

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETSKOPE, INC.,
Petitioner

v.

FORTINET, INC.,
Patent Owner.

IPR2023-00456
Patent 11,036,856 B2

Record of Oral Hearing
Held: May 31, 2024

Before JAMES P. CALVE, THOMAS L. GIANNETTI, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

IPR2023-00456
Patent 11,036,856 B2

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The above-entitled matter came on for hearing on Friday,
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P R O C E E D I N G S

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JUDGE CALVE: And good morning, everyone, depending which coast you're on. Welcome to the hearing for IPR2023-00456 between Petitioner Netskope, Inc. and Patent Owner Fortinet, Inc. regarding U.S. Patent 11,036,856. Today's Panel is Judge Belisle, Judge Giannetti and myself, Judge Calve. Netskope is represented in this matter by Perkins Coie and Fortinet is represented by Quinn Emanuel. Will counsel for each party, and if you have in-house counsel also, just please enter an appearance starting with Petitioner. Thank you.

MR. KLEIN: Good morning, Your Honors. Andrew Klein, on behalf of Petitioner and with me I have Mr. Tom Millikan, Ms. Kristen Schunter and a representative of Netskope, Ms. Dion Messer.

MR. ZIVOJNOVIC: Good morning, Honors. Ogi Zivojnovic here on behalf of Patent Owner, Fortinet, and with me also on the line is lead counsel, Jim Glass.

JUDGE CALVE: All right, well, welcome everyone. I think we've been through this routine a few times before. You've requested and we've granted 60 minutes of argument. You can reserve rebuttal or sur-rebuttal time. We'll begin with Petitioner, if you'll just, Mr. Klein, just let us know how much time, if any, you'd like to reserve for rebuttal and also for Patent Owner, and we can get started. We'll let you know when you're about five minutes out on your main argument time and you may begin.

MR. KLEIN: Thank you, Your Honor. We'd like to reserve 20 minutes for rebuttal, please.

JUDGE CALVE: Okay.

1 MR. KLEIN: And if I may, Your Honor, I'd like to share our
2 demonstratives.

3 JUDGE CALVE: That would be very helpful, actually. Thank you.

4 MR. KLEIN: Great. Okay, let me know if you can see those.

5 JUDGE BELISLE: I can see them.

6 MR. KLEIN: Okay, great. Thank you. All right, so first, Your
7 Honors, I'd like to start with just a brief overview of some of the issues we'd
8 like to focus on. What we've selected for the issues are the ones that we
9 think are really the most important ones. So, we can get down and drill
10 down into what are the issues that, based on the briefing, are really the most
11 important to the parties. And so, where I'd like to start is with this first issue
12 here. And this is really the only dispute as to whether the prior art discloses
13 each and every limitation. And this is whether the prior art discloses the
14 claimed copying as that term is used in the claims. And we'll get into it a
15 little bit later. But the Board preliminarily found in the institution decision
16 that the prior art's disclosure of moving disclosed copying because as the
17 intrinsic record shows, really, the patent describes no particular meaning
18 between moving and copying. Those terms are really used interchangeably.
19 And since the institution decision, nothing has changed. I mean, this is
20 really an issue of the plain and ordinary meaning of copying. And that of
21 course starts with looking at the intrinsic record, and the intrinsic record
22 hasn't changed. So, the Board's analysis from the institution decision really
23 carries over to today. And we'll drill into some of those points going
24 through the claims and the specification as we proceed through the slides.
25 And just to orient everybody a little bit, this is the graphic of claim
26 one, just an exemplary claim. And as I pointed out, none of the language

1 that's, that doesn't have a red line under it is really in dispute. No real
2 dispute that the prior art discloses those elements. The dispute here is on
3 that one word at the bottom where it says copying, and that term is
4 highlighted. And we contend that the intrinsic record uses copying and
5 moving and various other verbs interchangeably to refer to the same
6 operation. And to set the framework, I'd like to show a slide that illustrates
7 what is Patent Owner's position in that there is a patentable difference really
8 between copying and moving. And they say that copying and moving are
9 different and that copying happens whenever something is going to be
10 moved from one storage device to another. And in their argument, the
11 patent only claims copying for the embodiment that's in Figure 1B, where a
12 file is copied and moved to a different physical storage device. And I'd like
13 to note, Your Honors, that even in this particular excerpt that we have here
14 on the slide, the Patent Owner uses the terms moving and copying almost
15 interchangeably themselves. So, in the line that's about halfway down the
16 page where it's underlined, and it says when. It says when files are moved
17 between physical storage devices, moving without files. Moving files
18 without copying is not a practical option and it becomes necessary to copy
19 files as claimed. So here, even in Patent Owners own excerpt, it's kind of
20 using moving and copying to refer to the exact same operation.

21 And just briefly in the institution decision, again, as I mentioned
22 before, the Board, after looking through the intrinsic record, found that
23 there's no significance between moving and copying, as the claims or
24 specifications show. And if we start with the claims, which is where we're
25 supposed to start, when we're looking at divining what is the plain and
26 ordinary meaning of a claim term, we can start with claim five. And claim

1 five says wherein the network security device copies the file to the second
2 repository by sharing it. So here claim five is saying that copying can be
3 done by sharing. So copying is that restricted term as Patent Owner
4 contends that it is a restricted term isn't as restricted when you look at the
5 dependent claims. So, the dependent claims say that copying can include
6 sharing. And I'll note that Patent Owner contends that sharing itself is its
7 own separate operation. So Patent Owner contends that copying is
8 something different from moving and that's something different from
9 sharing and that's something different from transferring. But when you look
10 at the claims, all of these terms are being used interchangeably.

11 MS. BOBO: Excuse me, everyone. This is Pat from the hearings
12 team. Is Judge Giannetti still up on the screen? I don't see him.

13 JUDGE GIANNETTI: Pat, can you hear me?

14 MS. BOBO: Yes.

15 JUDGE GIANNETTI: Yes, I've been cutting on and off. I'm not
16 quite sure what's going on, but my connectivity is very, very iffy right now.

17 MS. BOBO: Okay, Charlie?

18 MR. TOROSSIAN: Yeah, this is Charlie from the VTC. Would you
19 be able to drop off, disconnect and reconnect, please?

20 JUDGE GIANNETTI: Hit my x button and drop out?

21 MR. TOROSSIAN: Yes. Correct. And go back in with the link,
22 please.

23 JUDGE GIANNETTI: I'll be back again. Sorry about the
24 interruption.

25 JUDGE CALVE: Counsel, we'll just -- your time is stopped right
26 now until we get.

1 MS. BOBO: Sorry, everybody.

2 MR. KLEIN: No problem.

3 JUDGE CALVE: Thank you, Pat.

4 MS. BOBO: You're welcome. Ms. Jordan, did you stop?

5 JUDGE CALVE: Okay, I think we can proceed now.

6 MR. KLEIN: Thank you, Your Honors. So, moving on from claim
7 five, there's another example in the claims that show moving and copying
8 are used interchangeably. So here on the left side of the slide, we have claim
9 one, which we've looked at. And then on the right side, we have claim
10 twelve, which recites various operations involving moving and copying.
11 And --

12 JUDGE GIANNETTI: Counsel, this is Judge Giannetti. I appreciate
13 the fact that you're showing us these slides on the screen, but you still have
14 to give us the slide numbers so that the public record, the transcript, will
15 reflect what we are looking at.

16 MR. KLEIN: Apologize, Your Honor. I'll do that.

17 JUDGE GIANNETTI: That's all right.

18 MR. KLEIN: So here we're looking at slide number eight. And in
19 slide number eight --

20 JUDGE CALVE: This is Judge Calve. This looks like they're using
21 the terms differently. So, we have the same claim. They're using two,
22 they're using them together. Why don't we give a different meaning to one
23 than the other in this context?

24 MR. KLEIN: So, when you look at the claim and you diagram it out
25 according to Patent Owners framework for what the difference is between
26 moving and copying, meaning the claim really doesn't make any sense and it

1 doesn't work. So, if you ascribe any specific meaning to moving versus
2 copying, the whole thing falls apart and that's kind of what I want to walk
3 through in the following slides. So, if we start turning to slide number nine,
4 we start with the first operation at the bottom of claim one, which is copying
5 the clean file from the first repository to a second repository. So, turning to
6 slide ten. Under Patent Owners framework, that means that the file
7 repositories are separate. So, you have the first repository and the second
8 repository, and the file is moving between the first and second file
9 repositories. Sorry Your Honors, my light just shut off in my office for
10 some reason. May I have a minute to go turn it back on?

11 JUDGE CALVE: Certainly.

12 MR. KLEIN: Apparently, I don't move enough when I talk. I need to
13 use my hands more. The motion sensor didn't trip.

14 JUDGE CALVE: There you go. Well, let me ask to interject. Can
15 we not all agree that copying involves physical relocation of bits or bytes of
16 a file from one file store or network share to another? It's physically, it's
17 moving and recreating physical bits. Isn't that what copying is?

18 MR. KLEIN: No, Your Honor, what I think determines whether
19 something is -- whether bits are being duplicated is where are the respective
20 file stores. So in other words, the term being used doesn't dictate the
21 operation, doesn't dictate whether there's a duplication of bits. Whether the
22 file stores are separate, and you need to duplicate bits dictates whether
23 they're duplicated. So, Dr. Franz explained this in his declaration, where if
24 you're looking at duplicating bits and you have one file store, then you
25 wouldn't need to duplicate the bits because everything is in the same file
26 store. But if you have one file repository in a second file repository, you

1 would need to physically duplicate the bits. So really what's driving the
2 operation is whether the repositories are the same or whether they're
3 different. And this is really brought into focus looking at the dependent
4 claims, where there are certain dependent claims that require the file
5 repositories to be in the same cloud file store or in different file stores.

6 JUDGE CALVE: Right. Let me just. I understand sort of agreeing
7 with Patent Owner and their spin on their Figure 1A and 1B. I copy files all
8 the time on my computer off of the same hard drive. I copy it. I think the
9 difference between copying and moving is you're physically recreating bits
10 and bytes in another location. And to that extent, copying and moving are
11 coterminous, they're identical. What are they called? Venn diagrams. The
12 difference, in theory, not always, and there's exceptions, is a copy you may
13 leave the original bits in the first location. It's not copy from A to B. You
14 can leave file a file one in A and you put another file one in B. That's a
15 quote unquote copy and move. You might go back and delete file one from
16 A, but A and B can be on the same net share. They can be on different net
17 shares, and I don't think one may be more efficient than the other, but I don't
18 think there's any difference. I don't think that drives the train.

19 MR. KLEIN: Yeah, I agree with Your Honor, I think the terms are
20 mostly coterminous and the situation described I would agree with, and I
21 think that's how the patent is using those terms as well. Right? Where --

22 JUDGE CALVE: Let me ask you a question. Is there a reason in the
23 patent? I've been through it. Is there a reason why they would want to copy
24 and leave another file in the clean file store and tie up memory space? I
25 don't see that there is. I don't see there's anything in the claims or the written
26 description that says what happens to the file that's in the clean file store if

1 it's deleted or not. And if they don't address that, then copy and move
2 collapse to the same thing.

3 MR. KLEIN: You're absolutely right. Your Honor, there is nothing
4 in the claims or specification anywhere in the intrinsic record that goes down
5 to the duplication of bit level where copies are being made, where they're
6 being left, where there may be an extra set of bits of a particular file. Your
7 Honor, the figures in claims really use these terms interchangeably and try to
8 show flexibility for really where things are being moved as we have figure
9 1A where things are on the same file store. Figure 1B where you have
10 moving between different file stores. And the claims in the independent
11 claims are brought and encapsulate different situations where file stores can
12 be in different locations, and that's reflected in the dependent claims. And
13 on slide ten what I'm trying to do is I'm adopting Patent Owner's framework
14 to show how the claims really collapse on themselves when you try to read
15 in the type of distinction between copying and moving that they are.
16 Whereas if you read the –

17 JUDGE CALVE: I thought their own Figure 1A and 1B proves the
18 point you just stated. They show the modules on the same cloud share, and
19 they show in Figure 1B separate. Notwithstanding that physical difference,
20 they describe the transfer identically as moving the files. They attribute no
21 difference or requirement in both of those instances. They themselves, out
22 of their own description, seem to equate them in those situations. You can
23 transfer files by moving, whether it's on the same network share or different,
24 right?

25 MR. KLEIN: Yeah, I agree, Your Honor. And if I may, I'll just flip
26 to where I was going to talk about those figures. For the benefit of

1 everybody, we can look at them together. This is slide number 13, showing
2 Figures 1A and Figure 1B together. And both Figures 1A and 1B have the
3 exact same disclosure about clean files are moved to the clean file store. So
4 it's completely agnostic to whether or not the public cloud file store, the
5 clean file repository, and the dirty file repository are in the same storage
6 volume. All of those differences in the framework don't matter, as the
7 intrinsic record shows, and that is supported by the actual description of the
8 figures too, Your Honor.

9 So again, we have clean files are moved in Figures 1A and Figure 1B.
10 And I want Your Honors to remember it says moved for this operation.
11 When we go to the spec, and this is slide number 14 on column eight, lines
12 53 to 57, the specification says copying and or transferring for that exact
13 same operation. So, between the figures in this specific disclosure, the
14 patent uses moving, copying, and or transferring, all to describe the same
15 operation. And there's nothing to suggest the patent is looking at duplication
16 of bits or different storage volumes or anything. And then there are a couple
17 other disclosures on this slide as well, Your Honor, that show that the patent
18 really uses all these terms interchangeably, transferred and copying by
19 means of all these other different protocols.

20 JUDGE GIANNETTI: Go back to your slide twelve. I don't think
21 you mentioned that. Or maybe I just didn't see.

22 MR. KLEIN: I skipped over, Your Honor, but I'm happy to cover
23 what's going on.

24 JUDGE GIANNETTI: So I'm not quite sure I see the distinction that
25 you're making here, but just for my own benefit, let me pose a hypothetical.
26 Let's say that in claim twelve, we substitute the word copying for moving in

1 claim twelve, where you underline moving, just copying. You think that
2 would change the scope of that claim?

3 MR. KLEIN: If we changed moving the underlined one in claim
4 twelve, Your Honor, is that what you're referring to?

5 JUDGE GIANNETTI: Substitute copying, that changed the scope?

6 MR. KLEIN: No, it would not change it under the way that moving
7 and copying are used in the patent, in the intrinsic record, in the claims, and
8 in the specification. No, it would not change it.

9 JUDGE GIANNETTI: Just to go back to Judge Calve's question a
10 while back, doesn't moving suggest that in the original location, let's put it
11 that way, that the information in the file no longer exists, or at least is not
12 accessible? Isn't that the difference between moving and copying?

13 MR. KLEIN: I think for the moving operation, Your Honor, I don't
14 know that it has to do with accessibility. I guess it's where is it accessible.
15 So if you're in your question, if you're saying it's no longer accessible where
16 it originally was, then yes, but it's now accessible in a different location or
17 by different means. You can move it into a different folder on your
18 computer, for example, and it's not in the original folder where you had it,
19 but it's now in the other folder.

20 JUDGE GIANNETTI: Whereas if you're copying something,
21 wherever you originally had the information, it still remains because you're
22 just making a duplicate, separate versions of the same information. That's
23 what copying means.

24 MR. KLEIN: But not necessarily, Your Honor, copying doesn't
25 necessarily in every circumstance require that you have a second copy. And
26 this is supported by --

1 JUDGE GIANNETTI: Just thinking about it, I think Judge Calve was
2 talking about this experience with his computer in mind. We all have copied
3 files and we've all moved files. We click on a file; it'll give us an option of
4 copying it or moving it. There's obviously a difference there, isn't there?

5 MR. KLEIN: No, Your Honor, and especially not as the patent is.
6 Sorry, Your Honor, I mean, to cut you off.

7 JUDGE GIANNETTI: I'm just saying, why is that not a difference? I
8 mean, this is plain meaning here, and the plain meaning of copying
9 something, to me, is different than moving it.

10 MR. KLEIN: So first, Your Honor, I want to again start with the
11 claims and the spec, which do not recite any difference between copying and
12 moving and transferring in those other operations. They say nothing about
13 whether an original file remains when you move or an original file remains
14 when you copy. None of that is in the specification.

15 JUDGE GIANNETTI: Well, it may be that there's no difference
16 whether you copy something or move it. Maybe it's more efficient to move
17 it because then you have the original storage area available, but that doesn't
18 mean there isn't a difference in the terms. It may mean that they are used
19 interchangeably, but that doesn't mean that they have different meanings.

20 MR. KLEIN: Yes, I would agree with that, Your Honor. They're not
21 synonymous. They're not synonyms, but they're used interchangeably. Is
22 that -- I think that kind of answers your question.

23 JUDGE GIANNETTI: That's my understanding also is that they may
24 be used interchangeably, but I have trouble accepting the argument that they
25 have the same meaning because to me, they have very different meanings,
26 giving them their plain meaning.

1 MR. KLEIN: Yes, Your Honor. So just to recap that with my
2 response, Your Honor, the terms are not synonymous, but they are
3 interchangeable. And essentially, they can be coterminous, like Judge Calve
4 was saying, if you had a Venn diagram, there are operations even looking at
5 the lower levels where they're doing the exact same thing. And Dr. Franz
6 explained again that the real analysis focuses on where you're moving or
7 where you're copying, where the operations are taking place, whether they're
8 between different things, different storage volumes, or the same one. So
9 even in a copying operation on your computer, the term may be copying
10 when you right click and say copy and then move it to someplace else. But
11 at the bit level, only a pointer is changing on the hard drive, it's not copying
12 the bits because the bits are already there. So, you would just change in the
13 registry. Instead of pointing to this file path, we've now moved it to this file
14 path. But the bits --

15 JUDGE GIANNETTI: Isn't that something entirely different than
16 copying or moving? Now we're talking about how you would access the
17 information, what path you would take to access the information, but it's not
18 telling you what's happening to the bits. To come back to Judge Calve's
19 question, just telling you how you get there doesn't tell you what -- whether
20 the location has changed. It's a different map to the same location. That's
21 how I would put it.

22 MR. KLEIN: Yeah. Yes. Your Honor, I think I would agree that
23 using the term moving versus copying doesn't necessarily tell you what's
24 going on under the hood.

25 JUDGE GIANNETTI: In your slide eleven. And I don't quite
26 understand your slide eleven. I think we were talking about that a minute

1 ago. Why does it matter which storage volume? Just to go back to my
2 hypothetical, why couldn't indeed the box be to the right? Why couldn't you
3 have a copy operation there? What in that nature of the storage volume says
4 that you can't copy something from the first repository to the third
5 repository?

6 MR. KLEIN: So, Your Honor, just to be clear, this diagram and the
7 one in the preceding slide, in slide ten, and the subsequent slides are because
8 Patent Owner says there's a difference between copying and moving. This is
9 not under our framework of moving and copying. This is purely under
10 Patent Owners framework, moving versus copying. Right. And I had
11 showed in earlier slides that they say moving happens. I guess moving
12 without copying happens when you're moving within the same file store, and
13 moving with copying happens when you're moving between different file
14 repositories. And so, if you apply that framework, Patent Owner's
15 framework, to claim twelve, and as it depends from claim one, the whole
16 claim falls apart. So, this is showing Patent Owners interpretation applied to
17 the claims, not ours.

18 JUDGE GIANNETTI: Just going back to my hypothetical, in that
19 box B, you would be okay with just changing the word copied? That
20 wouldn't be contrary to your theory of the case, would it?

21 MR. KLEIN: Changing the moving to copying, Your Honor?

22 JUDGE GIANNETTI: Yes, just as we did in the claim, my
23 hypothetical, we changed it in claim saying in the box with storage volume
24 one we can change copied without really changing the meaning of the claim.
25 Is that right?

26 MR. KLEIN: Yes, Your Honor.

1 JUDGE GIANNETTI: All right, I think I understand your position on
2 that. Thank you.

3 JUDGE CALVE: Yeah. Mr. Klein, you're really with these
4 interpretations, looking both parties of course, to the prior grounds where
5 you have files from an untrusted store on one net share, one area, moved,
6 copied, moved transferred to a different file share, so everybody agrees.
7 And then in that scenario you have to physically move the bits. Of course,
8 you could physically move them by moving or copy. So, still there's
9 different terms. I understand. But you could copy the files. The question is
10 what's left behind, right? If anything.

11 MR. KLEIN: Yes, Your Honor.

12 JUDGE CALVE: See, I see that figure. If you go forward to where
13 you have claim twelve, if you pop down a few slides, I see claim twelve is
14 consistent with claim one. It still doesn't address this issue of the grounds.
15 We still have the unpatentability grounds. But while we're here debating, for
16 some reason a skilled artisan might look at claim one and say for some
17 reason they're copying it because they want to retain a copy of that file and
18 then the original file. And I agree, there's no reason. It would probably be
19 inefficient, and it's not described, and it might collapse into moving anyway.
20 But that's consistent with twelve. They move stuff back and forth, but
21 ultimately, they keep a copy and then they copy forward from the first
22 repository. So, from the first repository to the third they move. But then the
23 copying operation is always tethered to the first repository, just like in the
24 claim. So that's consistent and it's consistent with Judge Giannetti's
25 differences. That still doesn't get us to the grounds and what we have to
26 resolve here, so. But I do think there are potential differences, and they

1 have, they've certainly shown that all of these means are equivalent means of
2 controlling access. We want to change interchangeable. They're all
3 equivalent means.

4 MR. KLEIN: Agreed, Your Honor. Yes.

5 JUDGE CALVE: Okay.

6 MR. KLEIN: Yes. And we'll all go ahead and turn to those grounds
7 if Your Honors would like. Or would Your Honors like me to continue
8 more on moving versus copying? Or I can get into the actual grounds.

9 JUDGE CALVE: This is a philosophical debate that's best resolved in
10 the context of the ground so we can see exactly how this plays out.

11 MR. KLEIN: Yep, all right. So I will fast forward to slide 19, Your
12 Honors. And this is the disclosure from Burdett. And Burdett really is
13 broad in describing what's going to happen in order to control access to the
14 files. And Burdett says that files can be moved, or it can change the name of
15 the files to control access. And then Burdett says, for example, to prevent
16 access to a file, the scanning device may change the name or the location,
17 for example, the path in the file system of a file in order to prevent access.
18 So, Burdett has a very broad disclosure about controlling access to these
19 files. Whenever you want to, you could move it. And how can you move it?
20 Well, you could change the name and you could change the location. An
21 example of changing the location is changing a path in the file system. So,
22 you have all of these different means kind of circling around each other for
23 how you're going to control access to the files once you potentially want to
24 put it in the clean file repository. So that way people can access it.

25 JUDGE CALVE: Yeah, I'm sorry, Mr. Klein, may I just interject,
26 please?

1 MR. KLEIN: Yes, Your Honor.

2 JUDGE CALVE: What is your position on that very first red
3 underlined? The scanning device may move files, or Burdett discloses
4 moving. The physical moving, which encompasses copying. It says you can
5 move, copy the files, either physically or alternatively, you don't have to
6 physically change location. You can change file names or paths. So it's
7 showing that part of copying that moves. It's not copying, but it is that. It's
8 saying we can physically move things, or we can change within the directory
9 system, which I understand you can only do. So it does A, which is move,
10 which is physically changing, or B, it fools around with directories and path
11 files. You can do B, in the context of Burdett, because they're on the same
12 file share. But when you combine it with FortiSandbox, of course you can't,
13 because now you have a network device that's outside. So we understand
14 that. But doesn't that first line, it moves. There's the move. There's the
15 physical relocation of bits right there. Contemplates standard old school
16 move.

17 MR. KLEIN: Yeah, I agree, Your Honor. It contemplates move.
18 And as you're saying, it also gives examples where the move can be
19 something where you're changing the location. And it can be, for example,
20 the path in a file system. And in these other slides on Slide 20, for example,
21 Burdett does have disclosures about moving files between different storage
22 data's, right? So if you again go back to kind of Patent Owners framework
23 for moving versus copying. And a subspecies of moving is moving with
24 copying because you have to move between different storage volumes.
25 Burdett has that disclosure, and that's reflected in these particular excerpts
26 here on Slide 20, where Burdett is saying, well, you can have access to one

1 or more cloud data storage for storage of data. That's the excerpt on the left.
2 Then the excerpt on the right is you can scan for multiple data stores, for
3 example, multiple S3 buckets.

4 JUDGE CALVE: Let's look at this in the context of the knowledge of
5 skilled artisans. And up this a bit. We agree that Burdett physically moves,
6 which is coterminous with copying under most meanings. And I think
7 skilled artisans understand that when you -- if it was a move where you
8 deleted the original copy, you really wouldn't delete anything. It would still
9 be there. You would just remove the marker to it. So in that sense, the
10 move looks even more like a copy. And I think, did you put that in one of
11 your papers and point that out, even technologically speaking, the move
12 looks more and more like a copy. As long as you're physically moving the
13 bits, even if you quote, unquote, delete the original file, it's still there. It's
14 just been unmarked within the directory subroutines or what have you, right?

15 MR. KLEIN: Yes, Your Honor. And that was in, I believe, Dr.
16 Franz's petition declaration. In support of the petition, he explained that
17 even when you have a quote unquote move, there's a copy of the bits, and
18 the original bits remain until you really need to write over them. You don't
19 just delete them to delete them, you leave the bits, and they have what
20 material was moved over, and they're only overwritten when you need to.
21 And Dr. Franz expands on that in his rebuttal declaration.

22 JUDGE CALVE: So what should we do as a Panel? We have
23 Burdette saying it moves it, and we think that to be a physical, we would
24 understand as a physical move. We don't have any idea that Burdett even
25 deletes the marker to it. Should we call Burdett a copy even within the
26 understanding of the art, or within the intrinsic record of the 856? Or are we

1 saying it's a move that it's obvious to copy based on the move? What's the
2 position here?

3 MR. KLEIN: I think it could be either, Your Honor, and it depends
4 on what level the Board wants to go down to. So again, from the
5 understanding of a POSITA and the way the terms are used in the
6 specification, I think Burdett discloses copying and this is, as Dr. Franz
7 explained in the petition, that it explains moving, and you can move from
8 one particular one place to another place, and then the bits would remain,
9 you'd have a second copy of the bits, and then they'd only be written over
10 later. But then you could also find that Burdett rendered these obvious,
11 which we also argue for in the petition, because Burdett has all of these
12 different mechanisms for controlling access. And so, if you really wanted to
13 go with a more narrow scope of copying that we don't necessarily see in the
14 intrinsic record, it would have been obvious anyways, because really,
15 Burdett is just trying to get these files and change the access protocol to
16 them, change who has access to them.

17 JUDGE GIANNETTI: So what do you mean, it would have been
18 obvious? Do you mean a person of ordinary skill in the art would have
19 understood it to be that? Because of obviousness, based on element by
20 element? When we look at the statute it says obviousness of the claim as a
21 whole. A person of ordinary skill in the art would understand that
22 connection with a -- there's necessarily a copy. Is that your position?

23 MR. KLEIN: Yes, Your Honor. So if it says move, a person of
24 ordinary skill in the art would have found it obvious that that would
25 basically be a copy operation, or could be an operation --

1 JUDGE GIANNETTI: Would have understood. Because again,
2 you're talking about obviousness, and the whole body of law involving *KSR*,
3 *Graham* and all of that. But the test is, does it teach or suggest to a person
4 of ordinary skill in the art. That's what I think you have to prove.

5 MR. KLEIN: Yes, Your Honor. And that goes to kind of my original
6 point, is that we think Burdett does teach or suggest copying, as claimed,
7 given its disclosure of moving and the various --

8 JUDGE GIANNETTI: I'll pause on that.

9 MR. KLEIN: Thanks.

10 JUDGE CALVE: Let me interject, Mr. Klein. You're getting close
11 here. I think we have really thoroughly vetted this issue within as well as
12 we're going to. Do you want to get into your motivations? And specifically,
13 why do we take a perfectly functional, optimized system like Figure three of
14 Burdett? Why do you want to go ahead and clutter it up with a network
15 security device like a FortiSandbox, even though that's what the invention
16 is? After they disparage what Burdett has, then they went ahead and did the
17 opposite. In the invention, it's an invention for you. It's inefficient. But
18 why do you want to do that? Besides hindsight?

19 MR. KLEIN: May I have just one second, Your Honor? My light's
20 turned off again. I don't know if you could tell.

21 JUDGE CALVE: Oh, you're fine either way. Whatever suits you.

22 MR. KLEIN: Okay, so on the motivation to combine, Your Honor,
23 and we explained this in the petition moving the scanning service combining
24 Burdett and FortiSandbox and then Sharpe and Seese in the second round
25 really provides benefits in terms of, I guess you could put them in two
26 buckets. The first is privacy, and then the second would be, I guess, control

1 for a network administrator. So the privacy and security one, this is actually
2 an express motivation to combine stated in let me find the slide, Your
3 Honors, in Sharpe. And I'll just fast forward there quickly. This is slide 30.

4 JUDGE CALVE: Yes. That means you're implying for some reason
5 you don't want to do this scanning in the public cloud store. Why is that?

6 MR. KLEIN: Because there are certain, I guess you'd say, security
7 risks. So, you might want things that are going to be on your own network
8 security device that you can control. Because in these public cloud file
9 stores, these are public cloud file stores. I mean, it's in the name and they're
10 under the control of third parties. I think there are examples of them being
11 Amazon can provide a public cloud file store, so you don't really have any
12 control. If something's compromised, it's under the control of Amazon,
13 whoever the public cloud files store vendor is. But by moving security and
14 scanning to a network security device like the FortiSandbox, then you all of
15 a sudden have control over what's happening with the scans and where the
16 files move afterwards. So you don't necessarily have to worry about
17 anything being compromised.

18 The other compromise and then more customizability, as Dr. Franz
19 talked about in his rebuttal declaration, if you're using a public cloud file
20 store for the scanning, you're really at the mercy of the uptime from the
21 public cloud file store vendor and what services they offer. And then the
22 other benefit, and this is one expressly stated in the FortiSandbox user guide,
23 is how scans and how scans can be conducted. So the FortiSandbox user
24 guide discusses being able to do bulk scans or being able to do scheduled
25 scans. So if administrator wants to configure when and how often scans are
26 happening, that can be done once you move the scanning onto a local

1 network security device like the FortiSandbox and Seese, that prior reference
2 also talks about doing scheduled scans and bulk scans. So you really, I
3 guess, increase the features as opposed to having it on a cloud scanning
4 service by moving it to a local network security device. And Dr. Franz
5 explains the benefits of doing on schedule or on demand or scheduled
6 scanning that you would get when you combine the references as we
7 proposed.

8 JUDGE CALVE: Sure. So, someone might look at Figure three of
9 Burdett and say that's a really nice, nifty way to do things. But someone
10 else, on a little more reflection, might say there are further advantages that
11 can be gained. And file scanning, virus scanning may be better performed
12 on a local network security device than in the cloud, where you have to
13 decrypt your cloud files for the whole world to see. And you can do that
14 much better and more safely and securely within the enterprise. It also
15 seems to me that if you have the network security device in the enterprise,
16 it's going to be quicker in responding. You're right. You don't have to work
17 through the cloud service provider and hope that they do things properly.
18 That was one of Mr. Franz's points too. But also, you have complete
19 harmony between what files you have in the enterprise and the cloud files.
20 So, you have everybody on the same sheet of music instantaneously through
21 your administrator. So, there's a lot of advantages. What about the
22 disadvantages, the Patent Owners pointing out latency and bandwidth
23 problems?

24 MR. KLEIN: So, Dr. Franz had, I guess, two responses to those
25 potential inefficiencies. One is that those aren't necessarily realized
26 inefficiencies. They're more hypothetical, because, for example, if you're

1 scanning a file for malware, and one of Patent Owners inefficiencies was
2 that, oh, you have to transfer the entire file across the Internet before you can
3 start scanning it. And Dr. Franz said, well, no you could start transferring
4 the file. And as you're getting the file, scanning it, and if the first block you
5 read as a virus, then you can stop. You don't have to keep transferring the
6 rest of the file. And then the other broad stroke point that Dr. Franz made is
7 if we're talking about potentially sensitive files or files you don't want on the
8 public cloud file store, you wouldn't necessarily take the trade-off of maybe
9 having a system that's a little bit slower or maybe a little bit more efficient,
10 assuming that it would actually be that in order to make sure your files are
11 secure.

12 JUDGE CALVE: Well, how does the '856 Patent contend with these
13 inefficiencies? That they are accusing your ground one of creating?

14 MR. KLEIN: The '856 Patent doesn't mention any of these
15 inefficiencies, Your Honor. And the '856 Patent, if you look at the claims,
16 really has flexible architectures for where files can be moved and where
17 they're stored, right? It says that the network security device, the files can be
18 moved to a different public cloud file store. They can be moved to a file
19 store on the network security device, they can be moved to a file store that's
20 somewhere else in the enterprise network. So really there are all these
21 implementation level decisions that the '856 Patent shows are up to the
22 implementer and there may be reasons for and against. But there's nothing
23 in the '856 Patent that talks about the inefficiencies that Patent Owner is
24 mentioning.

25 JUDGE CALVE: Let me ask you a question. You wouldn't have had
26 to prepare for this, of course. Their network security devices, hardware or it

1 can be virtual. Why, if you care to share, why isn't Burdett almost an
2 anticipation? That scanning service is virtual. Is there something in the
3 claim that requires the network service device to be external because the
4 '856 patent says it can be virtual? The scanning service is natively mounted.
5 We showed you that in the DI. I know you can't change petition, but that
6 looks a lot like an anticipation. There may be other factors that you're
7 contending with. I'm just scanning at a high level here.

8 MR. KLEIN: It's really the fact that the service, the device has to be
9 on the enterprise network.

10 JUDGE CALVE: Okay. Okay. Thank you.

11 MR. KLEIN: Yes, and I may be running up on my time, Your Honor.

12 JUDGE CALVE: You are, but you've been so accommodating with
13 answering our questions. We'll give you another ten minutes and we'll of
14 course do that with Patent Owner's counsel. If we could pepper him with
15 questions, too. So, you have about eleven minutes.

16 MR. KLEIN: Okay. Honestly, Your Honors, the next two points I
17 was going to talk about are for dependent claims. And if Your Honors have
18 no questions on that, then I can just rest and leave it where it is on the
19 papers.

20 JUDGE CALVE: I have nothing. But I'll see if Judge Giannetti or
21 Judge Belisle care to ask you anything.

22 JUDGE GIANNETTI: I think I'll wait for the rebuttal.

23 JUDGE BELISLE: I have no questions.

24 MR. KLEIN: Thanks, Your Honors. I'll stop sharing as well.

25 JUDGE CALVE: Okay. All right. Is it Mr. Zivojnovic again?

26 MR. ZIVOJNOVIC: Yes, Your Honor. Good morning.

1 JUDGE CALVE: Good morning. Okay, how many minutes would
2 you like to reserve?

3 MR. ZIVOJNOVIC: I would like to reserve 20 minutes, Your Honor.

4 JUDGE CALVE: Okay, very good. Okay.

5 MR. ZIVOJNOVIC: And if I may also share my screen, please.

6 JUDGE CALVE: That would be wonderful. Yeah, I like you guys
7 are tech savvy. This is good.

8 MR. ZIVOJNOVIC: So, Your Honors, I want to start by addressing
9 the copying and moving issue that was discussed by Petitioner. And I want
10 to start with the basic premise, and this is slide nine from our presentation
11 and something that was also discussed, which is does not seem to be a
12 dispute that the simple words copying and moving are not synonymous.
13 They're different words. And in their plain, everyday language, they have
14 different meaning. The dispute here is whether or not the intrinsic record
15 conflates them in some way. But I did want to start out with the basic
16 premise that they mean different things. And I do want to be very clear as to
17 what they mean from Patent Owner's perspective, because I do believe that
18 there was some confusion and some incorrect characterizations by Petitioner
19 as to our position.

20 JUDGE BELISLE: Counsel, this is Judge Belisle, in what context do
21 you assert they have completely different meanings just because they're
22 different words?

23 MR. ZIVOJNOVIC: That is our starting premise, Your Honor, and I
24 intend to address why that is also significant in the context of the intrinsic
25 record. But as an initial premise, I'm starting with just the different words
26 that have different meaning in computer science. And specifically, what we

1 contend is that copying does mean the duplication of the physical bits in
2 memory, at least temporarily, that there is actual duplication of bits in
3 memory, whereas moving is, in some dimensions, a broader term, in that it
4 means you just change the location of a file within a file structure.

5 JUDGE GIANNETTI: So how can you change the location of a file
6 without copying it? It's not like moving a chair. It's bits of information.
7 Isn't the understand that the moving process necessarily involves first
8 copying the file?

9 MR. ZIVOJNOVIC: Not necessarily, Your Honor.

10 JUDGE GIANNETTI: Why is that?

11 MR. ZIVOJNOVIC: So, moving can be implemented generally in
12 one of two ways. You can copy the file. You actually duplicate the bits; in
13 which case they were initially in location A and now they're in location B
14 within memory.

15 JUDGE GIANNETTI: They were temporarily, at least, in two
16 locations, weren't they?

17 MR. ZIVOJNOVIC: Yes. So that is a version of moving that does, as
18 one of its subsidiary steps.

19 JUDGE GIANNETTI: That version, that sounds like consistent with
20 what I'm hearing from the Petitioner. What is the problem with that?

21 MR. ZIVOJNOVIC: Because that is not the version of moving
22 implemented in Burdett and the version that is implemented in Burdett --

23 JUDGE GIANNETTI: So, you're suggesting, counsel, that there is
24 some special meaning that you -- I don't remember you asking for a claim
25 construction on that, did you?

1 MR. ZIVOJNOVIC: So, Your Honor, we believe that this is just the
2 plain meaning of the word moving.

3 JUDGE GIANNETTI: But you admitted that there are two meanings,
4 and the question I have is, if you have some special meaning in mind, why
5 didn't you ask us for a claim construction?

6 MR. ZIVOJNOVIC: Your Honor, if I imply that there was two
7 different meanings, that was not my intention. What I was intending to say
8 is there's two different implementations at issue here of how the moving,
9 which has the same meaning, which is changing a location of a file, can be
10 implemented, and so it's the same meaning in both instances.

11 JUDGE GIANNETTI: I'm not sure I accept that distinction that
12 you're making, because it seems to me that what we are dealing with here
13 are bits of information that can have two locations at the same time. And so,
14 I don't quite see why you have distinguished between these two different
15 implementations when at least one of those implementations seems to fit
16 Petitioner's theory of the case.

17 MR. ZIVOJNOVIC: Because that is not the implementation that is
18 disclosed in Burdett.

19 JUDGE GIANNETTI: All right. Well, I'll let you continue, but I still
20 have in the back of my mind the fact that you seem to be asking for some
21 special construction of the term.

22 MR. ZIVOJNOVIC: So –

23 JUDGE CALVE: Before you get going, do you agree that one type of
24 moving is identical to copying, with the possible exception that the original
25 file may later be deleted? Aren't those commonly understood meanings of
26 both terms? So, there's tremendous overlap. Like I was asking Mr. Klein

1 earlier, do you disagree with that? And I think that's totally consistent with
2 your patent, because your patent describes nothing about either of them.

3 MR. ZIVOJNOVIC: So, Your Honor, what I will say is that is we do
4 not dispute that moving, claiming moving can be implemented as with one
5 of its steps being copying. So if there is this, and this is the implementation
6 of moving disclosed in the '856 Patent, and that does entail copying, and that
7 part we do not dispute. The point we're disputing is when Burdett uses the
8 same word, moving, which is not the word found in the claims, but when I
9 use the word moving, that is referring to the same implementation, also on
10 the '856 Patent. So, in Burdett, and I'm now showing slide 16, which
11 contains excerpts from column one and 25 of Burdett. Burdett, the stated
12 goal in the summary is to provide protection in a manner that is simple and
13 efficient with minimal performance impact on application. The goal in
14 Burdett is efficiency. And so, with that context in mind, if we look at
15 column 25, and this is the disclosure of moving cited by Petitioner, it says in
16 some implementations, the scanning service may move files or change the
17 name of files in order to control access. That's the disposal of moving that's
18 really at the heart.

19 JUDGE CALVE: So why isn't that A or B. It can move A or B,
20 change the name. Isn't the move A the copy? I mean, that's how it would be
21 understood. Why would we understand it any differently? In fact, they have
22 actually contrasted it with another kind of moving or another type. And
23 they've said this, we want to move the files old school, or we can fool
24 around with the path system. That's how I would understand that. Why
25 would that not be the meaning?

1 MR. ZIVOJNOVIC: So Your Honor, the first sentence I just read, it
2 gives you two options on how access can control. You can move files, or
3 you can change the name. Then we go into the next sentence.

4 JUDGE CALVE: So you move the files, isn't that copying them?
5 Right.

6 MR. ZIVOJNOVIC: So the next sentence. Apologies, Your Honor,
7 please go ahead.

8 JUDGE CALVE: Isn't that it? Isn't that moving copying?

9 MR. ZIVOJNOVIC: No, Your Honor, the next sentence shows why.
10 It goes on to give an example of what this can entail. It says, for example, to
11 prevent access to a file, the scanning service may change the file to change
12 the name. Again, that's one of the two examples from the previous sentence
13 or the location e.g. task in the file system of a file. That is the example.
14 That is when Burdett talks about moving, that is what it actually discloses of
15 how it's implemented. It says, change the location e.g. path in the file
16 system. That does not entail physically moving bits, physically copying bits.
17 That entails modifying the file system structure, changing a pointer to
18 modify the path. That is the only disclosure of moving in Burdett. And that
19 type of moving does not entail any copying. That's the issue.

20 JUDGE GIANNETTI: Counsel, let me just -- isn't that an example of
21 controlling access? Not of moving, but of controlling access.

22 MR. ZIVOJNOVIC: And the two versions of controlling in the
23 previous sentence, the two versions of controlling -- it is an example of
24 controlling access. An example of controlling access by changing, by
25 moving the file. The way I read the previous sentence and think that is the
26 correct read is in some implementations, the scanning service may

1 parenthetical, move files or change the name of files, close parenthetical.
2 Those are your two options in order to control access. The first sentence
3 gives you two options for controlling access. Change the name or you can
4 move the file. Both of those are versions for controlling access. The next
5 sentence then gives you an example of how that -- those two options actually
6 implemented. And it does add more specificity on what it means by move
7 the file. It says --

8 JUDGE CALVE: Why isn't that second example or that example just
9 an example of change the name? Because it does say an example, change
10 the name or the location. The location will be changing the name. Why
11 aren't those two examples of B? And it doesn't speak to A, move the files.
12 This is bad grammar, which is all the time a problem in patents, and you're
13 asking us to apply grammatical rules to something written by a patent
14 attorney without those rules in mind, or with the desire to make things
15 ambiguous and confusing.

16 MR. ZIVOJNOVIC: Your Honor, I'm just addressing as how we
17 believe one of ordinary skill would actually read this disclosure. And
18 changing the --

19 JUDGE GIANNETTI: Just so that I understand, the term location
20 appears there and you suggest that that is what it means when it says move
21 the file is the change in location?

22 MR. ZIVOJNOVIC: That is correct, Your Honor, because that is --

23 JUDGE GIANNETTI: Why does it give as an example a change in
24 the path? I mean, I think we can agree that saying changing the path is not
25 changing the location.

1 MR. ZIVOJNOVIC: Because, Your Honor, we believe it gives
2 further specificity of what it means.

3 JUDGE GIANNETTI: But it's saying change the location. Changing
4 the path tells you how to get there. It's like a different map to the same
5 place. It doesn't mean that the physical location of bits is going to change.
6 It just means that you're going to have a different path to get there. I think I
7 agree with Judge Calve that this is poor grammar, but I'm not sure that I
8 think you're reading way too much into this.

9 MR. ZIVOJNOVIC: In a file system, the location of a file is the path
10 in the file system. That is, when you look at in your Windows Explorer,
11 you're going to a folder that is in the top window. It shows you the path to
12 that folder, to that location.

13 JUDGE GIANNETTI: Well, that's not the only meaning of different
14 locations. It could be on a different storage media.

15 MR. ZIVOJNOVIC: So that is -- I don't see any disclosure here of it
16 being a different. We're focusing on what this discloses. I don't see any
17 discussion here, and I'm not aware of any discussion for that of this location
18 being in a different storage media, as I noted, in fact Burdett's concerned
19 with efficiency and simplicity, so it would not be encouraged to go to a
20 different storage media. The disclosure we have in front of us, and this is
21 the only disclosure cited, is that it changes location, e.g., path in the file
22 system, which is consistent with that's how you move a file. That's one of
23 the implementations for moving a location of a file. You can change it
24 within the file system, but that does not, and that changes its location, a
25 different path in the file system. But that does not mean that any bits are
26 actually copied or -- yeah, that any bits are copied as part of that process.

1 JUDGE GIANNETTI: Just to put a point on it. Your contention is
2 that what this teaches, not having a relocation of bits, but simply a
3 redefinition of the path, that's what Burdett teaches, is that?

4 MR. ZIVOJNOVIC: That is correct, Your Honor. That is our
5 interpretation of the patent. That is the interpretation of our expert. And I
6 will note that that is an interpretation that is not actually disputed by the
7 Petitioner. Petitioner argues that in light of other disclosure of Burdett, that
8 there is disclosure of using different volumes, and that it would be obvious
9 that this move can be between different storage volumes. But they do not
10 actually disagree in our reading that the changing a location is changing a
11 path in a file system, whether it is the example in Burdett of moving. Their
12 point is, oh, it says, for example. So it could mean something. So there
13 could be other examples. That's why --

14 JUDGE GIANNETTI: I have your position. Thank you.

15 JUDGE CALVE: Let me ask you, Mr. Zivojnovic, Burdett itself talks
16 about different buckets in the cloud. AWS buckets. I think Petitioner
17 pointed out in one of their papers that these different buckets could require
18 moving. You're not just going to change the path file name, you're going to
19 have to move them. Whether it's a bucket in the cloud or a bucket in an
20 external share, that's a reason right there to do an old school move. In other
21 words, you change the location. One way you can change location, for
22 example, is change a path. And the other way they don't have to explain
23 because everybody's known that way. So they have both ways. And there
24 might be reasons they would do that. I'm looking at column 23, lines 43 and
25 on, they talk about AWS buckets. That's just one example. There are
26 reasons within the cloud, just like there are in hard services. They all have

1 files. The cloud's just a server that's accessed, I guess, over the Internet, but
2 it's still the same server. Anyway, back to my point, what about the
3 buckets? Doesn't that require an old school move, at least that suggests you
4 would do that.

5 MR. ZIVOJNOVIC: So, Your Honor, so we do agree that moving
6 files between S3 buckets would entail copying, but that does not disclose
7 moving files between S3 buckets. At best Petitioner asserts, it would be
8 obvious, and I do want to address that obviousness argument in a second, but
9 I do want to first start with that, what you just said, and I think this is an
10 important thing to note also, the '856 Patent that, yes, we agree. Moving
11 files between S3 buckets, it does involve copying, and I think that is actually
12 key to understanding the '856 Patent. If we jump --

13 JUDGE CALVE: Why did you say Burdett doesn't disclose it? It
14 does disclose it. They don't have to go through every single embodiment
15 with every single point. That column 23 is prelude to what you're reading
16 and what we're reading in column 25, 25 is understood in the context of
17 what came before it. So that we know there's buckets out there. So that's a
18 reason to move. That's how skilled artisan might understand all of this.

19 MR. ZIVOJNOVIC: There's buckets, Your Honor. But what Burdett
20 teaches you, it doesn't teach you. Well, the file starts in bucket A, and then
21 after the scan, move it to bucket B. There is -- that disclosure is not present.
22 That is not something Burdett discloses. Burdett teaches you if you have
23 something, there's multiple buckets. And it says, if I want to move things, I
24 change the file structure, I change the path. And what that teaches ordinary
25 skill is you keep the file in the same bucket before and after the scan. Did
26 not identify any, and I want any --

1 JUDGE CALVE: Where does it say that?

2 MR. ZIVOJNOVIC: Your Honor, so that is based on. First of all, it's
3 based on the lack of disclosure to the alternative. It just says there are
4 buckets. It doesn't say it's being moved between buckets. And the reason
5 we present that it stays in the same bucket, there's further evidence of it
6 beyond just lack of disclosure, again, goes back to the only example of what
7 moving entails in the context of Burdett, which is just changing a path in the
8 file system.

9 JUDGE CALVE: Well, you're saying there's lack of disclosure, that
10 they move it within the same bucket. So there's both. So who do we give
11 the tie to? They're saying they didn't go to that level of detail because
12 everybody knows about that. And while we're talking about lack of
13 disclosure, you want to call things copying in your patent, and you don't
14 describe anything that happens to that file that's in the untrusted file store. I
15 could see saving up a file of something contaminated to create a record of
16 malware. And functionally or behavioral based or whatever, I don't see
17 much point in a highly efficient system to retain another copy of a clean file
18 in an untrusted module where it's never going to be used by anybody. You
19 don't describe anything. Without that, your copying is a move. There's no
20 difference. Right? What are we missing here?

21 MR. ZIVOJNOVIC: So I will address. Let me first answer the first
22 part of your question, which is, first of all, we disagree that there's a tie. We
23 think that. So, in light of the specific disclosure of just changing path in the
24 file system, it's not a tie that's implemented via changing metadata. It's
25 changing the file directory, and thus without --

1 JUDGE CALVE: Where does it say that Burdett's figure three is done
2 in a single bucket? Just show us.

3 MR. ZIVOJNOVIC: So, Your Honor, it's in light of the disclosure
4 that the only example of moving is by changing path in a file system, which
5 is not how you would move files between buckets. So that the only example
6 that we see here is of something you would do if you keep files in the same
7 bucket.

8 JUDGE CALVE: So we're supposed to understand the file system is
9 now bucket. Where does it say it's in the same file system? And where does
10 it say that a file system is a bucket? It's not in Burdett? We're just supposed
11 to know that?

12 MR. ZIVOJNOVIC: So this, again goes back to undisputed respect to
13 the interpretation, I think, of this particular line we've been discussed, and
14 our expert submit a declaration of how one of ordinary skill would read
15 these two sentences, which is that when you see something talking about
16 changing the location by changing a path in a file system, it's not talking
17 about a move with copy. And because that's not talking about a move with
18 copy, it cannot move the file between buckets.

19 JUDGE CALVE: Well, if this is so true. Why does your own patent
20 not have this level of detail? You're trying to distinguish figure 1B from 1A
21 by saying 1A can be one of these path files because it's all in the cloud store,
22 but 1B has to be physically moving it.

23 MR. ZIVOJNOVIC: So, Your Honor, one last thing I want to say
24 about Burdett. You mentioned the question of a tie. Well, I would be
25 remiss if I didn't point out that in case of a tie, it's Petitioner's burden, and so
26 the Patent Owner --

1 JUDGE CALVE: Right. Well, I would say in case of a tie, there's no
2 description of either of them, but they do talk about buckets, so. And there's
3 no constraint on the buckets being used in the scanning process that I can
4 see. But I understand your position. You seem to think it's all in one
5 bucket.

6 MR. ZIVOJNOVIC: And then. So, you asked about what in the '856
7 Patent. And so let me first start by -- and this is Your Honor petition started
8 by talking about nothing has changed since the institution. We submit that
9 there has been expert discovery and expert depositions, and that new facts
10 did come to light. And one of the things I want to emphasize is, and this is
11 now all something Petitioner themselves raised in the reply that, yes, we
12 agree, when you move files between buckets, it entails copying. And this is
13 now slide eleven, where our expert explained, one of the reasons you want to
14 do this is for security reasons. You might want to isolate files, and you want
15 to physically isolate them from potentially dirty files after you've completed
16 the scan. It's a security precaution. And what's important and what I want to
17 emphasize right now is that this is not just our expert. You ask what is in the
18 patent itself, and I want to address that directly.

19 So the patent itself, the '856 Patent, and I'm now looking at column
20 two, line 33 through 37. It says, therefore, there exists a need for a new
21 paradigm, according to which newly introduced files, for instance, through
22 public cloud file stores, are physically segregated until they're properly
23 scanned, and thereby ensuring only known good files are made available for
24 access to users. That is an insight that is absent from Burdett, as addressed
25 by our expert. That you want to not just logically make others accessible,
26 you want to physically segregate them. And that can. And what the patent

1 goes on to explain what it means by that, in column 13, lines 20 to 23, we've
2 been talking about Figures 1A and 1B a lot. The patent goes on to explain in
3 more detail what some of these processes entails. And so, in column 13, at
4 lines 20 to 23, talks in the context of the present example, at block 48, the
5 cleanup lambda function, remove clean files tagged in a database from the
6 dirty S3 bucket, or the isolated VM detonation S3 bucket to a clean S3
7 bucket. So what the '856 Patent is disclosing here is you want to keep files
8 physically isolated, not just logically limit their access, but you want to clean
9 unknown, potentially dirty files physically in a separate S3 bucket from the
10 files that are known to be clean.

11 JUDGE CALVE: I understand, but in the context of what we're
12 talking about. So that move in line 21 is a copy. It's being physically
13 moved, it's not a path change, right?

14 MR. ZIVOJNOVIC: Exactly. That's why the '856 Patent in the
15 figure, it shows it as a move. And the claim it is copying.

16 JUDGE CALVE: It does. So maybe I'm overcomplicating. Isn't it
17 simply, if we have Burdett, and we want to now natively mount the cloud
18 data store to a network security device that's external, it's obvious to copy.
19 It's obvious to move by copying, because everybody agrees you can't do it
20 any other way. So, skilled artisan, realizing that we could enhance virus
21 scanning by moving it into the network on this network security device.
22 And the only way you can get the files out of the cloud to the external device
23 is by copying, moving, everybody agrees on that. You can't even do it by
24 changing the path file if you wanted to. So isn't that. It's beyond obvious?
25 It's essential. So that would be an obvious way to do it, and Burdett already
26 takes you halfway there. I still think it's moving with copying. But even if it

1 wasn't, to get it out of the system, you got to move, you've got to copy it. So
2 why isn't that obvious? How else would you do it? Once you've decided
3 that you need to get this out of the cloud for security and speed and control?

4 MR. ZIVOJNOVIC: So, Your Honor, setting aside that we disagree
5 there would be obviously to move to perform --

6 JUDGE CALVE: I understand. I'll give you that. All right.

7 MR. ZIVOJNOVIC: I was setting that aside. I want to focus, though,
8 on the specific point you made, and the response to that is that this copying
9 that we cited in the claims is not any copying from the cloud to a network
10 security device to perform the scanning itself. With this particular notation
11 that we're talking about is after you have done the scan, how do you get the
12 file from the first repository, where it originally was, into the second
13 repository, where you want it to end up? And there is no requirement here.
14 And this is also not yet. So this isn't referring to moving a file from the first
15 repository to the network security device. It's talking about moving the file
16 from the first repository to a second repository.

17 JUDGE CALVE: Good point. So you've had to copy it to the
18 network. Excellent point. Thank you, you guys. Thank you for clarifying
19 the record. But now you got to get back into the cloud, so you got to copy it
20 back into the cloud just like you had to copy it. You both get a copy both
21 ways or move both ways physically moving. I don't see any way around
22 that. I mean, that's what all of your experts are telling us.

23 MR. ZIVOJNOVIC: So, Your Honor, we disagree with that
24 characterization. So, there's no requirement --

25 JUDGE CALVE: Are you agreeing that the trusted and untrusted are
26 files and they stay in the cloud? Right. So we're taking them untrusted in

1 the cloud, external to the cloud to scan back into the cloud for trusted. Don't
2 both of those jumps, need to be copied? That's what everybody's telling us.
3 What's wrong with that?

4 MR. ZIVOJNOVIC: Because what we're talking about here is you
5 have the untrusted file in the cloud and in their combination, sure, you
6 maybe send a copy to a network security device, but that does not answer
7 how you then get it into the second repository. What Burdett teaches is,
8 while the file just stays in the cloud store the whole time, it stays there. Yes,
9 you can send a copy of it to the network security device. That's not an issue
10 for this limitation, but it stays in Burdett's cloud, and then what Burdett
11 teaches is you change the path in the file system to control access to that file
12 while it remained in the cloud all along.

13 JUDGE CALVE: Is that what the Petitioner's position has been?

14 MR. ZIVOJNOVIC: So that is certainly my understanding of this
15 position that they're saying you would take, you would add FortiSandbox
16 and you would add it to the enterprise network and you would then, as we
17 point out, that means you would have to send files all the way from the
18 cloud to the enterprise network for scanning. But ultimately, Petitioner is
19 relying on Burdett's moving to meet this copying limitation. They're not
20 relying on an obviousness combination or some alternative pathway.
21 They're just saying, look, Burdett teaches this moving, and that moving in,
22 Burdett discloses renders obvious the claim copying.

23 JUDGE CALVE: Okay.

24 MR. ZIVOJNOVIC: And I do want to finally address, I want to circle
25 back to one point that was we emphasized, and this is now Slide 17, the
26 efficiency drawbacks of in Burdett instead of just changing the file structure,

1 actually doing copy, moving by copying. And as our expert explained, that
2 can have an appreciable effect on performance. It can insert delays
3 depending on file size. And what I want to emphasize is, we discussed well
4 in Burdett, you have these different S3 buckets. Petitioner is not alleging
5 that there's express disclosure of moving files between these S3 buckets.
6 And this is from their reply, and this is slide 20. The alleging will be
7 obvious.

8 And what Petitioner writes is, since the scanning service can retrieve
9 files from multiple volumes, a POSITA would have found it obvious to
10 configure the scanning service to move files into multiple volumes after
11 determining the files are clean, including moving a file from a dirty file
12 repository on one volume to a clean file repository another volume. This
13 isn't a conclusive assertion. There's no analysis or explanation of anything
14 comparing it to the drawbacks we identified, they just say it in an attorney
15 argument. Their expert has not even, there's not even an insight to their
16 expert declaration in support of this. It's just something they said would be
17 obvious. There's no rationale, there's no reasoning or evidence of expert
18 support to back up their obviousness outline.

19 JUDGE CALVE: Okay, let me ask you something, Mr. Zivojnovic.
20 Back to that earlier point. Do you have a slide that has that column 25
21 again? You showed us that earlier. It deals with Burdett's discussing
22 moving or changing path file names.

23 MR. ZIVOJNOVIC: Yes, Your Honor. Give me one second.

24 JUDGE CALVE: Both of you guys do a fabulous job. I don't know
25 how you keep track of the record like this. Really helpful to us. I'm looking
26 at the right column, the last sentence. In some implementations, the

1 scanning service may replace a file with another file that is clean. There.
2 After it scans it, it copies it externally to the FortiSandbox scans it, it says
3 the scanning service, which would now be mounted externally on the
4 network security device, replaces the file with a clean file in the clean file
5 thing. If that doesn't outright teach it, it certainly strongly suggests it, and it
6 shows and you're criticizing them for using bandwidth, so that's bandwidth,
7 right? But why isn't that, why doesn't that take care of the issue?

8 MR. ZIVOJNOVIC: Well, in this case, you're still having the
9 scanning service is resident in the cloud and through that's own teaching. So
10 it's all within the public cloud data center. And what this is talking about is
11 it doesn't actually disclose on how this file is, what this replacing means
12 here, whether that is entails removing the malicious aspects of the file in
13 place or some other solution. It just says you replace the file, but it doesn't
14 teach actually physically moving files, it's just an assertion, you can replace
15 it. And yes, there may be some instances to remove if it has embedded in it,
16 malicious content, but it doesn't disclose actually that the scanning service
17 from outside copies a file to this new location.

18 JUDGE CALVE: Well, if you have the scanning service moving the
19 files, which is your position, and now you've taken that scanning service and
20 put it external on the network security device, and you seem to agree that
21 they have to copy it to get it to the device. Why couldn't the device do both?
22 Why aren't both be obvious? It's just after the scan copies the file from the
23 external networks to your device back into the clean file, then there's no
24 confusion as to that you got the right file. Rather than trying to circle back
25 into the cloud where there's nothing, there's no quarterback monitoring
26 things anymore, trying to make sure you get the right file, you have it

1 working, scanned it. If it's trusted, the network security device puts it back
2 up again. That's ultimate controllability and security and simplicity. There's
3 no room for error there.

4 MR. ZIVOJNOVIC: So, Your Honor, first of all, I want to start by
5 saying that I do not believe that is an argument raised by Petitioner and they
6 just rely on Burdett for the moving. They are combining it with
7 FortiSandbox and device, but they're still relying on Burdett's disclosure for
8 the moving. In terms of as to why you wouldn't do that is because you have
9 now doubled the bandwidth consumption in transferring a file both out of
10 the cloud and then transferring it back in. You've doubled latent and you've
11 also increased latency for the file to become accessible after the scan is
12 complete. So the same inefficiencies that we raise in connection for why
13 you would not move the network, move the scanning service out of the
14 cloud in the first place, those inefficiencies get doubled when you then also
15 rely on this external net security device to then copy the file in this
16 hypothetical back into the cloud. So for that reason it would not be obvious.

17 JUDGE CALVE: Okay. And I understand Petitioner's position. I
18 have a question for you. Does natively mounting something in the cloud
19 onto an external device, does that necessarily require the cloud virtual
20 machine to be pulled out of the cloud? Or was another alternative to
21 natively mount that scanning device and just leave it where it is and just
22 control it from the external device? I understand what the positions are, so
23 I'm just curious. I'm having trouble with this native mounting concept
24 because it's a notoriously known concept like copy move, but it's nowhere
25 discussed or described in the patent and that's how you got the patent to
26 issue over some examiner who didn't know what native mounting was. But

1 it seems like it's notoriously well known. You didn't invent native
2 mounting, did you?

3 MR. ZIVOJNOVIC: We are not contending we invent the general
4 concept native mounting.

5 JUDGE CALVE: Okay, so can you native mount something and just
6 allow it to stay in the cloud and have the device that FortiSandbox still be in
7 my enterprise network?

8 MR. ZIVOJNOVIC: Sorry, I apologize, Your Honor, I'm just trying
9 to understand your question.

10 JUDGE CALVE: The native mounting is just a connection. In fact,
11 Burdett has that explanation. Actually, you have an explanation too. How
12 Amazon basically tells you how to native mount to their public stores. That
13 doesn't. You can still keep everything in the cloud and keep your
14 FortiSandbox outside. I understand they pulled it out, but did they have --
15 you don't necessarily have to do that for native mounting, do you?

16 MR. ZIVOJNOVIC: So, Your Honor, I will say in this hypothetical, I
17 don't believe that is you can certainly have a virtual machine in a cloud that
18 natively mounts a drive. But I will say that our responses have been based
19 on the specific obviousness combination they presented. And the
20 obviousness combination very much relied on pulling the network security
21 device out of the cloud. So that is what we --

22 JUDGE CALVE: Yeah, you can natively mount two virtual machines
23 in the cloud. You can natively mount two machines out of the cloud, and
24 you can mix and match. I think native mounting is just a connection
25 compatibility. So, you can communicate in native languages, right? I think
26 it's agnostic in your parlance to where anything's located. It's functionality

1 that's provided transcends those labels. Okay, I'm running on, let me let you
2 get back, but I don't see any reason. Okay, let's get back to your point. I'm
3 sorry I got us down on --

4 JUDGE GIANNETTI: Counsel, this is Judge Giannetti. I would like
5 to hear you on the motivation to combine FortiSandbox, and particularly the
6 point you raised, that it's detrimental to the performance of the Burdett
7 system. And I understand your point, is that it's not efficient. Maybe
8 elaborate on that for me. But isn't this a situation where there are other
9 reasons to do it? That it would be a more secure system that would
10 outweigh any detrimental loss of performance, if you will? That's the whole
11 point. And the fact that there may be some drawbacks to making this
12 combination doesn't mean it would have been obvious.

13 MR. ZIVOJNOVIC: So, Your Honor, let me start by addressing what
14 the combination is and what the drawbacks. The Petitioner made a couple of
15 points about why dispute of how detrimental the drawbacks are, which we
16 disagree with. And yes, I will also address the upside that they purport to
17 identify. So let me switch to that part. So, just to level up now, on slide 26
18 in Burdett, you have a cloud infrastructure and you have a scanning service,
19 right in that cloud infrastructure, scanning files in that same infrastructure.
20 And what they're proposing to do, and this as a demonstrative on slide 27, is
21 instead of having the scanning service be in the cloud, have it implemented
22 as a FortiSandbox that is part of the enterprise network. And the point we
23 make is that to do that, to implement that, you now need to move files out of
24 the public cloud file store, across the network to the enterprise network, and
25 then perform scanning there. And we identified that the drawbacks of
26 latency, bandwidth consumption, security and complexity.

1 Now, Petitioner's response here, I want to address a couple points they
2 make, which is first, on latency, they say, well, you don't need to finish
3 moving the entire file in order to scan it, but that's not the sort of scanning
4 that FortiSandbox does. FortiSandbox is a Sandbox appliance. It scans the
5 file by executing it in a safe environment and seeing when the file is
6 executed, if it has any malicious actions. To do that, you need to have the
7 entire file to execute it. And so, you do get the entire latency drawback for
8 the same reason you experience the full drawback or bandwidth
9 consumption, you have to move the full file. But even if you can start the
10 process while the file is in motion, you still eventually need to move the
11 entire file over which consumes meta.

12 JUDGE GIANNETTI: I think that there's no question that there may
13 be some detrimental performance. I'm not sure that that's what the
14 contention is. The question in my mind is wouldn't that be outweighed by
15 the benefits of moving the scanning into the enterprise?

16 MR. ZIVOJNOVIC: So let me first start by saying that most of the
17 benefits they've identified for their accommodation are inapplicable to
18 whether or agnostic to where the FortiSandbox is running. FortiSandbox
19 comes as a virtual machine as well as an appliance. If for most of the
20 benefits they alleged benefits they identify, you realize them by just running
21 FortiSandbox in the same cloud infrastructure as the files, which is
22 consistent with that feature. So that doesn't get them to their combination of
23 moving the scanning structure.

24 Now I will specifically, I do want to specifically identify, I believe
25 Petitioner's argument, the one that they do report is specifically applicable to
26 moving the scanning search to the network enterprise is that it gives you

1 more control over the scanning service itself because it's not resident in the
2 cloud infrastructure, it's now on your enterprise network. That's how I
3 understand the main algorithm that's applicable to moving. And I think what
4 this misses is all these -- create a horrible about using the public cloud file
5 store to virus scanning ignores that you still have your -- to arrive at patented
6 claims, you still have your own files in that same public cloud file store. So,
7 if you were so concerned about not having your scanning service run in the
8 cloud that you don't trust the public cloud provider, fair. But then you
9 wouldn't be storing your files in the public cloud store in the first instance,
10 which is one of the claim requirements. So if you are motivated by what
11 Petitioners point to, and you're motivated to the extent --

12 JUDGE GIANNETTI: But there are risks and risks, but maybe there
13 was some risk in putting your information on the cloud in the first place, but
14 aren't there greater risks in performing a scan in the cloud?

15 MR. ZIVOJNOVIC: Your Honor, I'm not aware of why it would be
16 riskier to perform the scan in the cloud in your own cloud container. At
17 least that's how many of these cloud services work. That would be
18 inherently riskier than having those files in the cloud in the first place. They
19 have certainly not identified anything that would make it acceptable to have
20 the files in the cloud in the first instance, but for some reason detrimental
21 and so problematic that you would want to move the scanning service out of
22 the cloud.

23 JUDGE BELISLE: This is Judge Belisle, would you please just go
24 back one slide to slide 26. So the scanning service 304 that's highlighted in
25 yellow, if that scanning service was outside of what's designated as the cloud

1 infrastructure, would that system effectively be what your claim one is
2 targeting?

3 MR. ZIVOJNOVIC: So, Your Honor, I do not know if -- I believe
4 that that is potentially covered by the claims. We're specifically addressing
5 their obviousness combination. So I do not, for example, the parties did not
6 brief, and there was no need to address where the scanning service has to
7 reside or whether or not it can be part of the same or different cloud
8 infrastructure. There's specific allegations they have --

9 JUDGE CALVE: Does claim one require the network security device
10 to be external to the cloud? Just yes or no?

11 MR. ZIVOJNOVIC: Yeah. For purposes of this IPR, we do not
12 contend that it has to be external to the cloud, or at least not this particular
13 cloud.

14 JUDGE GIANNETTI: So that's -- I'm not sure what that qualification
15 is for this particular IPR. The claim means what it means. It doesn't mean
16 something different. It means what it means. What's your position on that?

17 MR. ZIVOJNOVIC: So, Your Honor, I'm just cognizant that there's a
18 lot of different scenarios that we haven't necessarily had an opportunity to
19 address. Hence the propagation. I will say that looking sitting here at this
20 point, I'm not seeing claim language that limits the location of the claim
21 network security device, or whether or not it needs to be a physical device or
22 virtual machine. Again, sitting here, given the specific record we have in
23 front of us, though.

24 JUDGE CALVE: Right. So the scanning device in Burdett, if it
25 doesn't have to be outside, we're almost looking at Burdett as an anticipation,

1 which is the epitome of obviousness. I know there's issues on that issue in
2 IPR context, but –

3 MR. ZIVOJNOVIC: So, Your Honor.

4 JUDGE CALVE: -- FortiSandbox.

5 MR. ZIVOJNOVIC: So, Your Honor, that is not, I guess the only
6 thing I can say to that is that is not the grounds that are in front of us today.
7 I do not purport to know specific reasoning for Petitioners and why they
8 advance a particular obviousness combination, but I'm here to address what
9 they claim.

10 JUDGE CALVE: Understand. In the ground two, Petitioner pointed
11 out that the other group of references teach how to ameliorate this latency
12 and network congestion issue by putting the external network security
13 device in what, close network proximity, so you don't have to put it across
14 the globe. You put it right next to the cloud, whatever that means, so that
15 you don't have latency, so it's virtually in the cloud, no pun. So that's even
16 kind of a red herring, issues that you've raised through your expert
17 recognizing that we have art in this instance right before us that talks exactly
18 how skilled artisan would do this to avoid those kinds of issues. Right?

19 MR. ZIVOJNOVIC: So, Your Honor, I want to make sure that we're
20 clear about, and I'm going to jump. We have some of this disclosure in the
21 slides as well, if you give me one second. So on slide 28, I first want to start
22 by emphasizing that Sharpe predominantly actually agrees with our expert
23 and identifies a number of benefits and reasons why you wouldn't move,
24 why you would want to keep the scanning service in the cloud. They
25 specifically list five reasons in columns 97, 98 and highlighted in slide 28
26 that largely overlap with the things that our expert emphasized. Now, I do

1 want to address, and this is what Petitioner emphasizes, is this disclosure
2 later on in column 98 from Sharpe, that first I want to emphasize that this is
3 an alternative embodiment that was not relied upon for the scanning service
4 in the original petition. But even more importantly, I think for purposes of
5 today's discussion, is that it comes with a lot of caveats that Petitioners did
6 not address.

7 So first we start off with if this risk is unacceptable, which as I've
8 noted is they have not shown is the case in their prior art combinations.
9 They say that it's unacceptable to have the scanning service in the cloud, but
10 don't explain why it would be acceptable to still keep the files there. But
11 then the other thing I want to emphasize is it then goes on to explain that
12 even in that specific circumstances, you would only want to do this in the
13 case of a secure site in close network proximity with the cloud storage
14 system, and that has a high bandwidth link to the cloud storage system. And
15 we're not talking -- Petitioner's proposal here is not to create this secure site
16 specifically for the FortiSandbox in close proximity. What they're saying is
17 you would move it to Burdett's enterprise network. And they have not
18 shown whether or not this enterprise network qualifies as a whole, as a
19 secure site, or for that matter, address the benefits and drawbacks of
20 modifying a traditional network to now have this close proximity with a
21 particular cloud storage system and these specific high bandwidth links.
22 And so, we submit that this is an alternative embodiment that comes with a
23 lot of caveats that Petitioner glosses over.

24 JUDGE CALVE: Okay, thank you. I think we're about at the end of
25 your time. We gave you a little extra time, like Mr. Klein. Is there anything

1 you'd like to wrap up on your principle argument before we allow Mr. Klein
2 to start his rebuttal?

3 MR. ZIVOJNOVIC: I just want to very briefly address Petitioner's
4 slide. My apologies, Your Honors. On claim twelve, alleged that this is
5 somehow inconsistent. There's inconsistencies in our interpretation of
6 copying versus moving. So this is Petitioner slide twelve, and I just want to
7 note that. So we obviously disagree. I think, in fact, claim twelve shows
8 that moving and copying are used purposely to move to different things.
9 And furthermore, once copying and moving are correctly understood, which
10 means that moving, as specifically disclosed in the '856, can include
11 copying, there's nothing inconsistent with our interpretation in claim twelve.
12 What you would see here is that in what they labeled A, there's a copying.
13 It's agnostic as to how that copying is accomplished. And what they label in
14 claim C would be two steps that can be performed through a move
15 implemented via copying. So in effect, what you see in C would be two
16 copy steps that are equivalent to the claimed one copy, the same copying as
17 in the independent claim. So that's why we disagree that this is in any way
18 nonsensical. As to further questions, Your Honors, I will save the rest of my
19 time for sur rebuttal.

20 JUDGE CALVE: Any questions from the Panel? I have none.

21 JUDGE BELISLE: None for me.

22 JUDGE CALVE: Okay, Mr. Klein, you're up. Ten minutes.

23 MR. KLEIN: Thanks, Your Honor.

24 JUDGE CALVE: Actually, you have 20 minutes, I think. Do we give
25 20? You reserved 20?

1 MR. KLEIN: Twenty, but I'm only going to use, I think, a fraction of
2 that, Your Honors.

3 JUDGE CALVE: Okay.

4 MR. KLEIN: So really, I just want to make one quick point, Your
5 Honor. And this is for one of the last slides that the Patent Owner showed.
6 That's slide three, where they showed the disclosure in Sharpe, and they
7 characterized it as an alternative embodiment and said, we didn't cite it in the
8 petition. I'd like to say that that's not correct. On page 53 of the petition, we
9 actually did cite that disclosure in Sharpe. So that is not a new argument,
10 and it's not new evidence. Outside of that, Your Honors, unless there are
11 any questions from the Panel, I'm happy to rest on the papers.

12 JUDGE CALVE: No questions for myself. Judge Belisle or Judge
13 Giannetti?

14 JUDGE GIANNETTI: Yes, Judge Giannetti, I just want to go back
15 over this motivation to combine, and I have to say I was confused by the
16 Patent Owner's position on where the scanner should be located, whether it
17 should be on the enterprise system or in the cloud. Do you have any
18 response to that position, that your argument is seemingly agnostic to where
19 that is located? I think that's what they said that the claim doesn't specify.
20 Any response to that?

21 MR. KLEIN: Only that I would agree with it. Your Honors, the only
22 limitation in the claims is that it protects the enterprise network, but that's
23 agnostic as to where it's actually located.

24 JUDGE GIANNETTI: How does that affect your Burdett analysis?
25 Does that have any bearing on that?

1 MR. KLEIN: It doesn't necessarily affect our analysis at all, Your
2 Honor. Even though the claims are agnostic, we rely on this application of
3 the FortiSandbox, and we say you could put it closer to the enterprise
4 network. And I think in our rebuttal, we give some reasons, and I believe in
5 Sharpe. Sharpe actually discloses some reasons why you might want to
6 locate the network security device closer to an enterprise network, because
7 things could be faster and things like that. But in terms of our analysis, we
8 didn't necessarily say where the FortiSandbox device would be, if it would
9 be physically located in the cloud or would be physically located on the
10 enterprise network, because it's not a claim limitation.

11 JUDGE GIANNETTI: Thank you very much. I have nothing further.

12 MR. KLEIN: Thank you, Your Honors.

13 JUDGE BELISLE: None from me.

14 JUDGE CALVE: Okay, thank you. Mr. Zivojnovic, you're up with
15 sur-rebuttal.

16 MR. ZIVOJNOVIC: All right, so I will just say so in terms of Patent
17 Owner slide 30, and this was briefed in our sur-reply. It's the fact that the
18 scanning service is moved to this secure site that is, but that is also addressed
19 in the sur-reply, so I'm not going to belabor that much further. On the
20 obviousness combination, I do want to flag that in our Patent Owner
21 response, we highlight and explain exactly where Petitioner took the position
22 that the -- in their combination, the FortiSandbox is on the enterprise
23 network. And Petitioner did not dispute that our characterization was
24 accurate. So, they've always taken the -- regardless of what the claims
25 require, they have taken the position in the obviousness combination.
26 Instead of using Burdett's scanning service, you would instead have a

1 FortiSandbox on the enterprise network. And so, that's what we addressed.

2 And that's all I have, Your Honors, in sur rebuttal.

3 JUDGE CALVE: Okay. Thank you. Any other remarks or questions
4 from the Panel?

5 JUDGE BELISLE: None from me.

6 JUDGE CALVE: And I'll check with the reporter. Do you need
7 anything before we adjourn? Any spellings or questions for the record for
8 your compilation?

9 COURT REPORTER: No, sir. No, Judge. I'm good.

10 JUDGE CALVE: Okay, then this being a Friday afternoon, I
11 officially designate this hearing adjourned. Have a great weekend,
12 everyone.

13 MR. KLEIN: You too. Thank you, Your Honors.

14 MR. ZIVOJNOVIC: Thank you, Your Honors.

15 Whereupon, the proceedings at 1:40 p.m. were concluded.)

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