

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETSKOPE, INC.,
Petitioner,

v.

FORTINET, INC.,
Patent Owner.

IPR2023-00458
Patent 9,280,678 B2

Record of Oral Hearing
Held: June 21, 2024

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

APPEARANCES:

ON BEHALF OF THE PETITIONER:

THOMAS MILLIKAN, ESQ.
BABAK TEHRANCHI, ESQ.
Perkins Coie LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130-2080

ON BEHALF OF THE PATENT OWNER:

JAMES M. GLASS, ESQ.
QUINCY LU, ESQ.
OGNJEN ZIVOJNOVIC, ESQ.
Quinn Emmanuel Urqhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor,
New York, New York 10010

The above-entitled matter came on for hearing on Friday, June 21, 2024, commencing at 11:14 a.m., EDT, by video conference.

P R O C E E D I N G S

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JUDGE CALVE: Well, good afternoon, everyone, and good morning to parties joining us from the West Coast. Welcome also to members of the public who are joining us today.

The hearing is for inter-parties review 2023-00458 and 2023-00459. The patents at issue are US Patent 9,280,678, which is challenged in 458 IPR in the US Patent 10,084,825, which is the challenged patent in the 459 IPR.

The panel for today's hearing is Judge Calve, Judge Giannetti, and Judge Belisle. Will counsel for Petitioner, please, introduce yourselves and internet appearances for us?

MR. MILLIKAN: Good morning, Your Honor. This is Tom Millikan for petitioner Netskope, and with me are my colleagues, Babak Tehrani, Kay Li, and Michael Mirabai, who's our summer associate with us.

JUDGE CALVE: Thank you, Mr. Millikan. I guess Ms. Messier was not able to join us today; is that it?

MR. MILLIKAN: Not today. She did -- she did say she was going to listen to the hearing or read the transcript, though.

JUDGE CALVE: Okay. Very good. Okay. Mr. Glass, would you care to enter an appearance with your team.

MR. GLASS: Absolutely. Thank you, Your Honor. Jim Glass for Patent Owner. Today with me is Ognjen Zivojnovic on the line as well as my colleague Quincy Lu.

JUDGE CALVE: Okay. Thank you. Each party will have one hour to present argument in each of the IPRs. Petitioner will argue first and may

1 reserve rebuttal time. Patent Owner will argue second and may reserve
2 surrebuttal time.

3 Please let me know at the beginning of your argument if you would
4 like to reserve rebuttal or surrebuttal time.

5 We're going to begin with arguments in IPR2023-458. We'll take a
6 short break and then we'll resume the hearing with arguments in
7 IPR2023-459.

8 And, petitioner, if you're ready to present your arguments for
9 IPR2023-458, you may begin.

10 MR. TEHRANCHI: Thank you, Your Honor. Babak Tehranchi on
11 behalf of petitioner. I will be arguing for the '458 IPR. I'd like to reserve 15
12 minutes of rebuttal time. And with that, I'd like to -- unless there are other
13 questions, I'd like to share my demonstratives and start the presentation.

14 Great. Please let me know if you can see that demonstrative on
15 the -- on the screen.

16 JUDGE CALVE: Yes, we can. And if you would please just
17 remember to mention the slide number for members of the public and those
18 who are not able to, anyone -- and just for the Court reporter as well. Thank
19 you.

20 MR. TEHRANCHI: Sure. I'll do that. Thanks again. On page 2 of
21 the demonstratives that, these are basically a summary of our grounds. And
22 there are five grounds, but really broken up into two sets. The first one is
23 based on Cidon in combination with Shikfa and Herrmann.

24 And the second set of grounds is based on Auradkar, Chiueh, and
25 Chambers. And we are also using some additional secondary references for
26 a couple of dependent claims, as you can see.

1 This is a quick overview of what I'll be discussing, at least the primary
2 part of this. And I'll start with a very quick background and then dive into
3 three claim construction topics regarding name space, creating and
4 configuring name spaces and the topic of policy, whether it's a single policy
5 or multiple policies, and so on. And then I'll wrap -- wrap it up with
6 discussions and discuss some of the points of contention for the two
7 combinations based on Cidon and Auradkar.

8 With that, if you turn to page 5 of the demonstratives, just as an
9 overview of the six, seven, eight patents so we have a kind of a background.
10 This patent deals with storing files in cloud storage services in a way that
11 they are encrypted, and this is done with a cloud gateway that receives files
12 from clients.

13 The red boxes on the bottom encrypts them and puts them in the cloud
14 storage. Of specific interest is that this technique uses a -- produces a
15 searchable, encrypted file that is stored in the cloud storage services based
16 on a policy that is assigned to a user.

17 Turning to page 6 of the demonstratives. This is an example of how a
18 searchable, encrypted file could be generated, and these are very coarse steps
19 in that process. Basically, the highlighted boxes indicate that the file is
20 received. It's partitioned into chunks, and then they're encrypted such that
21 name spaces are created for each chunk, then they're stored as a searchable
22 file in the cloud storage, and they can be used later. You can -- a user can
23 basically search for those files.

24 JUDGE BELISLE: Counsel, this is Judge Belisle. Could we just go
25 back to that slide for a minute? What does it mean to create that namespace
26 for a file chunk?

1 MR. TEHRANCHI: So that's a topic of discontent, a topic of
2 contention here. And the patent itself does not describe how you would
3 create a namespace. And our position is, well, first one, the namespace. A
4 namespace is a set of names for naming files or segments of a file, and when
5 you create that name, you create a namespace for it. The patent itself is not
6 specific of how those are created. And actually, there is no express
7 explanation that, this is how you would create a namespace. But there
8 is -- there's a lot more on that topic and I'll be happy to dive into that.

9 Before getting there, though, I'd like to point out that there are two
10 independent claims, Claims 1 and Claims 16. Claim 1 is the method claim,
11 and the basic steps in there, it's -- the first step is assigning the gateway
12 device and a policy to a user. And then the second part is encrypting via
13 gateway to produce an encrypted default content to produce a searchable,
14 encrypted file that includes dividing the file into chunks, creating
15 namespaces. And that's -- that's one of the points there, how do you create
16 that. And then configure namespaces so that the file is encrypted in a
17 manner that makes it searchable.

18 And the last two elements are basically storing it and managing it, and
19 all of these are done based on the policy. So with that, I think one of the
20 points of contention is about namespace and what is a namespace.

21 And, again, how is it created. If we search through that specification,
22 there are only three mentions -- aside from the claims, there's only three
23 mentions of namespace, and we've reproduced those here. One of them is in
24 the background section, or actually not the background, but the terminology
25 section. It's in Column 6, lines 44 to 47. The other one -- and you see the
26 other two there.

1 In all of these, there is no explicit explanation of what a namespace is
2 but it's more of an association with directories, folders, files and so on. And
3 of importance here is that here, the patent itself does not associate the
4 namespace necessarily with a complex directory structure. It's -- it says it
5 could be associated with directories, folders, files. So a file could be, could
6 have a namespace and there could be an association just with a file.

7 We actually asked at the top, this question from Dr. Black, who is
8 Patent Owner's experts, that, please tell us where -- where is namespace
9 defined or describe, or how it's created in the -- in the patent itself. And Dr.
10 Black basically said that it's not explicit there, but he said there are examples
11 that you could construe as creating a namespace. So not being able to find a
12 definite and explicit definition in the patent itself, we turned into extrinsic
13 evidence and we looked at literature out there. And it turns out that
14 namespace could have different structures.

15 So in Exhibit 1020, the audio paper, it described a hierarchical
16 structure just like what we see in a folder and subfolder on our computers.
17 So it is -- it has a hierarchy of folders on subfolders.

18 The Mika reference, Exhibit 1021, described URL namespaces where
19 you have a URL and you have domains and sub-domains within that URL,
20 and that would be a namespace, but also as we've shown in the petition the
21 table that Mika produced, it even has a simple root directory. So it doesn't
22 have to have multiple domains in any case.

23 And finally the exhibit, Exhibit 1023, Krishna talks about a flat
24 namespace. And by flat, it's the highlighted section on page 10 here of
25 demonstratives, indicates it's a flat meaning that the identifiers on
26 unstructured and not overloaded with any semantics about the object name.

1 And it gave an example that you could have, you could pick a number in a
2 range of 0 to 2 to the power of 128 minus 8, as an example.

3 Turning to page 11 of the demonstratives. We also looked at the
4 dictionary definition. It's a dictionary of computer and internet terms, and
5 what we found was it says that namespace is a set of names available for
6 naming things such as files and variables in a program or computers in a
7 network. And based on this, the collection of these are plain and ordinary
8 meaning construction for namespace is a set of names available for naming
9 things, such as paths or segments.

10 I don't think there is a lot of differences between what we say and
11 what the Patent Owner is contending here except Patent Owner is saying it's
12 a set of names available within a particular context.

13 JUDGE CALVE: Well, Mr. Tehranchi, this is Judge Calve. The prior
14 art seems to create names or identifiers, but some identifying label for
15 chunks or files, and then saves those chunks or files under those names. Isn't
16 that creating a namespace?

17 MR. TEHRANCHI: Yes, Your Honor. That does create a namespace
18 because it creates a unique structure that allows unique identification on
19 each of those chunks within that space.

20 JUDGE CALVE: Yeah, Patent Owner seems to be arguing that this
21 namespace has to be created with additional naming capability beyond
22 what's used in the immediate context of encrypting and storing, and then I
23 guess it criticizes you for -- for doing that. It seems like a namespace could
24 be a single name, right? At least within the scope of the claims. Is that your
25 understanding?

26 MR. TEHRANCHI: Yes, Your Honor. I agree with that. We agree

1 with that, and the namespace could be a single name. And really, the
2 genesis of this whole within a particular context, which is totally
3 unambiguous, was that there was a discussion with our expert, Dr. Lee,
4 where he -- the questions were about flat namespace structure, which could
5 be a single identifier. When that questioning ended, the questioning turned
6 into a more complex hierarchical convention, namespace convention.

7 And when Dr. Lee was testifying, he said, well, if you have such a
8 complex structure, you could have two names that are identical names, two
9 files with identical names.

10 So for example, if the file is called Demonstratives.PDF, you don't
11 know if it's a Patent Owner's demonstratives or petitioner's demonstratives,
12 as an example. I think Dr. Lee used a different file, different name, called
13 it -- text.

14 So in that sense, you need to specify not just the file name but the
15 directory and the root directory to be able to provide that connection of
16 where the file is located. But that's only in the -- relates to those complex
17 hierarchical namespaces. And there is nothing in the claims that requires
18 that, and absolutely a flat namespace, a single identifier that uniquely
19 identifies a chunk or a file, that could constitute a namespace.

20 JUDGE CALVE: Okay. Thank you. Well, Claim 6, which depends
21 from Claim 1, elaborates that configuring namespaces comprises storing
22 content of the file as file names. So according to Claim 6, it seems that the
23 namespace is the file name; is that your position?

24 MR. TEHRANCHI: The file name could be a namespace, correct,
25 Your Honor. That is a non -- a namespace could be a file, could be a part of
26 a -- a namespace or part of an edge space, that's correct.

1 And Claim 6 is a, really, just shows that what's in Claim 6 is not
2 necessarily covered in Claim 1 because it's a narrower version of Claim 1.
3 So the configuring parts or the namespace part in Claim 1, it could be
4 broader than what's specified in Claim 6.

5 JUDGE CALVE: Right. Patent owner seems to suggest that
6 configuring or creating a namespace could be formulating a rule, or you
7 could call it a policy of some sort, for naming files. So in the context of
8 Claim 6, the namespace would be, we will store files with the name that
9 comes from the content; is that also a namespace?

10 MR. TEHRANCHI: Yes, Your Honor. That is an example of a
11 namespace, but Claim 6 says comprising, it has -- I can go to that claim,
12 which I have a slide that had past claims. It's slide 44.

13 So in slide 44 it says, Claim 6, we're in the step of configuring the
14 namespaces comprising storing content of the file as file names.

15 JUDGE CALVE: Okay. If you would like to put slide 44 up for
16 everyone, that might also be helpful, if you have the ability to do that.

17 MR. TEHRANCHI: I have, actually.

18 JUDGE BELISLE: I can't see it.

19 JUDGE CALVE: You can, okay. Okay.

20 MR. TEHRANCHI: Sorry.

21 JUDGE CALVE: You have it up. I see it; very good.

22 MR. TEHRANCHI: So the creation of the namespace is a different
23 step, than configuring it, and Claim 6 really talks about the configuring
24 parts. So --

25 JUDGE CALVE: Is configuring, then, formulating the rule or the
26 policy? And then creating is actually coming up with a file or chunk name

1 under the policy? Is that how we're to understand these two limitations?

2 MR. TEHRANCHI: Your Honor, the patent is -- is not specific about
3 any of these. It doesn't explain the --

4 The best that it explains is the configured part, which is in Claim 6
5 here. And actually, there is a little bit more detail in the detailed description
6 that says instead of just storing content of the file, it said storing encrypted
7 indexes as part of file names. So those, those are the only two explanations
8 of how the namespace is configured there. They're described as examples,
9 certainly not as the rule.

10 JUDGE CALVE: What's your position -- it would seem that if a
11 chunk or a file is stored with a label or an identifier, the very fact that it's
12 stored in a unique location from which it's retrievable by a unique label,
13 evidences that there had to have been a namespace created, and pursuant to
14 that namespace, this identifier label was applied to whatever is being saved;
15 is there something that's not correct about that understanding?

16 MR. TEHRANCHI: No, Your Honor. That's absolutely correct this
17 is a unique identifier. It allows identification of the segment within a space.
18 And really, all that's needed, if you think about the context of this invention,
19 that the object of this is to be able to go out and pull out that, the relevant
20 segment. And having that namespace that is -- that uniquely identifies it
21 that's stored at a location, allows you to do that based on our -- the
22 references in Cidon and Auradkar.

23 JUDGE CALVE: Okay. And I think some of the references also
24 describe policies, algorithms, I think there is an SH2 algorithm for a
25 signature. "Some mechanism or policy by which some of these identifiers
26 were generated."

1 Is that something that's required by the claims? Or do we just need to
2 see that the prior art has generated some unique identifier pursuant to this
3 higher level of an algorithm or policy?

4 MR. TEHRANCHI: Your Honor, the claims don't require any
5 particular having an algorithm or policy to be -- to generate those
6 namespaces. But as you've said correctly, you've indicated quite correctly,
7 are references. Obviously in the Cidon reference for example, there is an
8 SHA algorithm that produces a 256 or 512 bits identifier. So there is a set
9 of -- there are a set of rules for generating that hash value and then attaching
10 it to that, to the segment, and then placing it in a storage container.

11 So I don't -- to answer your question, I don't think there is a
12 requirement to have a rule or a policy, or at least based on the plain reading
13 of the claim, to create the namespaces. So as long as you can create a
14 unique set of identifiers that identify the chunks, we believe that qualifies,
15 that satisfies this claim element.

16 JUDGE CALVE: So creating the namespace would be evidenced by
17 or performed by attaching or assigning this identifier to whatever's being
18 stored?

19 MR. TEHRANCHI: That's correct.

20 JUDGE CALVE: Okay. And then for the next limitation of
21 configuring the namespaces, is that where you get more into the indexing so
22 that these namespaces are correlated with where they're stored, so they can
23 be searched while encrypted?

24 MR. TEHRANCHI: That's right, Your Honor. So in the configuring
25 part, both of our main references, Cidon and Auradkar, it did not allow
26 searching of individual segments based on keywords. And the

1 complementary references, Shikfa and Chiueh, they basically said you could
2 generate these indexes and they could point to where in the file you can file
3 those, those encrypted indexes. So by combining the two, really the
4 configuring part is enabling the segments to be searched based on those
5 keywords.

6 JUDGE CALVE: Okay. Thank you.

7 MR. TEHRANCHI: Thank you, Your Honor. Let me go back to this
8 topic again. And I think we may have covered some of the topics that I
9 wanted to discuss about the namespace and the configuring and creating part
10 of this.

11 However, another part which there may or may not be a difference of
12 opinion between the Patent Owner and petitioner is that whether the steps of
13 dividing, creating and configuring, whether that is part of producing a
14 searchable, encrypted file or whether that's part of encrypting the content
15 itself.

16 And our position is that these steps, basically the claim limitation that
17 is reproduced here on slide 14, that main highlighted sections -- these are
18 four operations: You encrypt the content, you divide it into chunks, you
19 create namespaces, and you configure those namespaces so that the
20 encrypted file is searchable -- these four operations need to be done to
21 generate a searchable, encrypted, file.

22 And we don't really understand the Patent Owner's position that these
23 steps must be performed as part of encryption itself. Because if you think
24 about encryption, encryption is a process where you get a cipher text, you
25 run the encryption algorithm, and you get a -- you get a -- you have a plain
26 text, you run it through the encryption algorithm, and you get a cipher text.

1 Even if you look at the patent itself, for example dividing the file into a
2 plurality of chunks, that happens before anything is encrypted.

3 So that cannot be part of encrypting the content. And we think that
4 the language of the claim here is fairly clear. These are steps that are done
5 as part of producing a searchable, encrypted file.

6 And going to page 15, it appears that during the Q&A between Patent
7 Owners, counsel, and our expert, Dr. Lee, even Patent Owner's counsel
8 stated that the order of these operations are not important. And I think this
9 may or may not be a big point of contention because regardless of how you
10 want to interpret this, our references really described a, an encryption of an
11 algorithm that produces a searchable, encrypted file, and it does all of the
12 four steps that we were -- that are asked in that claim.

13 And I think the next claim construction topic is a policy. Patent
14 Owner spends a lot of time on this, so I want to address this, at least a few
15 points and I may have to come back during the rebuttal time.

16 The point here is that there is a -- the claim requires assigning to one
17 or more users a policy for managing access and processing of a file,
18 processing a file; and then encrypting, using cryptographic key information
19 defined by the policy; and then when we get down to the storing elements,
20 you store based on the policy and then you manage based on the policy.

21 What Patent Owner contends is that our references don't describe a
22 single policy and you need a single policy to -- that needs to be doing all of
23 these. We disagree. We disagree with the Patent Owner -- sorry, and we are
24 still on page 17 of the demonstratives -- for several reasons.

25 Number one, as the institution decision correctly pointed out, the '678
26 patent itself does not define a unitary single policy that's able to do

1 that -- that is doing all of these. So for example, although the policy may be
2 described as managing access or processing the file, it doesn't define the
3 cryptographic key information in that policy. And it may not do the
4 encryption and other parts of it. So there is a discrepancy in the patent itself
5 as to whether a single policy is -- is doing this or not.

6 And again, the prima facie case here is that "a" means one or more,
7 and to be able to kind of rebut that case, they have to show that there was an
8 intent to use a single policy to do all of this. And we contend that there is
9 none.

10 We actually found a section in the patent itself here on page 19. So in
11 Column 9, lines 40 to 46, the patent itself actually mentions having soft
12 policies. And we actually talked about this with Dr. Black, Patent Owner's
13 expert. And the question was, let's say there is a single policy; how do you
14 know which -- how to do content managing the access versus storing versus
15 encryption. And the answer was, well, the policy has different sections. It
16 has distinct sections where each section is dedicated to one function.

17 JUDGE GIANNETTI: Also -- this is Judge Giannetti. Doesn't the
18 use of the word "the" in the subsequent mentions of the policy in their claim,
19 isn't that classic claim construction that it's talking about an antecedent,
20 which would be the policy mentioned earlier in the claim?

21 MR. TEHRANCHI: Your Honor, that is correct. But the question is
22 whether the --

23 JUDGE GIANNETTI: What's your rationale for departing from what
24 I think is a bedrock principle of claim construction, that when you use "the,"
25 you're talking about an antecedent?

26 MR. TEHRANCHI: Your Honor, two points there. Number one, yes,

1 if we decide that -- we have to go back to the same policy. But the question
2 is, with that same policy, a policy is a unitary, single policy, that one
3 directive that says, do all of these things, or whether that a policy that we
4 started with, whether it has multiple sections, whether it has sub-policies.

5 And in our case we're saying, well, any way you look at this, the
6 patent itself talks about sub-policies, their experts said it has subsections.
7 And really, it's not possible to have a single unitary directive that does all of
8 these things.

9 If you think about a policy, which is a set of rules, somebody has to
10 go the processor or a person has to go through each section and say, okay, if
11 we're dealing with access control, use these set of rules. If we're using it
12 with storage, use these other set of rules. This is unlike the Salazar case
13 where the Patent Owner is citing, where it was a single processor had to do
14 all of these things.

15 So a single -- a single processor is a hardware device, and does not
16 have different subsections. And based on the description and based on claim
17 construction, the same processor had to do all of the other actions in the
18 Salazar case.

19 Here, it's quite different. We're dealing with a software case
20 and -- but that's kind of the first set of the first argument. Even if you put
21 that aside, if you go to our references, if you look at Cidon in combination
22 with Herrmann and Shikfa, and if you look at Auradkar, all of these are
23 talking about having a policy, and that performs all of these operations.

24 So in our case, in our view, really, these arguments don't make sense
25 that, number one, they haven't shown the intent in '678 Patent to have
26 multiple sections or have a single policy that's doing all of these; and

1 number two, even if they did, even if it requires a single policy, our
2 references describe those.

3 Okay. So going back to, now we're on page 21, and this is kind of the
4 continuation of the discussion with Judge Calve where in our Cidon, Shikfa,
5 Herrmann grounds, the process was really very similar to what the '678
6 Patent is -- is describing.

7 And so, you create it. It was a file. It was broken up into segments.
8 Each segment was subject to a hash algorithm, the SHA-2 algorithm, to
9 generate this 512 bits signature or 256 bit signature that was -- that uniquely
10 identified that segment, and it was associated with that segment, and it was
11 stored.

12 Now, when we combine it with Shikfa, Shikfa for allowed searching.
13 It created indexes and those indexes allowed searching of the documents, the
14 full document, based on those indexes. So when we combine the two, you
15 allow the search of the individual segments to be searched.

16 And again, there on page 22, we show about, that basically Pattern
17 Owner's contention that says -- well, this is a response to that contention of
18 whether configuring, generating namespaces is done as part of the
19 encryption, and our answer is, yes, it's part of the encryption process. But if
20 they're saying that while you are manipulating the bits, running the
21 encryption algorithm, you have to do all of these, we don't think that
22 position makes sense. It's not supported by anything in the record.

23 And when we're talking about the configuring parts, as we discussed
24 earlier, Shikfa comes in because Shikfa allowed association of these key
25 words with that unique identifier of the set -- of the file.

26 And finally, Herrmann. We're using Herrmann because Cidon,

1 although it described a management server that sat between the cloud
2 storage devices and enterprise, it did not describe it as a server. But
3 Herrmann, Herrmann showed that there is a server that sits between these
4 two entities and it had capabilities to incorporate these operations, so that's
5 what Herrmann comes in. And also, Herrmann also had assignment of the
6 policies to the users.

7 There are some teaching contentions that the Patent Owner presents. I
8 believe these were also part of their preliminary response. We disagree with
9 them. One of the arguments is that Shikfa describes encryption occurring at
10 the client's side. So it would not make sense to combine it with the Cidon,
11 that doesn't add a management server. There is no credence to that. It
12 really -- we're not using the architecture of Shikfa. We're incorporating that
13 search capabilities of Shikfa into Cidon.

14 JUDGE CALVE: Yeah, Mr. Tehranchi, Judge Calve. It seemed like
15 Cidon and Shikfa took similar approaches. They recognized a need to
16 encrypt files outside of the cloud, outside of a storage facility that was under
17 the control of another party for security reasons.

18 So Cidon of course implements that at a server which you're running
19 in Herrmann's gateway, external to the cloud, and it seems Shikfa in the
20 context of an individual user would do the same. So they both seem to be
21 teaching the need to encrypt files outside the cloud, and, yes, Cidon's the
22 base enterprise reference, so Shikfa would simply allow the encryption to be
23 done within the context of the enterprise via perhaps an IT administrator
24 department, right?

25 MR. TEHRANCHI: That's absolutely correct. And they both had the
26 same goal of not allowing the outside vendors to have access to these. So

1 these were done under either management and a server gateway side or at
2 the client itself.

3 JUDGE CALVE: Okay. Thank you.

4 MR. TEHRANCHI: And I think with that, I will reserve the rest of
5 my time for rebuttals. Maybe a quick note, kind of an explanation about
6 Auradkar. We have a similar case similar scenario in our Auradkar -- sorry,
7 I'm probably mispronouncing that. So it's Auradkar.

8 So in that, in this case, Auradkar described a similar process. It
9 created tags, it created based on a content, it encrypted those tags and
10 encrypted those contents, and then it allowed searching based on those tags.
11 However, it did not describe that you would do it based on chunks, and you
12 could turn only chunks based on that search. And that's where Chiueh
13 comes in in that combination, because Chiueh said you would break a page
14 into -- break a document into multiple pages, you encrypt each page
15 individually, and then you have this, these search terms be associated with
16 that document and provide a pointer that shows an offset within the page
17 where it is.

18 So again, in that combination you generate those identifiers which is
19 creating the namespace, and then you configure those identifiers, which is
20 providing that association between the search terms and the individual
21 pages, or chunks in this case.

22 JUDGE CALVE: Okay. Mr. Tehranchi, if you could please just go
23 up to the previous slide that showed Auradkar, I believe. The previous one
24 to that.

25 MR. TEHRANCHI: No. 31.

26 JUDGE CALVE: Oh, that's it. So the namespace here is this purple

1 box; which elements do you contend are the namespace that's created as part
2 of this encryption process?

3 MR. TEHRANCHI: It would be that entire purple box, which has the
4 file name in it. It has tags, such as "box" and "dog." Those within that.

5 JUDGE CALVE: So basing the file name on some of the content,
6 box, that seems to satisfy even Claim 6's more specific configuration, doesn't
7 it?

8 MR. TEHRANCHI: It does, Your Honor. Yes.

9 JUDGE CALVE: Okay. So the namespace, if we stop at a slightly
10 higher level, it's a policy that says we will use filename names, filename
11 spaces, based on content out of the document that we're encrypting; is that
12 also a correct understanding?

13 MR. TEHRANCHI: That is -- that is correct, Your Honor.

14 JUDGE CALVE: Okay. Thank you.

15 MR. TEHRANCHI: And with that, I will rest. Well, I will -- I have
16 five minutes, but if I may, I may reserve that for my rebuttal time, unless
17 there are other questions.

18 JUDGE BELISLE: None for me.

19 JUDGE CALVE: Okay, thank you. Thank you, Mr. Tehranchi. I
20 think we have Mr. Zivojnovic.

21 MR. GLASS: Unfortunately, Your Honors, it's me today. It's --

22 JUDGE CALVE: Oh, Mr. Glass. All right. Well, this is great. We
23 are indeed honored, sir. Okay.

24 MR. GLASS: It's me who has the honor. Mr. Zivojnovic is on, so he
25 is -- he's here in spirit. Let me share my screen. Just give me one moment.
26 Share. Let me start. This is a whole process, unfortunately, of doing this

1 remote. Okay. Can Your Honors see my screen?

2 JUDGE CALVE: Perfectly. And would you like to reserve any
3 rebuttal time, also?

4 MR. GLASS: I'm going to -- I'm going to reserve half an hour. I may
5 go over, but optimistically, I'll reserve half an hour.

6 JUDGE CALVE: Okay. Yeah, the slides are perfectly legible.
7 Thank you.

8 MR. GLASS: All right. So I'm just going to jump right to the issues,
9 Your Honor. And today we've raised a lot of issues in our response. I'm
10 going to focus, no surprise, I'm going to focus on the policy and the
11 namespace issue, the claim construction issues and the application to the
12 prior art.

13 For the most part, I will focus on the policy because I think that is
14 where the most egregious errors in their presentation and their application is,
15 is in that, in the construction of policy and their application.

16 So I'll jump ahead to slide 19. Now, so I think Judge Giannetti, you
17 hit the nail on the head. Our construction, our position is not -- and counsel
18 misstated it. This was something we focused on in preliminary response.
19 Our position is not that a policy means a single policy.

20 We are, for purposes of post-institution, we accept the fact that a
21 policy is one or more policies. We're not disputing that. The point is
22 exactly what Judge Giannetti focused on, that this is an antecedent issue.
23 I'm going to spend some time walking through our claim, walking through
24 the Salazar case, and petitioner's contentions, because they're -- the way they
25 avoid this, they simply sidestep the issue. And I have some points on that,
26 that I will -- will work through.

1 Working through the claim. Let's start with Claim 1. I am going to
2 highlight this as I go through it. Again, I'm repeating with what Your
3 Honor, Judge Giannetti, mentioned.

4 The claim starts with "a policy," and doesn't say "a sub-policy." It
5 doesn't say "different policies."

6 It says "a policy." And even, in fact, in the specification where it talks
7 about policies, it says that it's part of the same policy. So we're talking
8 about, there may be different sections, however they're parsing this, it's still
9 the same policy, the policy wherein the policy. It harkens back to a policy,
10 defines access rights, key information defined by the policy. I'm not going
11 to keep doing this, but you get the point. Everywhere in this claim where it
12 refers to a policy, it's the policy. It is the same policy.

13 So there can be one or more policies, but at least one of them -- could
14 be more, but at least one of them has to be used as set forth in the claim.
15 And As Judge Giannetti said, that's black letter patent law 101. Actually, I
16 don't know if those were his words. Those are my words. It's basic patent
17 law.

18 We pointed, we worked through the Salazar case in our -- in our
19 briefs. I'll work through that here. It is exactly the same situation. This is
20 the claim from that case. It started off with a microprocessor. It used the
21 word "said" instead of "the."

22 "Said microprocessor creates." "A parameter sets retrieved by said
23 microprocessor." "Said microprocessor generated." And now, in that
24 case, the plaintiff -- let me

25 jump ahead. The plaintiff argued -- I'm on slide 23. This is the
26 federal circuit's characterization of the plaintiff's argument in that case.

1 This should be eerily familiar. This is exactly what petitioner is
2 arguing here. Put another way, in Mr. Salazar's view, a correct claim
3 construction would encompass one microprocessor capable of performing
4 one claim function, another that performs a different claim function, even if
5 no one microprocessor could perform all of the recited functions. That's
6 what they argued in Salazar.

7 JUDGE GIANNETTI: Mr. Glass, Judge Giannetti just coming back
8 to this. You would agree, though, that a policy can have different parts; is
9 that right?

10 MR. GLASS: I would agree that a policy could include different
11 sections, but it's still the same policy, just like a processor could include
12 different functions, different classes. We're talking object-oriented
13 programming. It could include different inheritances. Those functions,
14 that -- that this case did not turn on whether code could have different
15 sections. We all know that code does have different sections. It focused
16 on --

17 JUDGE GIANNETTI: Just focusing on the Salazar case, though.
18 Isn't that case a little different in that it's dealing with an object, a physical
19 device, if you will? Whereas a policy is something a little more nebulous,
20 maybe? Maybe abstract is the wrong term, but I think -- I think you know
21 what I mean. It's not a -- it's not a tangible, physical device.

22 MR. GLASS: I understand --

23 JUDGE GIANNETTI: And therefore, it's a little more difficult to
24 figure out what the outer boundaries of the policy would be, whereas a
25 microprocessor is far easier. Look at it, measure it, take two measurements
26 and you know exactly what the microprocessor is.

1 MR. GLASS: I have two points. That's an excellent point, Your
2 Honor. The -- and I -- I wrote this down as Petitioner said this during their
3 opening, because this is, what you just referred to, that is their only
4 distinguishing point on Salazar. And what he said was, in Salazar we
5 have -- it's a hardware device. And because it is a microprocessor, it doesn't
6 have different subsections. That was his point.

7 Well, unfortunately, that is this case. Our case -- and I'll put up the
8 '678 patent. Petitioner forgets that we have multiple claims in this case and
9 claim 16 refers to one or more processors. That is the exactly what Salazar
10 refers to. So if the processor can't have different -- that just supports our
11 position. It's not -- it's a distinction -- I'd say it's a distinction without a
12 difference, but it's not a distinction.

13 The claims here refer to processors just like -- just like Salazar, a
14 processor running a policy. In our case, we have microprocessors running
15 computer code in Salazar. It's exactly the same point. Even in the context
16 of Claim 1, it's not just a policy. It's a policy that's assigned by a gateway
17 device. Hardware.

18 It's a little -- it's not quite as direct, but I think you see the point. The
19 claims here are not -- this is not a distinction between hardware and
20 software; it's hardware and hardware. It's microprocessor versus processor.
21 It's a microprocessor running code; in Salazar, a processor using a policy.

22 JUDGE GIANNETTI: He says the processor stores the policy.

23 MR. GLASS: The processor stores the policy. It's coupled to a policy
24 assignment module, which, when executed by the processors.

25 JUDGE GIANNETTI: It doesn't say the policy is -- is hardware. It's
26 just, the hardware stores the policy.

1 MR. GLASS: Well, the functions in Salazar are not hardware either.
2 The functions themselves are software running on computer code. If we
3 look at the Salazar. A plurality of three programmable --

4 JUDGE GIANNETTI: -- I'm still not convinced that there isn't a
5 distinction here between them.

6 MR. GLASS: Okay. Just --

7 JUDGE GIANNETTI: This piece of hardware, this microprocessor
8 and -- and the policy which may be embodied, or may be stored, or may be
9 implemented in hardware, but which itself is something different than
10 hardware.

11 MR. GLASS: I understand the point. I will just point out, Your
12 Honor, in Salazar again, the microprocessor stored a plurality of parameters
13 retrieved by the microprocessor. It generated a computer protocol. There's
14 really no way to -- to parse that. The code that it is operating on, to parse
15 that versus the policy, in our case the microprocessor that's executing a
16 policy assignment module, it's the same thing.

17 I've walked through -- unless I -- has that, at least, I may not have
18 convinced you, have I at least addressed your question, Your Honor?

19 JUDGE GIANNETTI: Yes. Thank you.

20 MR. GLASS: Good.

21 JUDGE BELISLE: Well, Mr. Glass --

22 JUDGE CALVE: Well, this is. Oh, go ahead. Go ahead, Judge
23 Belisle. Please.

24 JUDGE BELISLE: Well, this is Judge Belisle. So on this policy
25 issue, you know, again, we're talking programming. So if the policy has
26 programming elements to the policy of A through Z, when the claim then

1 says, "the policy," it could be referring to any one of those sort of aspects of
2 the policy A through Z. It doesn't -- and so I'm having trouble following
3 your argument as to how the policy, what the impact of "the policy" should
4 be on.

5 MR. GLASS: I'll actually, I'll get to that point right now. It's -- it's
6 two-fold. Because we're not just -- so the first part is we have to address the
7 claim construction. What policy are we talking about? We're talking about
8 a policy.

9 I think Your Honors get my point on that. But there is another aspect
10 to this claim, and there's no dispute on this. Petitioner mentioned this
11 several times in his presentation. The policy is assigned to one or more
12 users. So what we're talking about are user policies. So when I say it's a
13 different policy, they said, there's no way to parse this. We have
14 to -- there's -- you have to have a giant, single policy in the system.

15 That's not how systems work. What they pointed to -- I'll walk
16 through this in a moment. They've pointed to user-based policies, policies
17 that define, for example, what I can access. What I can -- what I'm
18 permitted to do, my permissions. That's a user-based policy. But the other
19 things they pointed to are file-based policies that are user agnostic.

20 If I have a file that I copy, regardless of who does it -- and their expert
21 agreed with us on this. Regardless who copies it, it should be encrypted in
22 the same manner as the parent.

23 A backup policy -- this is literally what they pointed to. A backup
24 policy for a file, these are completely different. And our expert explained
25 that they're -- they're functionally -- you couldn't possibly have a universal,
26 system-wide, file-based policy assigned to a user. It makes no sense.

1 And that's what they pointed to and that's where this comes in. It's
2 a -- it's kind of a dovetailed argument that the claims are talking about the
3 same policy and it has to be a user-based policy, not a file-based policy.
4 That's very specific. Does that answer your question?

5 JUDGE BELISLE: Why can't they both be together "the policy"?

6 MR. GLASS: So for example, if I have a user-based, because
7 I'll -- they -- let me step back.

8 A user-based policy applies only to the user. A file-based policy is
9 agnostic to the user. It's based on -- and we'll go through the art on this. It's
10 based on the document itself. So if I have a document, for example -- and
11 this is from, I think it's from Auradkar. If the document is top secret, I want
12 to qualify that document as top secret, I want to qualify that document as top
13 secret for the entire system, regardless of who accesses it. And then I could
14 have a user-based policy saying any document that's characterized as top
15 secret, you can access.

16 If that file-based policy was now attached to a user, that user is the
17 only one who would see those characteristics. The user is the only one who
18 would understand that that file is actually top secret. So that's why the claim
19 talks about user-based policies. These are files that are specific to the user.

20 These are not -- these are not user agnostic policies. This is a
21 user-based policy. So that, I think, coupled with the fact that the claims, say
22 "the policy," it's referring to the same policy, and that is a user-based policy
23 assigned to one or more users. And that's what the -- why this claim is not
24 referring to system-wide, user agnostic policies.

25 Have I addressed your question, Your Honor?

26 JUDGE BELISLE: I understand your answer, yes.

1 JUDGE CALVE: Mr. Glass, Judge Calve. So I'm looking at your
2 specification of the '678, and it does seem to talk about some practical
3 reasoning for having a policy. You want to be able to have different groups
4 of users, and then you want someone to be able to configure a policy that has
5 an indeterminate number of sub-policies or components, and you want to be
6 able to set a policy for the group in your finance department, your marketing
7 department, what have you; right?

8 MR. GLASS: Okay.

9 JUDGE CALVE: Yeah. And so, yeah, this would be Column 9,
10 starting at lines 10 to 29, as an example. So let's just take a look at the prior
11 art and, then, to help my understanding, at least.

12 Turning to the first ground. I believe that's Cidon, Cidon is the one
13 we're dealing with here. Yeah. So Cidon, paragraph 102, it's my
14 understanding that the petitioner is saying, among other things, that
15 paragraphs 102 and 108 are an example of a single user-based policy, right?

16 And in paragraph 102, you have a management server that's going to
17 encrypt, so there's the encryption right there. They don't necessarily have to
18 go to those 300 series paragraphs. But at any rate, they're defining a policy
19 for analyzing and encrypting files. That's sub iii, that provides access policy
20 configuration, it enforces access policy. That seems to be a coherent policy
21 that can be configured for one or more users that has these, one or more of
22 these multiple components, and these components seem to address the
23 specific components of the policy that you're claiming in Claim 1.

24 MR. GLASS: Let me address that in one moment. I'm having some
25 technical issues here. Are you -- are Your Honors able to see my screen?

26 JUDGE CALVE: No longer. It's --

1 MR. GLASS: How about now?

2 JUDGE CALVE: Yes.

3 MR. GLASS: Yes. Okay, so that -- so this, this is when -- this is now
4 getting to what they pointed to. Yes, paragraph 102 discloses users, several
5 user-based policies. We don't dispute that.

6 What have they pointed to? They pointed to paragraph 102 as the
7 policy for managing access to a file. It grants users, just like I said, grants
8 users access to a file. I'm sorry -- managing access to a file. Defining rights
9 of users, again, that's in paragraph 102, the same paragraph you pointed to,
10 Your Honor.

11 Encrypting, using cryptographic key information. Again, that's a
12 user-based policy. But they point to something different for the policy for
13 processing the file. That's a different function. And they point to not to
14 Paragraph 102. This is very clear in their petition. This is that page 25 of
15 their petition. It might be Page 24. They point to Paragraph 224.

16 It could not be clearer that this is a file-based policy. It's a completely
17 different policy. It's not discussed in context of the IT policy enforcement.
18 It is based on -- it says in this quote that I have on the screen. Oh, excuse
19 me.

20 And the quote that I have on the screen, it's an encryption policy
21 defined by the filing -- What does that mean? I'll move on. I'm answering
22 your question, I hope, Your Honor.

23 JUDGE CALVE: But hang on to that page, please, Mr. Glass.
24 Doesn't that, the Cidon paragraph 324, it seems to tie that back. So they
25 have more specifics on encryption further on, and even there they say that
26 these encryption parameters are associated with the specific user. I think

1 that's just more from paragraphs 102 and 108, isn't it? Isn't that --

2 MR. GLASS: So that is --

3 JUDGE CALVE: -- would understand that?

4 MR. GLASS: That is the -- that is the encryption policy that they've
5 pointed to for storing. That is storing the process based on -- storing these
6 searchable, encrypted file based on the policy. That is the policy they're
7 pointing to for that function, but we're talking about processing a file. And
8 for that processing, they're talking about the encryption policy based on the
9 ancestry tree. So there are different encryptions going on in this path.

10 There are user-based encryptions, when you copy files into the storage
11 space, into the cloud storage. And there's what Cidon is referring to here.
12 The encryption policy is defined by the ancestry tree. So for example, what
13 Cidon is getting at here -- actually, I'll bring up -- give me a moment. I'll
14 bring up Cidon. I'll -- I'll walk through it.

15 And this is what they point to in their petition. This is what we
16 have -- we have to rebut. They pointed to, for this policy they pointed to
17 paragraphs 224 and 227. No. 224 is introductory similar to, A, a specific file
18 was found to be under the encryption policy as defined by the file ancestry
19 tree. What does this mean? What does this mean?

20 This means that the original parent is encrypted and the policy dictates
21 that all descendant files must be encrypted, too. What is that saying? That's
22 saying that you have a system-wide, file-based policy. If you copy that file,
23 if you move that file, whoever does it, you want that encryption to be carried
24 through to those children and to those moved files.

25 JUDGE CALVE: I understand. I understand, but -- but still going
26 back to the -- to the parent. Ultimately, this ancestry, I think, traces back to

1 the policy for encryption based on the user. I think that's what they're
2 saying. I understand your point and it was well stated.

3 MR. GLASS: I will point that it, again, it says it's defined by the file.
4 And if you think about it logically, we -- this -- this is simply how one of
5 ordinary skill would view this. We have -- in any system, we have -- we
6 know we have user-based policies. There are things that I can access as a
7 user, but we want some policies to be applicable on a system-wide basis.

8 Auradkar and there were some others, for example a backup policy.
9 We would want, for example, a backup policy on a file -- and this is
10 something they point to in Auradkar -- to be backed up because it's medical
11 data. We want it to be backed up every night.

12 That's not a user policy; that's a system-wide file policy, and that's
13 exactly the type of thing Cidon is referring to here. When you copy files, it
14 doesn't matter -- it doesn't -- I'll put it this way. I'll put it this way and I'll
15 move on. It's -- it doesn't matter not only is it a user, but what if it's a
16 process? What if there's a process in the system that copies the file? If this
17 was a user-based policy, that encryption would be lost. This is a file-based
18 policy no matter who does it or what does it, that encryption is carried
19 through and that's why it matters you.

20 JUDGE CALVE: Yeah, I understand. What's your position again on
21 Paragraph 102 of Cidon? Does that not address that element of encrypting
22 files according to the same policy, setting aside their more specific
23 contentions in the 300 series of Cidon's paragraphs that you've explained?

24 MR. GLASS: It doesn't. It's a different encryption policy. And
25 remember, what they're pointing to is processing. Right? And they're
26 pointing to paragraph 224 for processing the file. And that encryption in

1 their view is processing the file. So there are -- while there are other
2 encryption policies in Cidon, that's not the same. It's not the same
3 encryption policy and it's not what they pointed to for processing.

4 I do not dispute. I will say this; we do not dispute that the encryption
5 policy they pointed to for the encrypting function -- they pointed at
6 324 -- that's a user-based policy. I think that's clear. But that's not what they
7 pointed to for processing. It's confusing because they pointed to two
8 different kinds of encryption. One happens to be user-based; one is
9 file-based.

10 JUDGE CALVE: So what's the difference between -- isn't encrypting
11 a file a form of processing the file, or something more required by the claim?

12 MR. GLASS: The -- in the context of -- in the context of the claim,
13 the -- it's storing -- it's storing the searchable, encrypted file based on the
14 processing. So they -- they -- I'm sorry. Using cryptographic key
15 information defined by the policy. So that's more of an access policy, so it's
16 granting rights to the file. That's not really processing the file.

17 That's why they had to go to that encryption. They had to show some
18 manipulation of the file.

19 JUDGE CALVE: Well, if the file gets stored, that means it was
20 processed. It was processed and stored. Isn't that also a form of processing,
21 the fact that they're stored?

22 MR. GLASS: It is. And if you look at the slide, that's also what
23 we've -- we've pointed out, that that is a file-based policy. I misspoke. I
24 said storing and I meant to say --

25 Let me bring up a highlighter to make this easier. I was referring to
26 the encrypting policy that they point to in 324. That is granting rights based

1 on encryption, and that's a user based policy.

2 We don't dispute that. But the encryption they point to for
3 processing, that's not a user access. That's not an access encryption;
4 that is an encryption -- encrypting the file based on its file ancestry, and it's
5 completely different.

6 JUDGE CALVE: Okay.

7 MR. GLASS: All right. So I think I've addressed -- I think I've
8 addressed sufficiently the Salazar case. I don't think we need to go back to
9 that.

10 I've addressed unless, Your Honors have any questions on Cidon and
11 Shikfa combination, I -- you walked me through what I was going to walk
12 through, so I don't think there's anything else to say. They're different
13 policies; they're not user-based policies.

14 I will point out, we asked their expert about this. Let me see if, I think
15 it might be easier to -- it may be easier to bring up his --

16 No, I'll just --

17 JUDGE BELISLE: Counsel, this is Judge Belisle. So just to make
18 sure I understand you clearly. Your argument is that the user-based policy
19 and the file-based policy are two different policies and cannot constitute a
20 single policy?

21 MR. GLASS: It cannot constitute a single policy, and the claim is
22 two -- there's two points to it. They're not single policy -- and this is
23 explained by our expert at paragraph 109 -- one of ordinary skill in the art
24 would consider them to be different policies.

25 And I -- I won't say this in stone. I do not believe that their expert
26 offered a rebuttal on this point. I may be wrong. I'll check on that during

1 the break, but beyond that, the claim says user-based policy. It doesn't say
2 file-based policy. This is -- what they've pointed to is very problematic for
3 them. It's not a user-based policy. I'll get to the Auradkar point. It's even
4 more stark in Auradkar, I think.

5 We did ask their expert, by the way, on 29, the -- I'll point out to Your
6 Honors at 848 of the lead transcript. We did ask him about paragraphs,
7 those paragraphs in Auradkar and -- excuse me, in Cidon.

8 The testimony is not pithy, but basically what he said comports with
9 what I'm saying. So regardless of who owns B or who owns A, the policy
10 did not require that they belong to the same user.

11 Not -- not quite as pithy as I would like, but he's agreeing that that is a
12 file-based policy at 57629, encryption. He's referring to that specific
13 encryption I just walked through. That is the policy that you define on a
14 document. So there's no -- and this was before, again -- I'm sorry. This is
15 before we filed a response. And he agreed with us that these are file-based
16 policies inside on the Cidon combination.

17 JUDGE CALVE: Mr. Glass. Again, so just to confirm. So back to
18 paragraph 324 and 326 of Cidon, 326 says, it seems more of the same,
19 "Using encryption parameters for encrypting a file that is associated with a
20 user of a certain group of users" -- there's your user based -- "and you use
21 different encryption parameters to encrypt another file that is associated with
22 another user or another group of users."

23 That sounds exactly like what you are contending is required by the
24 claim, so you have files encrypted according to user groups.

25 MR. GLASS: And that's goes to the encrypted function, looking back
26 on the screen. Encrypting, using cryptographic key information defined by

1 the policy, that's what they pointed to for that function, paragraph 324.
2 That's not processing the file. They have a policy for processing the file
3 based on users. They pointed to the encryption policy, the different, the
4 file-based encryption policy.

5 JUDGE CALVE: Where is that in the petition? Maybe we would all
6 view that together to get a better understanding.

7 MR. GLASS: That is the petition, I believe it's at 25, I -- If it would
8 help, I can -- I believe it's at page 25 of the petition.

9 JUDGE CALVE: Yes. Yes, it is.

10 MR. GLASS: And if you look, it's very clear. I'm reading -- reading
11 from Cidon. "Cidon's policy also dictated whether certain files were to be
12 encryption (policy for processing of file)." Paragraph 224 to 27.

13 That's what they pointed to. They did not change that, I
14 don't -- that's -- that's their position, that that is processing the file, and that's
15 not the same policy.

16 If I may, I will move on.

17 JUDGE CALVE: Okay.

18 MR. GLASS: I think I'm getting -- I'm almost at half an hour. I'll
19 move on to the Auradkar combination. It is the same issue. Different
20 functions, but the same issue. They pointed to file-based policies that are
21 not the same as the user-based policy.

22 And it's in this case, we are, very confusingly, we are focused
23 on -- we're focused on different functions here. We're focused on the
24 encrypting function. We focus in our briefs on the encrypting function, and
25 the storing function also as the same issue.

26 Now, in their briefs, in their petition they focused for the policy for

1 managing, processing and defining access rights. They focused on the
2 enterprise access policies 630. That's in paragraph 117. That enterprise
3 access policy does define user-based policies. We don't dispute that and
4 that's what they pointed to for these specific, that I'm highlighting, these. --

5 JUDGE CALVE: Right. Right, I understand. Let me ask you,
6 because you're short of time, Mr. Glass, which you can reallocate your
7 surrebuttal. Yeah, Auradkar uses data as its custodian, is what's going on
8 there. So they're putting encryption on data to make it its own custodian, but
9 I would submit that that encryption is -- it's implementing this other policy.
10 It's part and parcel to the policy. They say that.

11 So this encryption is not a separate animal. They have the access
12 policy and then they implement it, similar to how Cidon did it when they
13 encrypt these files. It's not just willy nilly encrypting files. These are files
14 for user and user groups that that are tied into the policy, or at least that's my
15 understanding.

16 MR. GLASS: It's very interesting that you said that. It's very
17 interesting that you said it's not separate. So we pointed out in our
18 response -- I think Your Honors understand the point. We point out in our
19 response, not the same policy. It's a file-based policy. They, for these
20 encryption policy in their petition, they cited only to paragraph 96.

21 In reply, they cited -- and I think it's -- I believe it's, in reply, it's -- I
22 don't have the page number here. In their reply they cited to paragraph 117.
23 Well, let's look at 117.

24 They cite -- so again, just for context, they pointed to only paragraph
25 96 in response to our position that, well, paragraph 96 is just a file
26 based-policy, it's separate, it's from the user based policies, they pointed to

1 Paragraph 117.

2 Interestingly enough, when we're talking about the crypto
3 policy -- and this is directly from Auradkar. Crypto access, while it's guided
4 by, it's separate from the enterprise access policy. That is an -- that could
5 not be more express.

6 JUDGE CALVE: Let me ask you -- I'm sorry, Mr. Glass.

7 Let me ask you -- I'm reading the same thing -- your interpretation,
8 please.

9 It says, "Different enterprise access policy," which I think is this
10 policy, you agree, is within the claim scope. "Different enterprise access
11 policy can be reflected by the crypto access controls of data container to
12 apply to different accessing entities or tasks."

13 To me, they've now said that this encryption policy, these crypto
14 controls, are -- that's part of this access policy. They're implementing the
15 access policy through these crypto -- which, by the way, the '678 patent talks
16 about that, right? You have encryption based on access policies. That, to
17 me, seems very similar. Or am I misunderstanding?

18 MR. GLASS: Two points. There, again, we're talking about different
19 encryption going on in Auradkar and in '678 patent. So we, yes, we do have
20 policies that guide how I can encrypt files. But what I -- I should have
21 started with 96, because that's -- that's what they point to for the encryption.

22 This is what I was getting at before. "A policy could be created that
23 requires that sensitive medical data must be backed up once a day using
24 AES-256 encryption to secure server in a trusted data center." Again, what
25 is that getting at? That is a system-wide user agnostic encryption policy.
26 What are we going to do? It's a backup policy.

1 Imagine the mayhem, if -- I can imagine the mayhem if our backup
2 policy in my firm was based on my user profile. It would be -- it would be a
3 disaster. This is a system-wide user agnostic backup policy. We encrypt it
4 according using AES-256 encryption backed up once again. And that
5 comports with 117.

6 No. 117 expressly states that that is separate -- it's separated from, to
7 protect the data from unwarranted access. We don't want that policy to be
8 part of the user access policy. We want it to be so.

9 So I agree with Your Honor that there are user encryption policies
10 discussed in our patent that are tied to a user. When I want to encrypt a file,
11 I want my files be stored on a document server in an encryption that matches
12 my user profile. But that's not what they pointed to here. That's not the
13 encryption that's going on. It's a backup based on the file, agnostic to the
14 user.

15 Does that answer your question, Your Honor?

16 JUDGE CALVE: It does, but then the very next section, the very next
17 sentence says that this access policy can be reflected by the crypto access
18 control. So it seems like it's taking us back again. But I understand your
19 position, I think.

20 MR. GLASS: Thank you, Your Honor. Excuse me. I'm suffering
21 from the -- the Northeast weather we're having. My allergies are really
22 kicking in, so if I -- if I cough, I do apologize.

23 JUDGE CALVE: I'm all right. We moved out of the urban
24 environment to get the clean, fresh air, and now we have pollen and grass
25 pollen all summer long. And they mow the lawn, so I'm not sure
26 who's -- who's ahead on that score.

1 MR. GLASS: It never ends. I just want to make sure that I'm finished
2 through. Unless Your Honors have any questions, I think you understand
3 our points.

4 Just to sum up very briefly, I'll move into namespace. I think I'm at
5 35 minutes. I'll chew up my -- I'll chew up some of my rebuttal time.

6 Again, claims specifically require user-based policies. There
7 are -- and they require that at least one policy perform all of those functions.
8 They fail on both. They point to different policies, and even if it's somehow
9 they could draw the circle around those policies to be the same policy,
10 they're not all user-based policies. So I'll move on with that to the
11 namespace. Now --

12 JUDGE BELISLE: So, counsel, not to keep you from running on to
13 your next one, but let's -- let's just stick on that for one last second here.

14 MR. GLASS: Sure.

15 JUDGE BELISLE: You've said a few times that it's not a user-based
16 policy. Can we go to Claim 1? Tell me where -- what you're reading in
17 Claim 1 that is driving that statement you've made a few times.

18 MR. GLASS: Absolutely. "A method comprising assigned to one or
19 more users by a gateway device, a policy."

20 JUDGE BELISLE: Okay. So they're assigning a policy. Okay.

21 MR. GLASS: To a user.

22 JUDGE BELISLE: Okay.

23 MR. GLASS: In the prior art, those are file-based policies. They're
24 not assigned to a user. They're based on the file. They're not assigned
25 to -- and their system-wide policy is not assigned to any user.

26 JUDGE BELISLE: Why can't I assign a policy that has both

1 overriding sort of rules and individual rules to a user? Why can't that policy
2 have both?

3 MR. GLASS: So first of all, they haven't argued. That they haven't
4 argued that it would have been obvious. They simply argue that it is
5 disclosed, and that's not what the prior art -- that's not what the prior art says.

6 And again, it would be utter mayhem because the individual users
7 have the whole point. The entire point of having user policies is that
8 different users have different rights. I don't have access to, for example,
9 if -- I'm a lawyer, so I'll give law analogies. I'm walled off from certain
10 cases. I have user, I have user access rights. I do not have access rights to
11 those cases. My policy would not then apply to files within that, within that
12 walled off network, because I don't have rights to it.

13 There is a reason. There's a real reason for having file-based policies
14 that supersede users. And it makes sense, and that's exactly what the patent
15 is talking about. I assume maybe in some universe, there could be some
16 computer science system where they manage to combine file-based policies
17 and user-based policy, but that's -- they don't make that argument here, and
18 that's not what the references disclose.

19 JUDGE BELISLE: Okay. Thank you.

20 MR. GLASS: Moving on. I will move on now to namespace. I
21 think, Your Honors, I'll focus on really just the claim construction and the
22 fact that -- and two points: The claim construction, and this notion of
23 creating and configuring as part of the encryption process. Because
24 that -- that is -- let me move this out of the way first. That is --

25 That is what the claim's saying that's where -- that's what the
26 arguments come down to. Now, again, our position. Petitioners set forth

1 correctly. Our position, the namespace must be within a particular context.
2 What does that mean?

3 They said that this, the specification doesn't define it. They made
4 petitioner walk through how they asked our expert, where is their definition.
5 That sidesteps the issue. We are not saying that the spec defines this term.
6 We are adopting an ordinary meaning for this term, confirmed by their
7 expert by the way.

8 We asked them. Petitioner sidestepped the deposition transcript. I'm
9 going to walk through this, hopefully if I have time, but he agreed with us.
10 The namespace has to have a context. and the petition, the patent discusses
11 this in a manner that is consistent with how we are defining this term. For
12 example, examples of storage containers include directories, directory
13 structures, web directories, and namespaces are the same.

14 So what is a namespace? A namespace is the set of available names
15 within a context. Their own expert agreed with that. Their own
16 dictionary agrees with that.

17 This is how we get to the point that you can have a unique namespace
18 within a context, a unique file name within a context. For example, I could
19 have a directory called Jim. That's my namespace. My namespace, the
20 context for my namespace is Directory Jim. The namespace is all the
21 permissible available names for naming files within that namespace.

22 I could have a read me file in that namespace in my directory Jim. I
23 could have another directory called PTAB with the same file. Within those
24 namespaces, I have unique names, but the namespace is what provides
25 context and allows me to have the same named file in different contexts.
26 That's what a namespace is; it's a directory.

1 There's no ambiguity. They argue that we -- our definition
2 encompasses untold number of aspects. It's a directory. It's -- it's, comports
3 exactly with how the specification describes it. Their own expert agreed
4 with all -- I have snippets of his testimony. I think it's worth it to put his
5 testimony on the screen. I'll go to page, this is at page 35 of the transcript.
6 It's exactly what he testified to. We asked him -- and counsel is correct, this
7 was a back and forth. This was a long, a long examination.

8 We asked him, When you refer to the name -- he's talking about the
9 scope. And the scope is simply the context. Would the name of the scope
10 be home wanke documents? Those are -- that's just the directory. And he
11 corrected us.

12 That's not what I'm talking about. I'm talking about, when you talk
13 about namespace, first of all, you talk about what's a scope of this current
14 namespace, the context.

15 Scope and context mean the same thing. The namespace is the
16 documents. Documents is the name of the directory. That means the scope
17 is everything within the directory documents. So we have consistent usage
18 in the specification. We have consistent testimony by their own expert that
19 scope is context, their own definition by the. Way, counsel focused only on
20 the first part of their definition. But the second point is --

21 JUDGE CALVE: Well, Mr. Glass, can you pull up that previous
22 slide, please? The one that you have selected portions. Yes.

23 MR. GLASS: Would you like to see the testimony?

24 JUDGE GIANNETTI: Oh, that's fine. Thank you. So the prior art
25 creates unique identifiers for files that are stored in directories or containers
26 from which they can be located uniquely. So why doesn't the description of

1 creating an identifier evidence that that's been done is either a namespace or
2 within the namespace where this file can be located and stored?

3 MR. GLASS: Okay. That, that -- that's -- that's an excellent question.
4 And this gets down to, really, this is one part of the analysis.

5 The namespace -- the namespace is created by the client. The claims
6 were -- specifically require that the namespace is created for one or more of
7 a plurality of chunks. We create the namespace for the chunks.

8 Now, what they point to, they do it exactly backwards. They create
9 the chunks and then they draw a circle around and say, Well, that's the
10 namespace. In the broader context, this is part of the encryption process.
11 And I think I'll jump ahead to it. I think you get my point on their definition.
12 Their definition, by the way, supports us. It's -- because it says it has to have
13 different namespaces and unique names.

14 Okay. So your question, Your Honor, again is why is this important?
15 Why is not the -- why is not what the prior are doing a namespace? The
16 problem is that -- and this gets back to their analysis of encrypting -- the
17 claim could not be clearer that we produce a searchable, encrypted file by
18 performing three steps: We divide the file, create the namespace, and
19 configure the namespace.

20 The reason why context is critical or it's part of this analysis is that
21 creating the namespace, just like we had, we described in the patent, creating
22 the namespace is creating the directory. Why is that important? They
23 sidestepped this. This is part of -- this is the entire point of the invention.
24 This is the scribe. We create the namespace.

25 We describe it, for example, at Column 12, 61 through 63; Column
26 13, 4 through 7. We create the namespace. It gets the name, the encrypted

1 name of the file we're uploading. That is what -- that is the example and
2 specification. We create the namespace, then we configure the namespace.
3 We create the -- I'm sorry.

4 We create the namespace. That is the context; that is the directory.
5 We configure the namespace by taking the chunked file that have been saved
6 as encrypted keywords and we place them into the namespace. We place
7 them into the encrypted -- the -- excuse me, the directory.

8 So that's why this is, that's why creating identifiers has nothing to do
9 with this invention. And I'm basing it not just on the specification. The very
10 words of the claims maps to exactly what's happening in the spec. Right?
11 We encrypt by, we divide the file into chunks, we create the namespace for
12 the more, one or more plurality of chunks.

13 In the Cidon and Auradkar, you asked counsel to map that out for
14 them. The namespace is created after the files are chunked and encrypted.
15 You don't create the namespaces for the chunk and you certainly don't
16 encrypt the files by creating the namespaces. Configuring the namespace,
17 they go off onto Shikfa and Chiueh, which doesn't configure -- remember,
18 it's not just configuring the namespace. It's configuring the namespace of
19 the one or more chunks such that the content of the file is encrypted in a
20 manner that makes it searchable.

21 What that's talking about, again, is the patent talks about taking those
22 files, saving them as encrypted keywords, and placing them in the context,
23 the directory. In their combination, that's already done.

24 The files are chunked, they're encrypted, they're assigned document
25 IDs, and off to the side they create this index, which doesn't configure the
26 namespace. It creates, at best, it configures an index. So that's why all of

1 this matters.

2 The focus on the definition of namespace is one of really several parts
3 of this argument.

4 If you look at the patent and you map this patent, and look at how the
5 claims are laid out, the claims are laid out exactly the way that the
6 specification is laid.

7 So I -- I kind of baked a lot into that answer and I think I hit a lot of
8 the slides I was going to, but that's really the issue here. This isn't just about
9 creating chunks, creating identifiers, and then drawing a box around it and
10 saying, Well, there's my namespace. The Patent's clear; you can you create
11 namespaces for the chunks.

12 You create a directory. You configure the namespace by putting those
13 chunks into the directory. You don't -- creating an index doesn't
14 configure the namespace. It doesn't. You're creating a directory.

15 Unless there are questions, I do think -- I don't know how much time I
16 have, but I will I think -- actually, I think about 45 minutes. Unless Your
17 Honors have any questions, I will bag the rest of my time for rebuttal.

18 JUDGE BELISLE: None for me.

19 JUDGE CALVE: None for me either.

20 MR. GLASS: Okay, give me one moment, a moment to stop sharing.
21 Okay. Do you -- you no longer see my screen, Your Honors?

22 JUDGE CALVE: That's correct. You're clear.

23 MR. GLASS: Okay.

24 JUDGE CALVE: All right. Thank you very much and for answering
25 our questions, Mr. Glass.

26 Mr. Tehranchi, I think it's your opportunity for rebuttal, if you care to

1 address any of the issues that were presented by Mr. Glass.

2 MR. TEHRANCHI: Yes. Thank you, Your Honors. And let me
3 share my screen. Just a few points here. Wrong document, one second.
4 Somehow -- I apologize for technical difficulties here. Okay, I'll do that
5 brute force. Let me see if this makes sense. Can you see my screen?

6 JUDGE CALVE: Yes.

7 MR. TEHRANCHI: Okay. Thank you. I apologize for this.

8 So a couple of points, and let me start with the namespace first. Our
9 friend indicated that namespace means creating a folder. That's not true and
10 that's contradicted by the patent itself, where it says that a namespace could
11 be associated with a file on its own.

12 And we could see that in the -- in the -- on page 9 of the
13 demonstrative that I'm showing, which says, you know, in each instance,
14 these are associations with any one of those. And specifically in the last
15 excerpt in 19 -- sorry, Column 9, lines 19 through 26, there is an "or." So it
16 is -- it's not "And." So it could be -- it could be "or stored in the
17 namespaces," etc. Namespaces, directories, folders, files, and so on.

18 So we are not necessarily require -- there is -- it doesn't make sense to
19 require a namespace to be a folder. That may be an example that is -- that as
20 described in the detailed description, but if you look at the description of
21 Figures 3, 4, and everything else, these are all exemplars descriptions. And
22 the claim itself does not require any kind of a structure for the namespace.

23 So let me move on to the next. Well, just one more point about our
24 experts deposition. And I want to go to Slide 40 of the demonstratives
25 where we have actually reproduced a bigger chunk of the -- of that
26 deposition, that Patent Owner's attorneys showed. They started, I think,

1 around Page 36.

2 But if you look at the delineation where I have that red dashed line,
3 prior to that, there is a discussion of a flat namespace structure, and there are
4 no discussions of context or anything. Else from that point on, which is on
5 page 33 of the transcript, if they -- counsel that's deposing our expert is
6 saying, okay, so let's move on, and then from there on they're talking about a
7 more complex, hierarchical name structure and that is, as I explained, our
8 expert talked about when you have two file names that are identical, you
9 have to provide a larger path to be able to delineate exactly which, where
10 they are located.

11 And that culminated with this discussion that, yes, you need to
12 provide a context in that case. So that's for the namespace. Let me just go
13 back to the discussion of the pause. And the page that I want to go to
14 is -- one second. This page 17 of the demonstratives.

15 So if you read the claim language -- and this is what Judge Belisle
16 pointed out -- there is no recitation of a user-based policy. I think that is a
17 shift, a slight shift, although it's a slight shift in the language that makes
18 some difference here. Basically, the claim is asking -- assigning to one or
19 more users a policy.

20 And so, it's basically assigning that policy to the user. If you read the
21 patent and also one of the claims, it doesn't mean that it's an individual user.
22 And in fact, it says this could be a group of users.

23 I think Claim 23 is the one that actually claims that, but the
24 description itself talks about assigning it to a group of users. There is
25 nothing about a policy that is assigned to the user that says, you cannot have
26 a firm-wide or enterprise-wide policy that says you cannot access top secret

1 documents. So the two are not contradictory.

2 You could have a user -- a policy that is assigned to the user, and that
3 policy could include certain things for that, user specifically for that user but
4 there could be certain things that are firm-wide that are applied to all users
5 or a group of users. So there is no contradiction there.

6 In terms of what you're actually claiming, or what is our position in
7 the petition, let me just make sure that we are on the same page here. And I
8 want to go to page 25 of our petition. Your Honors, can see my screen
9 where I'm scrolling through the petition? I just want to make sure you can
10 see it.

11 JUDGE CALVE: Yes.

12 MR. TEHRANCHI: Okay. Thank you. Might be an easier way, but,
13 okay. So let me go to -- so page, I want to go to page 25 of our petition.
14 And this is what, where we're talking about the policy for cryptographic key
15 information. And as you can see, it's not just citing paragraphs 224 and 227
16 of Cidon. It's actually going to also cite in paragraphs 102 and 108, which
17 describes this policy that -- that that is meant for, access and encryption and
18 so on.

19 So, and our position here is based on obviousness. And what also the
20 Patent Owner failed to consider is a combination with Herrmann. And in
21 fact, we have used Herrmann to say that Herrmann actually assigned a
22 policy based to the user. So that assignment actually in that combination, all
23 of these policies or sections of this policy could be assigned -- could be
24 assigned to the user.

25 And I think that's all I have for the rebuttal. So unless Your Honors
26 have any further questions, I will rest.

1 JUDGE BELISLE: Counsel, this is Judge Belisle. On Patent Owner's
2 argument about the policy, it was referenced to user-based policy, file-based
3 policy; does your patentability argument, your obviousness argument, does
4 that depend on using both a user-based policy and a file-based policy from
5 the art?

6 MR. TEHRANCHI: So we described the art generally that assigns
7 a -- assigns a policy to the user. Now, what that policy entails, it could be
8 specific things that are specific to that user, or it could be certain things that
9 are firm-wide or -- and I don't call it document-wide. It does not preclude
10 having those document-based policies as the Patent Owner puts it, in that
11 policy.

12 And the gist of this is that all of these would be obvious. You put that
13 through policies. And Herrmann definitely described that; you assign these
14 policies or a policy to the user.

15 JUDGE BELISLE: So just to come back to my question, your
16 obviousness argument is invoking disclosure that -- policy disclosure that is,
17 some is user-based policy, some is file-based policy?

18 MR. TEHRANCHI: Yes. I mean, and in the cases that we are
19 invoking some of those file-based policies, we are specifically saying that it
20 would be obvious to pull that into the policy. And we don't consider that a
21 file-based policy. That is a term that was coined by the Patent Owner. It's
22 just a policy that governs placement or storage or encryption of these
23 documents.

24 JUDGE BELISLE: So you're -- you're interpreting it as those rules
25 that are driving what a user can or cannot access constitute the policy, and
26 that's the policy that is assigned to the user?

1 MR. TEHRANCHI: That's correct. And it could have subsections
2 that we discussed before.

3 JUDGE BELISLE: Okay. Thank you.

4 JUDGE GIANNETTI: Counsel, I have -- I'd like to come back to the
5 question of namespace. And I'm still struggling with your construction here.
6 And just going back to Slide 9, I think that's the three places chosen -- three
7 places, in the '678 Patent where the term was used.

8 Doesn't the name itself and the usage of the term "namespace" suggest
9 that it is a location where things are going to be stored?

10 MR. TEHRANCHI: So it's a name -- it's the name of the file. It's the,
11 basically, the dictionary. It, here, it says that it's one or more containers of
12 cloud storage providers and associated namespaces. So the namespace
13 would be associated, could be associated with -- it's an association with the
14 location. So the namespace itself is not necessarily a location. What our
15 construction is, is a set of names for naming files or segments in the file.

16 JUDGE GIANNETTI: So the first, the first example, the upper
17 left-hand corner of this talks about namespaces of the listed directories,
18 directory structures, etc. I think that's consistent with what you've said.

19 MR. TEHRANCHI: Right.

20 JUDGE GIANNETTI: And then the second one talks about
21 namespaces that are associated with those directories, files, and their
22 associated namespaces. One -- this is the one to the far right, Column 9,
23 60-9026 suggests that the namespace itself is a storage place, doesn't it?

24 MR. TEHRANCHI: That's correct. So with that, on the one on the
25 far --

26 JUDGE GIANNETTI: Well, how do I reconcile this?

1 MR. TEHRANCHI: Your Honor --

2 JUDGE GIANNETTI: The term namespace suggests to me an area
3 where something is going to be stored.

4 MR. TEHRANCHI: Your Honor, we had the same kind of reaction
5 going through this. The namespace -- the word "namespace" is not clearly
6 defined in the patents. And the uses of it in different sections of the -- there
7 are only three recitations here. And as you can see, in some cases it could be
8 the locations. In some cases, it is the associations.

9 So that's why we went out to extrinsic evidence and dictionary
10 definition to figure out, okay, what are they talking about here, what would a
11 person of ordinary skill in the art would understand. And, you know, that,
12 the result was, well, oh, it's -- it could have all sorts of different
13 configurations.

14 So it could be in a hierarchical directory structure. It could be a URL
15 namespace. It could be a unstructured, like a flat identifier namespace. So
16 these are all fair examples of what a namespace would be. And the
17 dictionary confirmed that, because the dictionary's definition is very general.
18 It's a set of names for naming files.

19 JUDGE GIANNETTI: Well, just looking at the definition that you
20 pointed on, I believe it's on your Slide 11. That equates or at least compares
21 them to something like a local variable. That's a variable within a program
22 which can be used in one place, and with the same name in another place, as
23 opposed to a global variable. How does that square with your definition?

24 MR. TEHRANCHI: So Your Honor, the second part of this, it says,
25 "if." So if that is -- it doesn't say that that needs to be the case.

26 And in case of a flat structure where you don't need the syntax or the

1 root directory or anything like that, you know, you would not have the same
2 name in two different places. It would be unique. It would be a unique
3 location.

4 It would be a unique ID that clearly identifies it. So we -- we construe
5 the second part of this that, if that becomes necessary, which could be true if
6 you have a folder or hierarchical structure for namespace, but it's not
7 necessary for the definition.

8 JUDGE GIANNETTI: The definition, though, supports the Patent
9 Owner's contextual definition of construction, and that's what it seems to be
10 saying here; you can use -- the same name can be used into places and
11 program if the namespaces are different. So in context, but doesn't this
12 suggest that their construction is more or in tune with what the dictionary
13 definition says?

14 MR. TEHRANCHI: Your Honor, we don't think so. Because the first
15 part of this does not say anything about the structure.

16 JUDGE GIANNETTI: Right.

17 MR. TEHRANCHI: And the second part of this is -- pertains to a
18 program. So in a program, you know, you could -- if you have the same
19 name, same names as -- if you have the same name, right, if they're in
20 different namespaces, then they could be separate from each other, which
21 could be a directory structure or could be a different context.

22 It could be in a URL structure, for example. So it's not -- the point is
23 you cannot -- we should not import something from the patent that is -- it's
24 explained, described as an example, and require that to be part of the claim
25 construction. It's only one working example at best.

26 And in fact, it does not even describe that that is creating a

1 namespace. Nowhere in that description on Figures 4 or 5, or anything else,
2 it says that you are creating a namespace and what is a namespace. You can
3 imply it, perhaps. I mean, I think what we're doing here, we're teetering on
4 the edge of one enablement.

5 It's unclear if, even if those examples provide clear enablement for the
6 claims, let alone to provide a construction for what's needed for the general
7 namespace.

8 JUDGE GIANNETTI: I don't have any further questions.

9 MR. TEHRANCHI: All right. So unless there are other questions, I
10 appreciate the time that the board spent on all of this. It's a lot of material to
11 understand and -- and go through, so we really appreciate your efforts.

12 JUDGE CALVE: Okay. Thank you, Mr. Tehranchi for answering
13 our questions and for your presentation.

14 Mr. Glass, I believe you have some surrebuttal time, if you'd like to
15 use that.

16 MR. GLASS: I would, Your Honor. Thank you. I only have a few
17 points.

18 On namespace, where it starts. So again, their definition, I'm going
19 to -- let me just bring this up again. Give me one minute to just share the
20 screen. Just give me one moment. I'm going to start where they left off. I'll
21 start with their definition again.

22 What are we talking about? We're talking about a space. And that
23 indicates a space to store the variables. We're not talking about -- I'll just.
24 You know what? I'm just going to talk through this.

25 Their definition includes the notion that the namespace must include a
26 context. It specifically says when you have variables of the same name, the

1 namespace, the context is what allows you to use those variables in different
2 portions of your program.

3 So what are they doing? They're citing to a portion of a definition that
4 they like and then ignoring the rest of the definition because it doesn't
5 support them. So I would suggest that looking at their definition, looking at
6 it in total, everything we say, it comports with the intrinsic and extrinsic
7 evidence.

8 The very word itself -- Judge Giannetti, I should have came up with
9 that -- "space." It includes more than just one name. You heard them on
10 opening that one name is a namespace. That identifier from -- from
11 the -- from when it's created by the prior art, that's a namespace; that's not
12 what a namespace is.

13 They suggested -- I wrote this down as they said it. I was a little taken
14 aback. Their own definition potentially had enablement issues.

15 The claim -- the reason we don't have a definition for this, for this
16 term in the patent, is because everyone knows what it means. The
17 specification is not a dictionary. Our expert had no problem defining it.
18 Their expert -- I urge your Honors, don't take my word for it. Look at their
19 expert's -- I'm sure you have, but look at their expert's transcript, starting
20 around page 35. He had no problem explaining that a namespace had a
21 context. It has to. That's the whole point of it.

22 They talked about higher -- counsel spoke about hierarchical URLs
23 and flat namespaces. Hierarchical, that's exactly what we're talking
24 about -- directory structure. That's the that is synonymous with the directory
25 structure.

26 URL is just another way of making things hierarchical. The flat

1 namespace, that, to me, is simply a one-off that they found and are trying to
2 apply here. We're not talking about a flat namespace. We're not talking
3 about a system that has one user document and we're encrypting that one
4 user document. We're talking about a system, they said it themselves, has
5 user or users. How would that work in a flat system? You need context.
6 You need a space for every single document.

7 There has to be context. Without context, this invention doesn't make
8 any sense. If -- and I would -- I'll leave -- I'll leave namespace on this. If
9 you build in this notion of context into namespace, everything makes sense.
10 The entire patent makes sense, and we're not trying to drag that from the
11 spec. That's its ordinary meaning.

12 It's only when you remove this notion of context that things fall apart.
13 Things don't make sense. The spec doesn't make sense, the claims don't
14 make sense. So I would suggest that -- and again, their own expert agreed
15 with us before we filed the response -- that the namespace must include, and
16 part of that definition is that includes context.

17 I'm going to back up to just a few points on the policy. Perhaps I
18 should have worded this differently, to go to questions that were rows.
19 Maybe I've been short -- short-circuiting this in my mind as a user-based
20 policy or file-based policy. Let's stick with the claim language. If that's
21 causing consternation or issues, the claim specifically says policy that is
22 assigned to one or more users. The file-based policies in the prior art, there
23 is no disclosure of those being assigned to a user. None.

24 You heard from counsel, he said, well, there's nothing preventing you;
25 you could have done this. You could have included some way of including
26 the files in a user-based policies. Well, unfortunately, we have no discussion

1 in their petition on how, one, you could have done that, or two, why you
2 would have done that. That's the first time we're hearing this today, that
3 that's something that could be done.

4 But that, even if it could be done, that doesn't answer the question.
5 That's not a motivation to combine, a motivation to modify, that simply
6 could have, not would have.

7 On the policy, I will put up -- I'm going to I'll attempt to share my
8 screen again. Can Your Honors see my screen?

9 JUDGE CALVE: Yes.

10 MR. GLASS: They pointed to -- counsel pointed to other
11 cryptographic policies. They -- he attempted to correct what I said. It is
12 perfectly clear that when they pointed to the policy for processing a file, they
13 pointed to 224 and 227.

14 I don't dispute that for other policies, for other functions that use the
15 policy, they pointed to other paragraphs. But we have to work with what
16 they gave us. They can't now come back at the oral argument and say, well,
17 for some of these other functions, the encryption function, which we don't
18 dispute in this context is for a user. They pointed to other paragraphs.

19 For this specific function, they pointed to a policy that is not assigned
20 to a user. It's a file-based function. And to Your Honor's question, yes,
21 that's exactly what they're doing. They are pointing to functions, to policies
22 in the prior art that are not assigned to users; they're file-based.

23 I have one more point -- two more points. On the Cidon-Herrmann
24 combination, they don't point to Herrmann. Look at their -- their petition.
25 Their petition at page 27, they don't point to Herrmann for additional
26 functionalities of the policy. It's simply for the hardware. They point to

1 Herrmann for the access policy assignment.

2 Counsel said, well, reminder that this is an obviousness argument.

3 Well, just because you label it as an obviousness argument doesn't excuse
4 them from explaining their point. They never argued that Herrmann renders
5 this file-based policy be obvious to -- to turn it into a user-based policy.

6 One last point. I spent a lot of time on Salazar. I spent a lot of time
7 explaining that their distinction in their briefs was not a distinction.

8 I pointed to Claim 16, that Claim 16 was in fact a -- it expressly says
9 microprocessor, just like Salazar. No rebuttal on that point.

10 That -- that -- that claim is exactly like the claim in Salazar. There is no way
11 to make a distinction between what Salazar is looking at, and at least Claim
12 16. I would suggest also Claim 1.

13 With that, Your Honors, I have nothing further, unless there are any
14 questions.

15 JUDGE BELISLE: I don't have anything else.

16 JUDGE GIANNETTI: None for me.

17 JUDGE CALVE: None for me either. Let me just check with the
18 Court reporter.

19 Mr. Peterman, do you need anything of us before we have a brief
20 intermission or an adjournment?

21 THE REPORTER: No, sir.

22 JUDGE CALVE: Okay. Everyone, please stay on the line. We'll just
23 mute your phones. You can cut your cameras, but we'll -- let's see. It's
24 about 1:55. Is a ten-minute break sufficient for everyone or do we need a
25 little bit more? Very good. Okay, so we will reconvene at about 2:05.

26 Thank you, everyone.

1 (Whereupon, at 1:55 p.m., the proceedings concluded.)

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PETITIONER:

Thomas Millikan
Babak Tehrani
Wei Yuan
PERKINS COIE LLP
millikan-ptab@perkinscoie.com
tehrani-ptab@perkinscoie.com
yuan-ptab@perkinscoie.com

PATENT OWNER:

James Glass
John McKee
Quincy Lu
Andrew Holmes
Ognjen Zivojnovic
QUINN EMANUEL URQUHART & SULLIVAN LLP
jimglass@quinnemanuel.com
johnmckee@quinnemanuel.com
quincylu@quinnemanuel.com
drewholmes@quinnemanuel.com
ogizivojnovic@quinnemanuel.com