could take that -- the system can take that into account, and it
8 could be modified. So, said LSR B makes that decision as far as what
9 bandwidth is available in the next link instead of LSR C. Your Honor, you
10 may be speaking, and I can't hear you.

11 JUDGE ENGELS: I'm sorry. Counsel, I just wanted to push back
12 a little bit on what you said earlier about column 7 being applicable to the
13 example in Figure 3 because I'm not sure that that's really the case. Figure 3,
14 the discussion, it seems like it begins in column 9.

15 MR. BLAKE: Correct.

16 JUDGE ENGELS: But before that, in the context of column 7, it
17 seems to be talking about the example in Figure 1. And then after that, it
18 goes to a discussion about a different example, a different embodiment in
19 Figure 2. And only then does it go and discuss the example in Figure 3. So,
20 how -- what -- is there anything in column 7 that suggests that it would apply
21 to all embodiments in the Raz disclosure and not just Figure 1?

22 MR. BLAKE: Your Honor, I apologize if I misstated it. Let me
23 try to restate it more clearly. Right below, in column 7, right below is a
24 discussion of an example of two LSRs, LSR A and LSR B. And that's not
25 Figure 3, obviously. Figure 3 is in column 9. But what I was trying to say is

1 the logic here in column 7 of taking into account bandwidth and noting that
2 the next link may have other connections in addition to the 10G length. And
3 that you're taking into account the bandwidth considerations of the next link
4 in the path is applicable to when you get to column 9's discussion of Figure
5 3, and the fact where you have three different hops, LSR A, LSR B and LSR
6 C.

7 It's that line that says in the next link in column 7, the next link on
8 the path over the subport may be different. This is because the next link
9 may have other connections in addition to the 10G link and therefore, it may
10 be the case that a different subport is the only subport that can accept the
11 LSP with the required bandwidth finishing their own lines 25 and 26. It's
12 talking about the fact that it's a bandwidth consideration at each link. And
13 here it has an example of LSR A and LSR B in column 7. And I think I did
14 mistake that, and I apologize. But it's equally applicable to what's in Figure
15 3.

16 JUDGE ENGELS: Okay, I understand. Thank you.

17 MR. BLAKE: Any more questions there? I see that my time is
18 moving, moving on before I jump in to handle the next part of my argument.
19 Any more questions on that point? Okay. As my time is running and I do
20 want to stop at my 45 minutes, a couple things to note. One, as I leave that,
21 I did want to note Dr. Rouskas's testimony, Corrigent's expert, when talking
22 about at Exhibit 1022 at 68, lines 4 through -- page 68, lines 4 through 13,
23 where he acknowledges that in talking about the example in Figure 3 that the
24 subport in the LSR C could have been chosen to be the same as the subport 0
25 that was going through LSRs A and B.

1 And then I also would like to address briefly two points before my
2 time expires. One, the concept that has been raised repeatedly that the fact
3 that you're talking about internal subports in Raz, as opposed to an external
4 link between the devices and recited in the claims of the '602 patent. Patent
5 Owner tries over and over in a number of different ways to make an
6 argument that these are different functions operating in different ways. And
7 it characterizes Raz as dealing with slow speed sub processors within the
8 LSR, and having a sufficient link between the devices that are shown in Raz.
9 And respectfully, I think that our position has always been the obviousness
10 modification of Raz is that the teaching of using the label method to select
11 the path through a support that you are going to take within the LSR applies
12 equally to a link between devices.

13 The link between devices while it is multiplexed in Raz into a
14 single signal between devices, even a multiplex signal has, as data speeds
15 get higher and higher and Raz focuses on the fact that you're trying to make
16 sure you have enough bandwidth, even a multiplex signal is going to have a
17 cap in its available bandwidth. And the teachings within Raz that you can
18 use a label to select a path that you're going to use among a number of
19 different subports are equally applicable to communications between devices
20 where you may have the need to aggregate multiple paths between devices
21 in order to achieve a higher bandwidth capability than what you have with a
22 single link such as a multiplex signal. And it's the same function that you're
23 teaching. Communicating packets within a device versus communicating
24 packets between devices. And that's what differentiates our position from
25 some of the case law cited in the Sur-Reply from Patent Owner, that you're

1 not changing the function. What you're doing is making use of a label to
2 assign paths that are going to have sufficient bandwidth, whether that is
3 within a device or between devices, doesn't teach anything different.

4 And secondly, Patent Owner makes much of the argument that the
5 subports within a device would not be thought of as a LAG. And therefore,
6 you wouldn't consider it a LAG for use between devices. You wouldn't
7 modify the devices, and as it applies to Ground 2, that there would be no
8 reason or motivation to combine with the Ferguson reference. But
9 respectfully, you would consider it a LAG. A LAG is a logical link between
10 devices. And the logical link between devices could also be considered.
11 That's also how you could consider the subports within the LSR. You're
12 using subports 0 through 9 to effectuate the same logical result of having a
13 LAG within the device. You're still aggregating the transmission of data
14 across different links and putting them together so that you can use them.
15 That is applicable whether you're within a device or external to a device.
16 And I believe I've reached my 45 minutes if my time calculation is correct.
17 So, absent any questions, I will cede the floor.

18 JUDGE ENGELS: Thank you. With that, we will turn to Patent
19 Owner. Patent Owner, you may begin when you're ready.

20 MR. SUAREZ: Great. Thank you, Your Honor. Struggling to
21 find my mouse here, just give me a moment. I found it. I'm just going to
22 share my demonstratives as well. All right. Thank you, Your Honors. May
23 it please the Board. Again, this is Christopher Suarez on behalf of
24 Corrigent.

25 JUDGE ENGELS: I'm sorry, counsel. Before we begin, do you

1 intend to reserve any time for rebuttal?

2 MR. SUAREZ: I'd like to reserve 15 minutes.

3 JUDGE ENGELS: Okay.

4 MR. SUAREZ: Thank you, Your Honor. So, before I go through
5 my demonstratives, I'd just like to make a couple, I think, high level points
6 at the outset that I think all of us should keep in mind for this case in
7 particular. First, we have to look at the claim language. An entire
8 presentation from counsel we didn't hear any specific discussion of the claim
9 language. And we have to look at whether the claims as they're worded are
10 rendered obvious in light of the person of ordinary skill's reading of the
11 references. And that brings me to my second major point which is that this
12 is an obviousness case. There's no anticipation, and so we're solely looking
13 at whether the claims would have been obvious to the person of ordinary
14 skill in light of the references, in the light of the teachings of the references.
15 And what we heard a lot of from counsel is things like this could have been
16 possible or this might have been possible. But what we don't have in this
17 record is any demonstration that any of the claims would have been obvious.

18 So, those two principles are ones we should keep in mind as I go
19 through my demonstratives. So, real quickly just as a roadmap I'm going to
20 go through Grounds 1 and 2, and this slide 2 gives that roadmap. I won't
21 repeat it here, but I just wanted to preview some of the arguments. So,
22 before we even get into the substantive problems, there's procedural
23 problems in this case, which is that there were numerous new theories
24 presented on reply that were not in the Petition. We heard some questions
25 about, from Your Honors, about what was in the Petition. And the reality is

1 much of what was in the Reply wasn't in the Petition. These concepts of
2 LAGs being well known, these arguments about design choices, obviousness
3 alternatives, whereas the subports are functionally like a LAG. These
4 arguments about the same subport number being used, all of these things that
5 are outlined on slide 3 were new arguments and should be procedurally
6 rejected. We noted that the Reply Declaration that was submitted was
7 almost 50 percent larger than the Petition, reflecting the new arguments and
8 new analysis that was made. And we want to set that out at the threshold
9 because procedurally, as Your Honors are well aware, we're not permitted to
10 submit a Sur-Reply Declaration to respond to a lot of these points.

11 Now, notwithstanding the fact that there are new arguments in
12 evidence, we still think that the arguments were woefully deficient and don't
13 come close to the preponderance burden. So, I want to set the stage with an
14 overview of the '602 patent. And this patent, '602, looking at slide 6, is
15 called tunnel provisioning with link aggregation. It's about a network tunnel
16 that is between nodes, and it's about this concept of a LAG, which is critical
17 to the deficiencies in the Petition. Turning to slide 7, I'm starting with the
18 claim language. And this is important, as Your Honors' questions, I think,
19 illustrated. We have a switch A, which I've highlighted in red in the claim
20 language that assigns by a first MPLS/LAG switch, a single physical tunnel
21 port of a LAG. The LAG is illustrated in green. There's also a
22 communication to a preceding node.

23 I think opposing counsel did reference that, and you see that in the
24 yellow, both on the figure and in the claim language. And so, the
25 assignment of the physical tunnel port also is conveyed to a preceding node,

1 and that information from the preceding node is then used by the first
2 MPLS/LAG switch to send to the second MPLS/LAG switch through a
3 single physical tunnel port, this data, this information. And so, these three
4 nodes are all involved in the claim language. They all play a role. And they
5 all relate to the limitations that we discussed throughout our Patent Owner
6 response and in our Sur-Reply that demonstrate that the claims of the patents
7 were not obvious. And so again, we have to focus on the claim language for
8 purposes of our analysis. So now, let's look at Raz.

9 Raz, looking at slide 9 here, is called link multiplexing mechanism
10 utilizing path oriented for forwarding. It's about this concept of multiplexing
11 and that is taking multiple internal processor subports and ultimately using
12 them to transmit over a single high speed link. That concept of multiplexing
13 as some of the slides will show and as we argued is completely the opposite
14 of a LAG which is called inverse multiplexing. That argument wasn't even
15 responded to in any of the briefing from the other side. We'll get in a little
16 more detail later, but I want to make the point that conceptually Raz is the
17 opposite of what the '602 patent is about.

18 Looking at slide 10, this is Figure 1 that Petitioner relies on. And
19 again, there shouldn't be a dispute here that these subports are internal
20 processing subports, and that they are internal to the device. And that green
21 illustration is referring to the single high speed link that is used to transmit
22 between routers and Raz. It's undisputed that there's a single high speed link
23 and that these subports are not links in a LAG group.

24 Slide 11 will just show you some of, you know, again it shows the
25 figure in slide 10 that I just described, but it also gives you evidence from

1 the record in the Raz disclosure that confirms that this is about these internal
2 subports in the single high speed link. And so, why does Ground 1
3 obviousness over Raz not render the claims obvious? It doesn't disclose the
4 LAG or render it obvious. It does not disclose or render obvious a first
5 MPLS switch that assigns and codes and then sends a single physical tunnel
6 port. Your Honors' questions, I think, spoke significantly to that limitation.
7 Next, a POSA would not modify Raz to apply between two MPLS/LAGs,
8 which is let alone to arrive at the claimed invention. And then something we
9 did not address in the prior discussion is that there's not even a reasonable
10 expectation of success that there could have been some sort of combination.
11 And then finally, we're going to touch on claim 15's mapper, which, again,
12 was not discussed before but is, I think, informative of the fact that none of
13 the claims, 1 through 26, would have been obvious, sorry, in light of Raz.

14 So, turning now to slide 13, Raz does not disclose or render
15 obvious the claimed LAG. Slide 14 illustrates that the '602 patent requires a
16 lag between two MPLS switches, that point is undisputed. Slide 15
17 illustrates that in the Petition, the Petitioner was unequivocal in arguing that
18 Raz's subports are the LAG. Figure 1, the one we talked about earlier,
19 shown in red in the top call here, they argued is 10 subports used to
20 implement link aggregation. They also stated Raz, quote, discloses,
21 unquote, ethernet supports in an ethernet LAG. The next call out says Raz,
22 quote, teaches, unquote, the assignment of one subport of a LAG. And I
23 don't need to read them all but slide 15 makes the point that they were
24 arguing that the LAG was taught by Raz.

25 The institution decision, Your Honors, recognized that that was

1 their argument. Looking at slide 16. Slide 17, however, shows us that Raz's
2 supports do not disclose or render obvious a LAG, because again, subports
3 are processors, not links, and Raz uses a single high-speed link. As I've
4 shown in slide 17, the bottom left, there's a disclosure of the green 10G link
5 28. That's what it refers to in the Raz disclosure, 10G link 28. And the other
6 disclosures on the righthand side, which are cited on this slide, reinforce that
7 there's a subports comprising processors that are performing packet
8 processing for a higher-speed packet stream.

9 JUDGE OGDEN: Counsel, it seems to me that your argument is
10 getting to what the construction of a LAG is. What is a link aggregation
11 group? And I heard counsel for Petitioner say that a LAG is a logical link
12 between devices, I think something to that effect. What do you propose as a
13 construction? Do you agree with that? Or do you propose a different
14 construction?

15 MR. SUAREZ: Yeah, thank you, Your Honor. I don't think a
16 formal construction of LAG is needed, but insofar as there's a dispute that
17 needs to be resolved by the Board, I would agree that a LAG needs to be
18 between devices, and it cannot be simply something within a device. The
19 LAG group has to be links between a device, and there's no dispute that
20 what they rely on in Raz is not a link between a device. It's simply
21 something internal, and we provided evidence in our briefing. In fact, it's
22 right here on this slide 18, which is that subports are physical structures
23 within an LSR and are thus different from the link between LSRs. And so, I
24 think that admission kind of gets to the point. But, Your Honor, seek further
25 clarification?

1 JUDGE OGDEN: Well, yeah. I mean, why isn't it just an
2 aggregation of links? Why does it have to refer to particular devices? Why
3 isn't it more general, just an aggregate -- it's a link -- you were talking about
4 a link aggregation group. Why isn't it just a group of aggregated links of any
5 kind? More general like that?

6 MR. SUAREZ: I think that's a fair point, Your Honor. I think as
7 long as link means that there's a linkage between devices. So, if you're
8 suggesting that a link is something, the internal processor, that doesn't seem
9 to be consistent with the meaning of link based on the evidence in this case,
10 given, frankly, the point on the slide right here in their Reply and in their
11 evidence. But --

12 JUDGE OGDEN: Why couldn't it just be a link between two
13 points within a single device? Isn't that a link, too?

14 MR. SUAREZ: I don't think -- so, I think a LAG is a term of art
15 here, and it's in the art. And so, I don't believe that that's the case. And I
16 don't think there's any evidence from their expert that suggests that a LAG
17 can be something that's merely internal.

18 JUDGE OGDEN: But if it's a term of art, we kind of need to
19 know, you know, what the term of art is. If it's different from just the literal
20 words, a link aggregation group.

21 MR. SUAREZ: Yes. So, I think another point is if we look at the
22 record in this case, if you look at both Ferguson, the reference they cite as
23 the secondary reference, and you look at the '602 patent, they both indicate
24 that the LAG is between devices. And I think, you know, in the context of
25 this proceeding, where we're, you know, interpreting and looking at claims

1 of the '602 patent, that is what is informative. And on page, I believe it is 26
2 of the POR, we made that point.

3 JUDGE OGDEN: If it is a link between devices, I mean,
4 something like an LSR has multiple components. Why couldn't you call
5 different parts of an LSR a device?

6 MR. SUAREZ: That may be possible. That certainly wasn't
7 something that I think we briefed or discussed or was disputed between the
8 parties or was disputed between the parties. You know, so sitting here right
9 now, I don't have a perfect answer for that. But, you know, I do think that in
10 the context of the '602, when you read the disclosure, and you look at what's
11 disclosed, it's unequivocal that the Patentee is talking about connections
12 between devices. And, you know, there was no argument from the
13 Petitioner about there being some internal subset of devices that establish a
14 LAG. That certainly was never presented, and there was no argument in
15 that. So, to the extent, you know, Your Honor is thinking about that, you
16 know, I think it's something that's just not relevant here because the
17 Petitioner just doesn't ever argue that. There's no discussion of, you know,
18 sub-components of a device and whether that is a LAG.

19 JUDGE OGDEN: Well, there is in the '602 patent, there is
20 something that could arguably be understood as some sort of a definition
21 that's in column 2, the first maybe five lines. And it says that link
22 aggregation LAG is a technique by which a group of parallel physical links
23 between two endpoints in a data network can be joined together into a single
24 logical link referred to as a LAG group. Do you think that that's
25 definitional?

1 MR. SUAREZ: I think that's certainly informative of the position
2 that we've taken. I'm not gonna, you know, state necessarily the Patentee
3 was intending to be their own lexicographer there, but I do think that is
4 informative of the position we've taken in this case.

5 JUDGE OGDEN: Okay. Thank you.

6 MR. SUAREZ: Great. Thank you, Your Honor. So, then going
7 back to that, under that position, Petitioner's Reply on slide 18, it recognized
8 that Raz teaches only a single high-speed link between LSRs. So, there's a
9 concession there that there is no LAG between LSRs under the interpretation
10 that we believe is correct here. And so, looking at slide 19, this goes to the
11 point I previewed before, which is that Raz is directed to multiplexing,
12 which ultimately results in taking these internal subports and aggregating
13 them into a single link for purposes of communication between devices,
14 which is exactly the opposite of the inverse multiplexing that the '602
15 package was talking about. And again, this was undisputed. We have
16 expert evidence on this point that is not disputed in any way. If we were to
17 look at Exhibit 2007, paragraph 62, paragraph 92, and again, we think this is
18 informative of why the POSA would not have modified the reference as was
19 claimed by the Petitioner.

20 Slide 20. We just want to reiterate that the Reply asserted a new
21 function argument that Raz's supports act functionally like a LAG. That was
22 a shift. And then in the Petition, again, they just argued that it was actually
23 the LAG. Slide 21, we cite some case law here, including one of the
24 members of the panel, Judge Driesch, on the *Netflix* case where this Board
25 and the Federal Circuit has found you cannot make new arguments on reply,

1 and agreed with the Board's decision to disregard those arguments. We
2 think that's very important in this case.

3 Slide 22, this just shows that the new function argument is wrong,
4 again, because the Raz reference is directed to the multiplexing, not the
5 inverse multiplexing concept that is at the heart of the '602 patent. Slide 23,
6 it just illustrates that there are several of these new theories. I don't need to
7 hash through them here. We just want to make the point that numerous
8 theories were new, and this is color coded to show that they shifted their
9 position between the Petition and the Reply. Same with slide 24. It
10 predominantly relied on the new declaration from Dr. Bhattacharjee that,
11 you know, for the first time made these arguments. There weren't references
12 to exhibit, the first declaration. It was all references to Exhibit 1021. Slide
13 25 is reiterating the same point. And 26, again, points to the fact that the
14 case law shows that those arguments should be disregarded.

15 So, now there is also no motivation to replace Raz's single high-
16 speed link with a LAG. If we look at slide 29, we talked a little bit about
17 that. And in the next slide, I'm going to talk a little bit about Raz. In the
18 Reply, they simply make this argument in a conclusory fashion, but there's
19 no indication of how or why any sort of change will be made. And actually,
20 this will dovetail well with the point that Your Honor's questioning got to
21 that we'll get to shortly, but I want to point out that even if there was some
22 sort of bandwidth motivation, generically stated, there's no reason the POSA
23 could not have, for example, simply increased the speed of the single link
24 and never even considered a LAG. And so, I think that alternative is
25 important. And I just want to point to, for example, Exhibit 1022, where it

1 says testimony from 2322 to 249, which makes that point. So, now the
2 second reason besides the LAG is that there is no assignment and encoding
3 of a single physical tunnel port for sending a packet between MPLS/LAG
4 switches.

5 So now I'm on slide 32, which again provides the linkage with the
6 claim language and the main arguments here. And you'll see that 1.1
7 requires assigning by first MPLS/LAG switch a single physical part of a
8 LAG, and then 1.3, 1.4, 1.5 are all discussing the encoding being sent to a
9 preceding node, receiving it from a preceding node by the first switch, and
10 then sending to the second MPLS/LAG switch via the single physical tunnel
11 port. So, there's again an interplay between those nodes. Now, slide 33 I
12 think gets to a lot of the questions that were being asked by Your Honors,
13 and we just want to make hammer home the point here. First off, if you look
14 at this, we've highlighted LSR A and LSR B in this Figure 3 embodiment,
15 and in between A and B, the subport zero is selected, and then LSR B is the
16 one that makes the selection of that zero. And in the second portion here,
17 there's a subport one, and LSR C makes a selection. There is no dispute, and
18 we've cited it repeatedly in our briefing, that there is an independent
19 selection between each pair of routers to decide which subport is being used.

20 And so, I think that gets to Your Honors' points, which is that what
21 Raz is about is independently looking at the processing capacity of these
22 various nodes and seeing if transmissions can be done. And at the point it's
23 doing that, it does the assessment independently to be chopped because it
24 doesn't care about a physical tunnel port being consistent. In fact, it does
25 even care about physical tunnel ports at all because even if you were to

1 consider their argument, these ports again are the internal ports. They are
2 independent pairs of them, and they have nothing to do with a single
3 physical tunnel port. And again, the question is, would the POSA have been
4 motivated to modify the reference as the claims require? And this comes
5 nowhere close. I think Your Honors' questions got to that.

6 Thirty-four points out that the disclosure, you know, of Raz
7 confirms that the downstream node determines the subports, and that the
8 subports are determined independently with respect to each pair. And that's
9 what Your Honors' questions again got to, so we provide those sites on slide
10 34. Even if there was some sort of magical modification that was made, you
11 know, that still would not, Raz would still fail as a reference. And this goes
12 to the point I made about these subports, you know, are not themselves
13 single physical tunnel ports. They're not, because there's internal ports.
14 They're dealing with internal processing to ultimately, I have my mouse
15 here, make sure you can transmit on the single link between nodes. That's
16 ultimately what they're about.

17 Slide 36 here. This shows you the entirety of the analysis and the
18 Petition for limitation 1.5. I think there was some discussion of this before.
19 And you'll see there is this discussion of LSR B in the example described in
20 column 7 of Raz. Right? And I think this, you know, this A, we think is
21 conclusory, but B, goes to the fact that you're not have -- LSR B is not the
22 one that is assigning the single physical tunnel port to go to C, as Your
23 Honors pointed out. What's happening is LSR B is making the assignment
24 of what goes to A, which is not what the patent's about, which is not what
25 this assigning limitation requires.

1 Looking at slide 37, you know, again, this is just another excerpted
2 page, and the Petition's asserting that the packet, I've underlined it here,
3 could be sent to another LSR, not that the POSA, it would have happened,
4 because there's no evidence that it would have happened, or that the POSA
5 would have been motivated to make sure it happened. Again, in fact, each
6 hop is independent, and the bandwidth limitation could, or between nodes
7 could dictate precisely the opposite, the bounce from zero to one to three, all
8 these different permutations. So, it's, again, not close. And slide 38 just
9 points out that the Petitioner Reply misreads the claims. Claim 1 says,
10 assigning by a first MPLS/LAG switch on a single physical tunnel port. So
11 that's clear as day. And the Reply reads that out of the claims as we point
12 out referencing Reply page five. The experts on the Petitioner's side in two
13 proceedings agree with that. That's what we point out on slide 39, citing
14 evidence from Bhattacharjee, the expert in this case, and also Dr. Min, who's
15 the expert in the follow-on Petition, defendants filed that we will address
16 separately in another time.

17 Now, slide 40, they make an alternative argument, again, about
18 design choice. That's a new theory, never was presented. The same subport
19 number argument, slide 41, that should be disregarded. Because again, if
20 you look at our annotation here, in Figure 3, you have zero selected in the
21 first hop in Figure 3, you have one selected in the second hop, and those are
22 independently assigned, and there's no evidence that it would have been the
23 same subport number. And again, even if in some hypothetical world were
24 that there's no evidence that that is a single physical tunnel port of a LAG
25 that carries through because either these are internal subports, not links

1 between nodes.

2 Forty-two is, again, the case law about new arguments, and those
3 should be disregarded. Forty-three, I believe I already discussed the same
4 subport number point, so we can move on from that. And I think Your
5 Honor's questions covered this point very well. Forty-four just shows the
6 evidence of the fact that the follow-on node is the one that selects what goes
7 to the preceding node in every single pair in this reference. So, independent
8 of that, there's no motivation to modify Raz. If we go to slide 45, you know,
9 Raz's mechanism, as slide 46 says, is specifically for inside of an LSR and
10 teaches away from external use, and so we provided some citations to the
11 record on slide 46 for that point. Raz and in '602 address different problems.
12 If we look at slide 47, the idea is to internally make sure there's enough
13 capacity to handle a single link in Raz. In the '602 patent, there's an
14 assumption that the switches internally have enough processing capacity, so
15 you don't have Raz's problem. So, 48 is just, again, additional citation
16 Reply. It's trying to show a similar problem in Raz by conflating processing
17 capacity with link bandwidth. But again, the processing is not about the link
18 bandwidth between nodes. Slide 49, we made the argument about the fact
19 that Raz would be inoperable for its intended purpose of multiplexing if you
20 were to somehow magically modify it to approach the '602 patent, because
21 again, they're directed to opposite problems. And so, you would essentially
22 be eliminating the whole purpose of Raz if you were to try to modify it to
23 use LAG groups, which doesn't make sense.

24 Slide 50 talks about the fact that the inoperability, and again, they
25 try to argue that Raz's multiplexing was merely a design choice. Again, that

1 wasn't argued in the Petition, but there's a key addition here. They say if a
2 LAG were available between LSRs, there would be no need to multiplex.
3 So, they basically admit that there's no need for Raz if you somehow
4 modified it to use LAGS between LSRs. So, we think that just reinforces
5 the interoperability and the pointlessness of the combination of the POSA
6 would never have been motivated at all to modify Raz in this way. And we
7 note that Exhibit 1021, the Reply Declaration at paragraph 31, their expert
8 makes the same admission about if a LAG were available between LSRs
9 would be no need to multiplex. So, basically no need to do Raz anymore.

10 So, 51, again, we made this point that the different structure and
11 function would result. And we cited the *In re Gal* and *Ex Parte Maita* cases
12 where there's no design choice, where the claim structure and function were
13 different from the prior art. And, you know, because if you're fundamentally
14 changing the result of the primary reference or what it does, that that's not a
15 valid obviousness argument. Page 52, again, the obviousness is just another
16 new argument and should be disregarded. In slide 53, again, it would
17 obvious, obviate the need for any of Raz's invention as I stated before. You
18 know, just repeating the legal standard here real briefly, you have to explain
19 how the prior will be modified per the *ActiveVideo* case. You have to
20 provide the motivation to modify. You need to have specificity.

21 And I urge Your Honors to look back at the Petition as I'm sure
22 you have many times and there isn't a clear articulation of how you modify
23 the reference. I think some of the questions that Your Honors asked got to
24 that point. I spent a lot of time looking at Petition at page 25, which was
25 discussed thoroughly. I reread it and reread it. There's not really a clear

1 articulation of how the reference would be modified, let alone like why it
2 would be modified in a particular manner, let alone in a way that gets to the
3 exact claim language at issue here.

4 JUDGE OGDEN: Well, counsel, isn't there a theory of
5 modification that you would start with Raza's Figure 3. And then basically,
6 instead of switching from one subport to another as you go between them,
7 from -- from LSR A to B and then from B to C, you would just keep the
8 same subport number?

9 MR. SUAREZ: I think that is one. So, that is one articulation of
10 what their theory has evolved to. It's not clear to me that that was articulated
11 in the Petition, but I think their theory has sort of evolved to this well, you
12 might have the same subports across three nodes, you know, these again
13 internal subports across three nodes and that gets us to the LAG. But -- but
14 their expert, you know, at the same time is conceding that the internal ports
15 are different, as we pointed out repeatedly. And so, there's all sorts of
16 problems with that, not to mention the lack of the assignment, right, which
17 Your Honors' questions got to by the first switch of the single port. So, I
18 think if I could try to articulate what they're arguing, I think that is one of
19 their arguments, but I think they don't come anywhere close to explaining
20 why that would be the case, according to the POSA. And I think Your
21 Honor made an astute point as well about how they're trying to kind of mix
22 and match different parts of the specification to try to get there.

23 JUDGE OGDEN: There's a slide, I think 40, where you talked
24 about one of the arguments in the Reply where they say it would have just
25 been a design choice to use the same port on the second hop. Assume we

1 were to not view that as a new argument. I was wondering if you could
2 maybe speak a little bit more to that. Is that, you know, if we were to take
3 that as not a new argument, is that a good argument or what's wrong with
4 that?

5 MR. SUAREZ: I don't think it is a good argument. And I think
6 the reason why is, you know, you have to look at every argument in the
7 context of the reference. And as I think Your Honors pointed out, the Raz
8 reference to the extent it's talking about this bandwidth, it's looking at the
9 bandwidth at every single hop. And it's making these independent
10 determinations. And so, at the point that is true, the reference is teaching
11 away from this notion that, oh it's just a design choice that you would have
12 picked the same one all the way through. And so, you know, again it's a
13 new argument and never was raised in the Petition so it should just be
14 disregarded out of hand, but to the extent Your Honors are inclined to
15 address it on the merits I would just point out that when you look at Raz as a
16 whole there's just no basis that the POSA would have been motivated to do
17 that and just hand waving the words design choice without an explanation
18 that's other anything other than conclusory doesn't get you over the line.

19 JUDGE OGDEN: Well, does -- Raz does seem to at least imply
20 that it could be the same port. Is that enough to say that that, you know, a
21 person of ordinary skill in the art would have understood that is suggesting
22 that it -- that that's one possibility among many possibilities for choosing
23 which ports to use between the different hops?

24 MR. SUAREZ: So, I don't think so because if we look back at the
25 column 7 portion that was discussed, you know, it says, the MPLS label is

1 using or assigning the packet to one of the subports. The selected subport is
2 the same for both sides of a 10G link. In the next link of a path, however,
3 the subport may be different. That is a teaching of possibilities that it could
4 be different. And there is no affirmative teaching in the reference, and I
5 think Your Honor pointed that out, that suggests that, oh, and there are some
6 situations where it would be the same, or where the POSA would want to be
7 the same, or it should be the same. There's no suggestion in the reference
8 whatsoever. And again, there's no analysis or evidence in the record from
9 the experts, even independent in the reference itself, that show that it would
10 have been something the POSA would have done. You know, our view is
11 that this is simply a hindsight-driven argument, right? Because we know
12 that there are three nodes in the claim, and, you know, we need to have it be
13 the same port, you know, we're using hindsight now to say, oh, well, it says
14 it may happen. So therefore, we think it would have been obvious. And we
15 just think, again, that violates all the basic legal standards of obviousness.

16 JUDGE OGDEN: I'm just wondering, under, I'm sure we're all
17 aware that, you know, in *KSR*, you know, there are various other scenarios
18 other than just a specific teaching of a particular motivation to modify a
19 reference in a particular way that would still lead to a conclusion of
20 obviousness, you know, one of those is, you know, if it's a design choice or
21 if, you know, other possibilities are where, you know, you're using a
22 known technique to improve a similar device or, you know, maybe you're
23 combining known elements in, a known way to yield predictable results, that
24 kind of thing. So, is there any, I'm wondering if, you know, we say we don't
25 necessarily find that there's a specific teaching of a particular motivation to

1 use the same port on the various hops. Why would we not be able to go to
2 some of the other rationales that might be finding *KSR* to get there,
3 particularly considering that Raz at least sort of implies the possibility that
4 the ports could be the same?

5 MR. SUAREZ: So, I think number one, you know, I'll just repeat
6 it again, *KSR* was never argued so that that sort of analysis was never
7 provided. So, I think that would be a new argument and beyond the
8 administrative authority of the Board to make that sort of argument. But
9 beyond that, you know, it's one of those things where there's no articulation
10 in the record of why the POSA would have been motivated to do that. Let
11 alone an opportunity for us to respond to any such argument, you know,
12 because this was a new argument made in a footnote. Going back to the
13 argument addressed on slide 40 in their Reply brief. So, you know, we just
14 don't think that would be reasonable or appropriate. And again, I go back to
15 my point about Raz, what Raz does teach, which is because the reference as
16 a whole has to be considered, which is that it's independently determined
17 each time. And so, you're basically, you know, using *KSR*, an argument that
18 was never made to override the reference. And I don't think there's any basis
19 for that particulate in the record at all. So, I think that would be my
20 response.

21 JUDGE OGDEN: Okay. Thank you.

22 MR. SUAREZ: Thank you, Your Honor. And so just going back
23 to this real quick. So, the motivation to modify was insufficient. Again, the
24 bandwidth motivation was too generic. I just want to point out briefly,
25 there's no reasonable expectation of success. So, even if there is some

1 hypothetical motivation, there is no discussion of how you go from the
2 internal to the external and how that would be feasible. And I want to point
3 out that there was evidence, you know, put into the record about the fact
4 that, you know, what happens internally is different from what happens
5 externally in the context of these systems. And so given that, you know, and
6 there's no articulation of why the POSA would have had a reasonable
7 expectation of success. We think that's just another reason that it fails. The
8 arguments were completely conclusory. We cited cases in slide 58, slide 59,
9 we note they made no arguments on that issue. And same for slide 60 and
10 61, which also point out that to the extent they made an argument it was
11 entirely new.

12 And so, briefly I do want to touch on claim 15's mapper because I
13 think this drives home the point that the whole Petition is deficient. If we
14 look at slide 64, the mapper required receiving data packet from an upstream
15 node. It had detecting said packet in by a data packet label, and then sending
16 said data packet to the second MPLS/LAG switch via said single physical
17 tunnel port. So again, that mapper has all three of those nodes involved in
18 what the mapper is doing. And all we heard from Petitioner in the Petition
19 was that, oh, well, Raz teaches the sporting module and that gets us across
20 the line. But again, you know, that was woefully insufficient. Exhibit 2007,
21 paragraphs 120 to 132 I believe, our expert provided numerous reasons why
22 it was insufficient, and to the extent that they rely on this forwarding module
23 I just want to point out here on slide 66 whether you're looking at what
24 comes out of the port forwarding module or going to the right or whether
25 you look at what's going out of the port forwarding module going to the left,

1 it doesn't do what the claims require. The port module going to the right,
2 you know, if you look at the one -- the illustrative on the left it shows it
3 going out to the right to the single high-speed link.

4 So, you're not using the forwarding module to send via the single
5 physical tunnel port. And if you look at the one on the right it's sending the
6 information back internally to these internal processing ports which are not
7 what the invention requires. So, we just think that the, you know, the lack of
8 proof on the forwarding module and the lack of articulation on that simply
9 reinforces why the whole Petition is deficient. Now, in the Reply at 67 they
10 make some new arguments on the forwarding module that we couldn't
11 respond to through our expert, and, you know, we think not only are the
12 arguments conclusory but that they -- they should be disregarded. And even
13 if you consider the arguments they don't explain how Raz's forwarding
14 module would apply -- be modified to apply to a LAG or even what
15 specifically it would do *vis a vis* all the requirements.

16 So, on Ground 2 I want to reference Raz in view of Ferguson, and
17 our view of this ground is it doesn't cure the problems of Ground 1. The
18 POSA would not modify Raz based on Ferguson and there's no reasonable
19 expectation of success. And so, Ferguson is about this distribution of labels
20 which packets if you go to slide 71, and slide 72 just makes the point, if you
21 look at what they actually rely on Ferguson for, and this wasn't even
22 discussed in the opening presentation by my friend, but Ferguson, you know,
23 they rely on it for this concept of an aggregate interface. Oh, that, you
24 know, in the art, there is some concept of a LAG that is taught. And that's
25 really all they rely on it for. If you look at what they talk about for the

1 Petition, they want to get from this in, you know, what is inside the router
2 and they want to say, well, you could do it with, you know, between the
3 nodes as well. That's essentially what they rely on Ferguson for. But they
4 don't go limitation by limitation and they don't articulate how the POSA
5 would have actually modified Raz based on Ferguson. And they just rely
6 on this teaching of LAGs are in the art that Ferguson provides. And so, you
7 know, that, in our view, underscores that just as with Ground 1, you know,
8 Ground 2 is woefully deficient, and there's not really any basis to use it to
9 magically rehabilitate Ground 1. Because again, if you look at slide 73, it's
10 making the point that they just wanted to go from within the LSR to between
11 the LSR. Within the LSR, between. That's really all they try to use
12 Ferguson for, not to make some other grand modification or do anything else
13 to remedy the numerous deficiencies that I've mentioned. But even if you
14 modify Raz based on Ferguson, we also believe it's insufficient.

15 So, looking at slide 75, you know, there's no discussion in that
16 ground of how the assignment step would occur, how you assign the single
17 physical port, and then you make that single physical port go to the
18 preceding node, and then also go through to the second MPLS/LAG switch.
19 There's just no articulation of that at all. At most this gets them is arguably
20 the LAG, but they don't meet all the requirements of receiving the packet
21 from the upstream node, detecting the packet label, and sending the data
22 packet via that said physical tunnel port that is required to be carried through
23 the three nodes. They just simply, you know, do not address that at all. So,
24 we think that underscores that the proposed combination is deficient. And,
25 you know, again, there's no motivation. We cited the cases about generic

1 motivations. You have to tie it to the limitations. You have to be specific.
2 They weren't specific. Hindsight bias cannot be the thread that stitches
3 together prior art as we cited the *Metalcraft* case. This is slide 78. And we
4 think hindsight is essentially what they've done in this entire case.

5 Seventy-nine, there's no --

6 JUDGE ENGELS: Counsel, you have 15 minutes remaining.

7 MR. SUAREZ: Okay. Thank you, Your Honor. I might take a
8 couple more just to wrap it up, and I appreciate you letting me know. So,
9 79, you know, there's no explanation of why or how the modification would
10 have occurred. No analysis specific to claim limitations. And, you know,
11 again, they just try to address the internal versus the external, but nothing
12 more detailed than that. They don't even explain how the modification
13 would occur. I do want to address this point briefly on slide 82, because
14 counsel may mention this. They rely on a reference in Ferguson that talks
15 about techniques in Ferguson being applied internally. And I just want to
16 make it clear that while they argued that this suggests that something
17 internal could be done externally, the only direction the Ferguson reference
18 points to is taking something external and applying it internal.

19 And so, if you look at slide 82, we say, although the techniques
20 have been described in reference to distribution of MPLS packets across
21 parallel physical interconnects of an aggregated link, the techniques may be
22 applied in a variety of environments, for example, the techniques may be
23 readily applied to internal parallel data paths within a device. So, the only
24 direction this teaching goes is taking stuff external and going internal, which
25 would bring you closer back to the primary reference, Raz. And so, we don't

1 think that disclosure helps them in any way whatsoever. And again, there's
2 just no motivation to apply Raz between LSRs, because again, remember the
3 '602 patent or teaching of LAG and Raz are fundamentally opposite things.
4 And so, you still then have that question of why would you use Ferguson to
5 eliminate the purpose of Raz? That question is never answered. And all
6 they do is they cite a single conclusory packet or paragraph of the expert --
7 of the declaration. They don't really explain it.

8 Raz and Ferguson just briefly address different problems. Raz
9 about slower speed processors to a higher packet stream. Ferguson is about
10 this concept of load balancing, so they're not for the same problem. And
11 they use different methods. And so, it's not clear how you would combine
12 the embodiments, combine the references in a cohesive way. They're just
13 not articulated. They pivot to the bandwidth. But again, our view is that the
14 bandwidth motivation that they try to articulate is extremely general. It
15 doesn't get you across the goal line to all the limitations. And so finally,
16 there's no reasonable expectation of success. Again, the argument was
17 conclusory as to Ground 2 for the reasonable expectation of success. And
18 so, we think that that also reinforces that the Petition and the ground should
19 be rejected. And there is no showing on that. And so, I think that's where
20 I'll end for now, unless the Board has further questions. Thank you, Your
21 Honor.

22 JUDGE ENGELS: All right. By my clock you have about 12
23 minutes remaining. And Mr. Blake, you have a little over 15 minutes, you
24 may begin when you're ready. Mr. Blake, I believe you might be muted.

25 MR. BLAKE: Made that mistake, which I try never to make. I

1 want to begin, Your Honor, by picking up where Mr. Suarez left off and
2 talking about Ferguson. Because the point with Ferguson in Ground 2
3 actually is very close to what he said, which is the reason that we have relied
4 upon Ferguson from the beginning is what I believe was referred to in the
5 institution decision as an unremarkable concept, which is the fact that
6 Ferguson teaches the communication of a LAG group between LSR devices
7 or between routers and switches and the use of LAG, which was something
8 that was well known in the art. Ferguson teaches it, and Ferguson teaches,
9 and this goes to the point they've always said, well, Raz talks about what's
10 inside the LSR, not between devices, and Ferguson teaches the idea of the
11 concept of using LAG between devices, and it is fairly unremarkable that
12 what is applicable in Raz as far as using various subports within devices
13 could be applied between devices. And Ferguson demonstrates that, and
14 really nothing more.

15 So, when they try to make the argument that we haven't disclosed
16 how to modify Raz in view of Ferguson, respectfully that's not correct. Our
17 whole point in relying on Ferguson is the fact that all Ferguson basically
18 teaches that would be combined with Raz is that LAGs can be used between
19 devices, and therefore what was within Raz would apply equally to what's
20 outside of Raz. Now, slide 82 of Mr. Suarez's presentation, he correctly
21 predicted that I was going to go to this portion of Ferguson that discusses
22 whatever applies in Ferguson's discussion of linking between devices and
23 using a LAG there could be equally applicable to what's inside of a device.
24 And Mr. Suarez would have it be the case that a POSA would not
25 understand the kind of vice versa situation to be equally applicable, that

1 what happens within a device isn't necessarily good for communications
2 between devices. But there's no reason in reading Ferguson that a POSA
3 wouldn't take the idea that it goes back and forth and vice versa.

4 Ferguson specifically teaches that the communication between
5 devices would also apply if the same techniques apply inside devices.
6 There's no reason the same wouldn't apply that what a POSA understands
7 about the transmission of high-speed packet networks within a device would
8 apply to links between devices, they're transmitted in the same way. And I
9 know that Mr. Suarez has pointed repeatedly to the fact that Raz discloses
10 multiplexing the signal between devices. And the argument really has a
11 number of different facets that focus on the same idea of it's multiplexing to
12 a single link. But that's exactly why we've never said that link aggregation is
13 the only way to logically communicate packets between a device. It is a way
14 that was known in the art. Just as multiplexing is a way that was known in
15 the art. LAG, multiplexing, they're two different design choices, two
16 different alternatives for how you can communicate between devices. And
17 when you look at Raz, Raz is using the concept of link aggregation internal
18 to its devices that could be used external to the device just the same as
19 multiplexing could be used. Given the bandwidth needs of a particular
20 situation, you would choose what you wanted. The Board asked at one point
21 in time if there's a definition of link aggregation that would make all this
22 make sense. It's not necessarily between two devices respectfully.

23 If you look at our slide 35, Ferguson provides that. I know we
24 referenced one inside the '602, but if you look at Ferguson, column 1, lines
25 28 to 42, it reads, the term, quote, link aggregation, quote, refers to a

1 technique by which the multiple physical interconnects are logically
2 associated and treated as a single aggregated link. Doesn't disclose what
3 you're linking. It's taking multiple interconnects, logically associating them,
4 and treating them like a single link. That's what's happening within Raz,
5 and that would be equally applicable to treat it as a single logical link and
6 think of it as a design choice alternative to the multiplexing signal. My
7 colleague refers to Raz as having been focused on multiplexing. That is not
8 correct. The focus of Raz, just like the focus of the '602 patent, is on using a
9 label to assign certain bits that are going to identify the path through which
10 you are going to transmit the packets in a high-speed link, high-speed packet
11 network. It is on how am I going to identify the path that we're going to take
12 and communicate that so that the particular tunnel you're going to use will
13 be understood, whether it's going through a device or between devices. This
14 is not a particularly big link, and it's a design choice whether you are going
15 to use those multiple paths within the device or between devices.

16 Now, I'd like to also speak to kind of the repeated assertions by my
17 colleague that our Reply raised new theories, and I won't belabor every
18 single one of the new theories, but I will address some of the ones listed on
19 slide 3 just as examples that my colleague identified to say that these are not
20 new. They can be found in the Petition. As a threshold matter, he cited Dr.
21 Bhattacharjee's declaration in the Reply as being longer. If you go back and
22 compare the size of the declarations, Dr. Bhattacharjee's original declaration
23 was significantly longer than his Reply Declaration, but the Reply
24 Declaration, if it addressed particular limitations in more detail, that's
25 because a number of arguments were raised against it, and we had to address

1 them.

2 Now, to specific reply arguments, Patent Owner argues that we
3 state for the first time that LAGs were well known, or that LAGs were being
4 used as an alternative. Respectfully, that's not true. If you go back and look
5 at the Petition, we discussed the concept of aggregation, and that Raz was
6 teaching aggregate, I would cite as an example, pages 14 and 15 of the
7 Petition, which are disclosing specific aggregation techniques that are being
8 used within Raz, and in particular, the discussion in column 7, lines 7 to 16,
9 which reads, the 10 subports are provided, wherein each is adapted to handle
10 a 1K packet stream. The overall aggregate speed, however, is 10G.

11 And then column 9, lines 9 through 12, again, where it's talking
12 about the aggregation and the implementation of a LAG, which was well
13 known in the art. The Patent Owner would act as if we never mentioned the
14 aggregation in the Petition, but that's certainly not true when you go back
15 and look at it. Patent Owner argues that -- tries to jump on the word design
16 choice, where we say it's a design choice if you wanted to use the concepts
17 that are taught about what happens within the LSR and LAG to plot a
18 communication between the devices. Those particular words may not have
19 been used in the Petition, but the Petition spoke multiple times over and over
20 to the concept that what happened within LAG, within Raz, the LSR, also
21 equally applies to between the devices in Raz. Again, I would cite the
22 Petition at page 15, page 19, as examples of where we were saying this is an
23 alternative that would have been obvious. That the phrase design choice
24 may have been a turn of phrase used in the Reply, but the same concept was
25 disclosed in the Petition. Similarly, line number 3 here on Patent Owner's

1 slide 3 says it's a new reply theory that we discussed that Raz's link has
2 bandwidth limitations. Respectfully, that's not correct. The whole focus of
3 our motivation to modify Raz discussion as we had in the opening
4 discussion when the Board was asking me questions is on the fact that it's
5 the bandwidth limitations that are the preeminent concern with addressing
6 how you're going to implement things in any modification to Raz. And I
7 would cite the Petition at pages 9 to 10 specifically where it's talking about
8 Raz, column 11, lines 3 to 8. Again, where we talked about the same
9 subport number being used for example across Figures 1 to 3, I mean excuse
10 me, Figure 3, LSRs A through C. Again, that was at the Petition at page 25.

11 If we go to claim 15, as my colleague spent a lot of time talking
12 about claim 15 and arguing that our identification of the subport forwarding
13 module was something new in the Reply. Again, that is not accurate. It is
14 cited on page 46 of the Petition where we identified the forwarding module
15 as corresponding to the claimed mapper. Mr. Suarez would point out that
16 we did not go kind of limitation by limitation in a lot of instances repeating
17 the arguments that we previously -- we refer back to previous arguments for
18 some of the limitations for claim 15. And then the Patent Owner Reply
19 where they questioned specific limitations, we explained what we were
20 referring back to, but that doesn't make it a new theory or a new element.
21 They said we think these are the specific things missing from claim 15, and
22 on pages 17 and 19 of our Reply we said those specific things were referred
23 back to in earlier arguments and are not missing.

24 The argument that our discussion of Ferguson was lacking in the
25 Petition because it didn't do an element or limitation by limitation analysis.

1 Again, because we disclosed particular arguments made by -- discussed
2 them in the Reply, that doesn't mean that the Petition was lacking. The
3 Petition, if you look at it, refers back to the analysis of Raz in Ground 2 for
4 most of the limitations of the claim because Raz is the focus of most of the
5 limitations as to why the claim is obvious. Ferguson was cited for a specific
6 point, and we discussed that specific point in the Petition.

7 With regard, I would like to kind of finish my time focusing on the
8 motivation to modify analysis with respect to Ground 1. And in particular,
9 the Patent Owner argues that Raz and the '602 patent were addressing
10 different problems. That Raz refers to substandard processing capacity
11 inside the LSR, whereas the '602 patent was talking about bandwidth
12 between nodes, as I made notes on that he referred to. Those are two sides
13 of the same coin. Both of these references are intended to address how do
14 we transmit package streams that require more and more bandwidth from
15 point alpha to point zeta in a network. And in doing so, you're going to
16 transverse both the links between devices, and the components within a
17 device. And the packets are going to be transmitted in the same way at both
18 stages. And the concern is, as we need to transmit more and more
19 information, how are we going to do it?

20 And I think we need not to let it get lost that the ultimate
21 consideration and the ultimate teaching of both Raz and then later in time,
22 the '602, is that what you are trying to do is pick the tunnel you're going to
23 use and then encode that into a label and send that label back to the previous
24 node so that the label could be used to identify the tunnel and select it as you
25 transmit through the network. Raz teaches that through the use of its

1 subports. It uses the same paradigm of selecting the label, encoding the
2 label, sending the label back to the previous node, and then transmitting it
3 through the between devices along subports in Raz or ports between devices.
4 It makes very little difference because what you're trying to do is figure out
5 the best way to allocate the bandwidth that you have and how to use that.
6 And to the point that a signal is multiplexed coming out of Raz going from
7 A to B, you just as easily could have used a single logical link in the form of
8 a LAG to transmit from A to B between devices. We've been consistent in
9 our explanation that that's the real teaching of Raz from the very beginning
10 of this.

11 And I'll finish with saying, we have acknowledged that while Raz
12 says that the subports may be different and the different LSRs may make the
13 different selection as to which subports are going to be used. The
14 implication is clear to a person of ordinary skill in the art that it's just as
15 likely that it could be the same subports, and that there would be reasons to
16 maintain the same subports. If you have the bandwidth available, process
17 them along the same subports as you go from A to B to C. Whether you're
18 talking about the disclosure in column 7 of Raz and that disclosure, and
19 there was an example there that when it talks about two LSRs, A and B, and
20 you would extrapolate out that if A and B picked something based on
21 bandwidth, then it could go from B to C. And Figure 3, it shouldn't be lost
22 that Figure 3 in all of those LSRs shows subports 0 through 9 as being
23 available. And the fact that you saw subport zero used between A and B and
24 support one used between B and C doesn't at all confuse the fact that a
25 POSA, we've said this from the Petition forward, could have chosen to use

1 the same subports. And it -- you could have -- it would have been equally
2 likely that if you wanted to evaluate the bandwidth from the overall
3 perspective that you could have that decision made one time by the first LSR
4 that's going to receive it and the nodes are sent, it is sent through the entire
5 network on the same set of subports all the way through. I'll pause there as I
6 think I'm coming close to my time to ask if there are any questions.

7 JUDGE ENGELS: Okay. Hearing are no questions; I think you
8 have exhausted your time. We'll return to Patent Owner for 12 minutes of
9 rebuttal.

10 MR. SUAREZ: Thank you, Your Honor. Just a few points. First
11 off, you know, I would reiterate that the Board, you know, I would
12 encourage you to go back and look at the Petition. You know, there's no
13 arguments made about design choices. No arguments made about *KSR*.
14 There's no arguments made about functional equivalence for the LAG or
15 anything like that. And instead, the record shows that links between nodes
16 are distinct from these internal subports and that's undisputed from both
17 experts. And so, I'll also address the argument that was just made by
18 counsel, which I'm hearing for the first time their argument that there would
19 have been some selection made on the front end that would have magically
20 permitted all of the subports to have been the same. That argument was
21 never made until this hearing. And in any event, Raz teaches that the
22 follow-on node is the one that selects what goes to the node before it, as
23 Your Honor's questions pointed to, and as the reference unequivocally states.
24 There's simply no dispute that Raz independently makes these
25 determinations between each of the pairs of routers.

1 And I want to reiterate again that those subports are still the
2 internal subports. And so, counsel would like this Board to believe that all
3 of that is the same ports if the numbers happen to be the same, but that is not
4 the same physical tunnel port, that is not the same connection, because it's
5 not a link, it's just internal subports that are internally processing
6 information, and that's what the record adduced in this case shows. Counsel
7 also mentioned the institution decision and Your Honor's reference to
8 unremarkable, in reference to Ferguson. I just want to be very clear that our
9 argument in the POPR about that was simply pointing out that LAGs were
10 known in the art. We're not disputing that. And all they're relying on
11 Ferguson for is the existence of an aggregated interface between nodes. And
12 so, they simply wanted to argue, you know, that something internal could be
13 done externally. That's what their Petition argues. Their Petition doesn't
14 even argue that a LAG would have been obvious if you look at it closely. It
15 just argues that you can go from internal to external because they thought as
16 of the Petition that a LAG was taught in the Raz reference.

17 And so, the reference to unremarkable was simply saying that
18 Ferguson was essentially cumulative to what the POSA would have already
19 known in the art about LAGs. And it doesn't cure the fact that there's a
20 glaring deficiency in why the POSA would have been motivated to modify
21 Raz in light of Ferguson to have the LAG and have the assignment from the
22 first port and have it be all the same port. None of that is shown. And so,
23 that's our point. And but because Your Honors didn't mention that
24 unremarkable point in the institution decision, I wanted to make sure that
25 that was clear. And then I just did want to point out for the benefit of Judge

1 Ogden briefly because we had that colloquy about the definition of a LAG. I
2 just want to note that the POR at page 27, we also referred to a definition
3 from the IEEE, and we think that that might be helpful. It refers to
4 establishing data terminal equipment to data terminal equipment, logical
5 links, DTE is the acronym in there. IEEE is obviously quite authoritative in
6 this space. And I think, you know, data terminal equipment being the bridge
7 between links, that's consistent with my argument from earlier. And I just
8 want to make sure you're aware that that's in the record for you.

9 JUDGE OGDEN: Counsel, what do you think about the definition
10 in Ferguson that counsel for Petitioner referenced on their slide 35 that
11 seems to define link aggregation pretty broadly, a little bit differently than
12 this IEEE definition?

13 MR. SUAREZ: Let me take a look. Well, I guess I'd make two
14 points. Number one, is that we're looking at a meaning of a term in the
15 '602, so the '602 definition is more authoritative. But the second point is I'd
16 note that this Ferguson disclosure references IEEE 802 3AD working group,
17 which is the exact working group from which the thing I just pointed to you
18 to on page 27 is. And so, I think that provides more clarity and what the
19 IEEE actually says. And the IEEE I think is more authoritative than
20 Ferguson's generic description here. So, I think those would be my two
21 points in response to that.

22 JUDGE OGDEN: Okay. Thank you.

23 MR. SUAREZ: You're welcome. And then the other major point I
24 want to make is the point about inoperable for its intended purpose because I
25 never heard much from counsel on this. And again, you know, you have to

1 ask yourself was it in both Ground 1 and Ground 2. You know, would the
2 POSA have been motivated to take this concept of multiplexing that puts
3 everything into a single link and then say I'm just going to blow that up and
4 I'm going to do the exact opposite. I want to be very clear their Reply brief
5 and their Reply Declaration doesn't mention inverse multiplexing in a single
6 time because they don't want to grapple with the fact that the references are
7 opposite to each other. And that would -- and so why would the POSA have
8 been motivated to do the things that they're suggesting? They don't have a
9 response for that, and the record is undisputed on that point. So, I think
10 that's very important because we cited numerous case law that showed that
11 that is a legally invalid way to -- to combine references if you vitiate
12 fundamental purpose of the primary reference. And there's no dispute that
13 vitiation would occur because their own expert admitted it as per the slides I
14 referenced earlier.

15 So, at the end of the day, you know, we think their Petitions are
16 insufficient, didn't provide a *prima facie* case that was sufficient, you know,
17 the art the change arguments render are invalid. But even if you do consider
18 them, you know, their Petition is ultimately, and their theories are ultimately
19 hindsight-driven. You know, we mentioned the blue, the yellow, and the red
20 and those link -- those are the limitations throughout, and they simply have
21 nothing to show that that doing all those things and the limitations that we've
22 discussed would have been obvious.

23 So, unless Your Honors have any further questions, I submit on
24 behalf of the Patent Owner that all the claims 1 to 26 of the '602 patent
25 should be upheld as patentable. And I just want to be clear that, you know,

1 all the arguments we made apply to all the claims notwithstanding that I
2 didn't call out, you know, claim 26 specifically throughout the proceeding.
3 But unless there are further questions, you know, we submit the case.

4 JUDGE ENGELS: Thank you. I'd like to thank you both very
5 much. This was a helpful discussion. And if you all could stay on the line,
6 please, in case the court reporter has any spellings or corrections to clarify.
7 With that, the case is submitted.

8 (Whereupon the above-entitled matter went off the record at 4:01
9 p.m.)

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Patent 9,118,602 B2

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