

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETSKOPE, INC.,
Petitioner,

v.

FORTINET, INC.,
Patent Owner.

IPR2023-00459
Patent 10,084,825 B1

Record of Oral Hearing
Held: June 21, 2024

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

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The above-entitled matter came on for hearing on Friday, June 21, 2024, commencing at 2:06 p.m., EDT by video conference.

P R O C E E D I N G S

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JUDGE CALVE: We're back from recess. This portion of the hearing is for IPR2023-00459. Again, Petitioner will begin the argument, may reserve rebuttal time. Patent owner can respond and then reserve sur-rebuttal. So Mr. Tehranchi, if you're presenting on the '459, I think the floor is yours and just let us know how much rebuttal time you might like to reserve.

MR. MILLIKAN: Your Honor, you're stuck with me today for this particular one.

JUDGE CALVE: Oh, okay. All right.

MR. MILLIKAN: And I'll be reserving 20 minutes for rebuttal time, please.

JUDGE CALVE: Okay. Very good, we'll make a note of that. Thank you.

MR. MILLIKAN: Is it okay if I share my slides?

JUDGE CALVE: Please.

MR. MILLIKAN: Can everyone see those?

JUDGE CALVE: Yes. Very well, actually. Thank you.

MR. MILLIKAN: So I'm going to jump right into what I think is the central issue, which is the Board's construction of fabric and petitioner's proposed construction on cooperative security fabric.

So the first point we'd like to make is that the board correctly construed the term fabric. The board's construction -- we're on slide 4, too. The board's construction of fabric is a network topology such as the physical structure of a switch or network.

1 The Board's construction was, as the Board notes in its construction
2 and in the institution decision, the construction has support in both the
3 dictionary cited by the patent owner, the Patent Owner's preliminary
4 response, and the Patent Owner's expert testimony.

5 On slide 6, you can see that the Board's noted in its decision that the
6 construction is consistent with the '835 patent and describes the top Figures
7 1 and 2 both describe the topology showing that consistency.

8 The last point here is just to note that the board also, outside of sort of
9 the construction section, noted that fabric does not require bidirectional
10 communications under its plain and ordinary meaning.

11 At slide 6, we see some additional support for the board's
12 construction, starting with the abstract in sort of the top section. We see that
13 the abstract talks about there being two devices. It doesn't talk about sort of
14 some of the other things that are added, but it talks about a topology between
15 two devices where one sends information to the other. And so, the Board's
16 construction tracks the abstract.

17 The Board's construction also tracks Column 1, lines 64 to 67, where
18 the term "cooperative security fabric" is introduced and sort of this notion of
19 fabric. In that column and that, those lines, it reads, "Therefore, there is a
20 need for a cooperative security fabric (CSF) that may coordinate operations
21 performed on network traffic to avoid or reduce operation -- redundant
22 operations among members of the CSF."

23 So we see there that it's talking about a topology, but not a specific
24 structure.

25 And then lastly, if we look at Claim 1, we see that the construction's
26 sort of consistent with Claim 1. Claim 1, the only sort of structure around

1 the -- the sort of topology in Claim 1 is that it's two devices.

2 The second appliance transmits, you know, a packet, which is sort of
3 the first device. And so we see that all of those things sort of line up, that
4 the board's construction is consistent with the '825 patent.

5 JUDGE BELISLE: Counsel, this is Judge Belisle. Is it -- is the term
6 "fabric" a term of art in computer networking? Or is it usually used as
7 topology?

8 MR. MILLIKAN: I think consistent with what the board showed,
9 there is a -- there is a dictionary definition. So I think it has a plain and
10 ordinary meaning in the general networking arts to -- to refer to a topology.

11 JUDGE BELISLE: Right.

12 MR. MILLIKAN: And I think that that's on -- that was on -- the
13 Court cited to one of the exhibits right here. Hold on. Yeah, Exhibit 2003,
14 "Defining a fabric as a descriptive term, referring to the physical structure of
15 a switch or network." And that was a dictionary that was provided by patent
16 owner.

17 I take your question also to note that at some point, I think patent
18 owner referred to fabric in terms of clothing, but I don't think that's the
19 meaning that's relevant here in this particular field. And even that notion is
20 sort of inconsistent with the tree structure that's shown in Figures 1 and 2.
21 I'll note just contextually, too, that the patent owner does not dispute that
22 Chandra and Keohane disclosed, you know, a fabric or a cooperative
23 security fabric under the Court's construction. And that, that sort of is the
24 central issue.

25 In its -- you know, in its preliminary response, Patent Owner proposed
26 a construction that was -- that required processing of bidirectional

1 communications. And the board sort of responded to that in the institution
2 decision. And there in their response, they propose a whole new
3 construction that's more complicated. They sort of -- so you can see the
4 construction on slide 11 here on the right-hand side.

5 Their proposed construction is a topology of network security
6 appliances that cooperate to inspect incoming and outgoing traffic along
7 multiple interconnected paths. And that's sort of a very purpose-driven
8 construction because they need all of those additional words to avoid the fact
9 that two sets of prior art in Chandra and Keohane.

10 JUDGE BELISLE: And counsel, this is Judge Belisle. I mean,
11 doesn't that suggest, I mean, Patent Owner is trying to take the term fabric
12 and define it to be a particular topology, not just topology, but a very
13 specific topology like a mesh topology.

14 MR. MILLIKAN: I agree with that that's what they're trying to do;
15 they're trying to define a particular topology. I think the path that they used
16 to get there is something that I would describe as sort of incredible and
17 would make new law. And you'll notice, you go through their papers, they
18 do not cite to a case that that sort of maps the path they took to get the
19 construction that they result in.

20 And so I agree that that's sort of their -- that's the goal or sort of, that's
21 the, you know, the target. But the path that they used to get there is both
22 legally and technically flawed. Again, there's no case that takes the route
23 that they're suggesting. There's no case that says when you see a capitalized
24 term in a patent, you know, you should Google it to find its meaning and
25 look at, you know, the patent owner's, you know, literature.

26 They ignore the explicit claim language, which is where you're

1 supposed to start. The claim language talks about two devices, and the
2 independent claims Claim 6 adds a third device. And again, it's along a
3 singular path. So just the claim language itself disagrees with their
4 construction.

5 They focus on some exemplary embodiments, that the patent is very
6 clear or exemplary, not definitive. And they oftentimes, you know, sort of
7 are picking and choosing the parts that they're -- that they're pointing to.
8 And even sort of in their own product literature, you know, CSF and their
9 product literature is more of a marketing term than something we can go and
10 find a definitive nature of it.

11 You have to do sort of another extraction of some sort of -- you know,
12 extraction. I'm not sure exactly how, you know, to -- to sort of arrive there.
13 You know, it's also sort of technically flawed compared to those
14 embodiments.

15 The embodiment, you know -- they say that the embodiments show
16 incoming and outgoing, but you know, other embodiments talk about a path.
17 And the claims talk about it being sort of a path in one direction. They talk
18 about multiple interconnected paths but we see, you know, embodiments
19 that talk about a single, linear path within the claims and in the body.

20 And, you know, they cited the provisional to try and talk about a
21 hierarchy. I think there are two interesting things about that. One is when
22 they wrote the claims for this, they took all that language out, you know, and
23 now they're sort of trying to backfill with language that they opted not to
24 include in the claims.

25 But the other is that the claims of the provisional and embodiments of
26 the provisional talk about a singular node being a CSF, right. And also talk

1 about a node that's a straight line with three devices: A root, a branch and a
2 leaf, and a straight line being a CSF.

3 And so even their own provisionals sort of disagree with their, you
4 know, outcome driven construction.

5 So I've talked through at a high level. I can go through the slides. I
6 think the board's familiar with this, and so in the interest of sort of saving
7 time, I don't know that there's -- I can walk through the embodiments to
8 show they're exemplary.

9 I can walk through the claims, but I think the board's familiar with all
10 of those, and I think this construction is very much a reach. And again, both
11 incredible and would require the Court to break new law, or the board to
12 break new law.

13 So unless there are questions about that, I'm happy to, you know, I'm
14 happy to move on, to sort of talking about the construction in terms of the
15 two references.

16 JUDGE CALVE: None for me.

17 JUDGE BELISLE: Yes, that would be fine.

18 JUDGE GIANNETTI: Just one -- just one question. So the term that
19 we're construing is cooperative security fabric, or just fabric?

20 MR. MILLIKAN: I don't think the Court has to do another
21 construction. I think the Court's construction of fabric is fine. Cooperative
22 security just tells you that the fabric is going to cooperate on security issues,
23 and so I don't know that you need to sort of recombine the words as they're
24 proposing.

25 I think they saw that their proposal for fabric by itself was rejected, so
26 as not to sort of offend the board by going at fabric a second time, I think

1 they pulled in two more words. But really, all of their construction points to
2 fabric, not cooperative or security.

3 JUDGE GIANNETTI: On what the claim says, though? The claim
4 says a cooperative security fabric.

5 MR. MILLIKAN: Right. And our --

6 JUDGE GIANNETTI: Not just the fabric. So what meaning adds to
7 the cooperative security piece of that?

8 MR. MILLIKAN: It means that the appliances that are mentioned in
9 the claim have to cooperate. And the claim spells out a detailed instance of
10 how they would cooperate.

11 JUDGE GIANNETTI: But --

12 MR. MILLIKAN: And that's --

13 JUDGE GIANNETTI: In your view, it doesn't really modify the term
14 fabric in a way that it becomes more mesh-like? Is that what your position
15 is?

16 MR. MILLIKAN: Yes, I agree with that. We would not -- we would
17 not rewrite the rest of the claim to make it more mesh-like as they're
18 proposing.

19 JUDGE GIANNETTI: Do you think it's fair just to look at the word
20 fabric, or do we have to look at the term cooperative security fabric?

21 MR. MILLIKAN: I think the result's the same either way. And so I
22 think that, you know -- I don't think cooperative security -- if you go through
23 the patent and you look at fabric, I think you come to the Court's
24 construction. If you go through the patent and the claims and you look at
25 cooperative security fabric, I think you end up with the -- with the board's
26 topology, and that the devices in that topology cooperate on security.

1 So I don't think that either path leads you to a different outcome. And
2 so, I don't know if there's a fairness point in going down either path.

3 JUDGE GIANNETTI: Okay. Thank you.

4 MR. MILLIKAN: All right. So jumping to sort of the -- to the, you
5 know, the prior art.

6 And I'm going to skip over sort of -- they had some sort of hidden
7 constructions that we talk about on slide 18. I'm going to skip over those in
8 the interest of sort of saving the Board's time, unless the board has questions
9 about them, but we see those as sort of added limitations in addition to the
10 explicit language.

11 The last is that the prior discloses the cooperative security fabric.
12 Under the Court's construction, the -- or under the Board's construction, the
13 Board found that that, you know, both Chandra and Keohane found a
14 cooperative security fabric as required by the claims. And it shows sort of
15 the two devices and one transmitting to the other, and the two of them
16 cooperating.

17 We also in our reply talk about how Chandra discloses a CSF under
18 even their construction. And we understood their main complaint with
19 Chandra to be that Chandra does not receive traffic from the internet, so it
20 doesn't address sort of the incoming portion of their new construction.

21 And so, if you look at Chandra, Chandra discloses a situation where
22 sort of the second device in the chain, it's considered -- it's called the first
23 appliance in the claim, but this, in Chandra it's sort of the one on the right
24 here, the receiving end -- that it receives a data packet from the internet
25 directly and then it performs corresponding security actions based on
26 receiving it from something other than the transmitting device, the device to

1 the left in Chandra.

2 And so that's consistent with what Claim 4 describes as sort of
3 incoming information from the internet. Claim 4 talks about the second
4 device receives it from someplace other than the first device, or in the claim
5 it's backwards, the second -- the first device receives it from someplace other
6 than the second device, and that matches sort of Chandra, and so that shows
7 that Chandra discloses an embodiment that matches Claim 4 and necessarily
8 Claim 1 in receiving information or incoming information from another
9 network.

10 They also in their -- we didn't understand their, the patent owner's
11 response to make take issue with sort of Chandra doing outgoing
12 communication, but we see Chandra as agnostic. It talks about a receiving
13 in and transmitting in for all sorts of computer devices. And for TCP/IP and
14 LAN, you know, information goes in both directions for those, and so
15 whether or not the information is sort of coming out or going, you know,
16 sort of at a -- at a global sort of level in the system, Chandra is agnostic as to
17 that and it would be obvious to apply it to either.

18 For Keohane, again, the board found that it met its construction of
19 a -- of a fabric. We think Keohane also shows an embodiment that matches
20 patent owner's construction of an embodiment, specifically a situation where
21 the mail -- it talks about the mail gateway receiving information from a
22 source that's not signed, meaning -- well, let me back up for a second.

23 When we were trying to explore patent owner's construction, we
24 asked their expert sort of what does it mean when it has to have sort of like
25 multiple pathways? Can they be in a line, sort of visibly the way that Figure
26 3 is of Keohane? And he conceded that you can as long as you have, sort of,

1 like, different inputs and outputs. Right?

2 So one of the embodiments of Keohane is that it contemplates the
3 mail gateway receiving a packet from something other than the firewall, and
4 it talks about how Keohane should respond to the mail gateway, and
5 Keohane should respond to that differently. And so that matches their
6 construction that it has a different sort of input because the mail gateway is
7 getting an input from both the firewall and from some other source inside the
8 network.

9 I can talk about the dependent claims. They have a number of
10 arguments on the dependent claims. I don't think any of those are
11 particularly strong, but I'm happy to walk through our positions if the -- if
12 the board has any questions.

13 JUDGE CALVE: Would you like to just address the next network
14 appliance in Claim 6? Because there were some issues that Chandra just
15 seems to show, too. And Keohane, you've clarified the client performed, so
16 that could be the next and then Keohane, but if you could address both of
17 those, please.

18 MR. MILLIKAN: Yeah, happy to. Happy to, Your Honor. So I
19 think the first thing to note is that patent owner's sort of attack on Chandra is
20 really limited to sort of an anticipation attack on Chandra by itself. If
21 you -- if you look at our petition, it's a combination with Buruganahalli. I'm
22 not sure I got that right. And, you know, patent owner doesn't take issue that
23 Buruganahalli talks about sort of chaining these devices together.

24 That's in Figure 3 in Buruganahalli. It's on Slide 51 of my deck, but I
25 don't need to go there. It shows three devices, and so that would constitute
26 the two devices that are in Claim 1 and then sort of the next device

1 forwarding it on to sort of the next device.

2 For Chandra, there are sort of two embodiments or two positions that
3 sort of teach this next device. The first is that Chandra talks about how you
4 might want to have multiple CEs, you know, for a PE and sort of -- and so
5 Dr. Franz talked about how, to distribute workload and make things more
6 efficient, you would want to chain those together. And that's consistent with
7 Chandra having devices sort of cooperate. So one half of the receiving end
8 of the transmitting end having multiple CEs would fit the requirement that
9 the packet be transmitted onto the next device. And so, that's Chandra at 29.

10 The other example is one that we sort of depicted, you know, for the
11 board, which is, you know, Chandra, this combination where you combine
12 Figure 2 and Figure 8 through a VPN. And the idea here is that the
13 receiving network device on 212 through of VPN would connect to the
14 transmitting sort of VPN site.

15 So this Figure 8, which is a, you know, one embodiment. And Figure
16 2, this would be an obviousness combination to extend Figure 2 and Figure 8
17 is sort of pictured.

18 And so, you know, Dr. Franz disclosed how you would want to chain
19 VPNs together for security reasons based on some NSA briefing, but this
20 shows in this situation, you would be passing that packet on to sort of the
21 next network appliance in this combination.

22 JUDGE CALVE: Okay. And Mr. Millikan, your motivation for that,
23 other than hindsight, I think you mentioned an NSA study over this; could
24 you elaborate on that please? And just general motivation for why you
25 might want to extend the one network to connect with a VPN.

26 MR. MILLIKAN: Yes, you would do it -- you would do it for

1 security reasons. And you would want to sort of connect devices, and that
2 chaining VPNs together provided an additional means of security across
3 different networks. And the NSA briefing talks about that, and it was a way
4 to sort of cascade networks in sort of a secure environment.

5 JUDGE CALVE: Do you have positions in the papers -- I don't recall,
6 but both Keohane and Chandra give you excerpts, snippets, if you will, of
7 almost exemplary connections of security devices within a much larger
8 global context. I think both use almost the term internet, interconnected
9 networks.

10 Are we to understand these figures you've relied on, or it's just -- it's
11 exemplary of how people communicating across multiple sub-networks,
12 LANs/WANs, would go through multiple elements or multiple links like
13 these?

14 Do you have positions in your papers on that?

15 MR. MILLIKAN: Yes, Your Honor. That this -- these are
16 obviousness grounds and that you would -- you would read, sort of, Chandra
17 and Keohane --

18 Let me see if I can find a cite while we're talking.

19 But I think a person of ordinary skill looking at these right would
20 understand that, you know, for example, Chandra talks about this being part
21 of -- the network that's shown be part of sort of a LAN or a WAN.

22 If you go look at the '825 patent, it talks about its security devices
23 being connected between sort of a, you know, inside of a WAN or sort of
24 inside of a LAN. And so, a person of ordinary skill looking at Chandra and
25 understanding that the devices it's talking about are, you know, laptops that
26 you literally can't do TCP/IP without bidirectional communication in some

1 respects, what I understand that it's talking about is sort of a pathway to
2 teach -- to teach sort of how the system would cooperate.

3 But that's in the context of a larger system. And that's at our petition
4 starting at 23 until about 27.

5 JUDGE CALVE: Okay. Thank you.

6 MR. MILLIKAN: Okay. Unless Your Honors have further questions
7 about any of the dependent claims, I'm happy to reserve the remainder of my
8 time.

9 JUDGE BELISLE: None for me.

10 MR. MILLIKAN: Thank you, Your Honors.

11 JUDGE CALVE: Okay. Thank you, Mr. Millikan. Mr. Glass, I think
12 it's your opportunity to

13 argue. If you just let us know how much time you'd like to reserve,
14 please.

15 I believe you're on mute, Mr. Glass.

16 MR. GLASS: Apologies. Can you hear me now?

17 JUDGE CALVE: Yes, perfectly. Thank you.

18 MR. GLASS: Okay, let me share my screen. I am going to focus for
19 the most part, Your Honors, on -- again, on these cooperative security fabric,
20 on the claim construction for that term and the application given to the prior
21 art. For the most part, I will likely rest on the briefs and the remainder of the
22 arguments.

23 Let me jump ahead to slide -- give me one minute. Jump ahead to
24 Slide 3. We -- actually, I'll just jump ahead to Slide 17. Again, the issue
25 here, we -- so I'm going to focus on really two things with respect to this
26 argument. We did as, as counsel stated, we did focus on --

1 JUDGE CALVE: Mr. Glass, I apologize. Would you just -- we
2 probably missed your request to maintain any rebuttal time or surrebuttal.

3 MR. GLASS: Yeah, yes. That was my fault; my mic was on mute.
4 Thirty minutes, please.

5 JUDGE CALVE: No, that's all quite all right. I've been muted myself
6 in one of the other proceedings. Thank you. I apologize for the interruption.
7 We'll take care of it.

8 MR. GLASS: So I'll start. I'll start with the claim construction. The
9 way I'm -- the way I have this structured is I will walk through cooperative
10 security fabric first, our position. Your Honors did ask us in the institution
11 decision to address the fabric -- I will address that next -- their positions on
12 fabric, and their positions on cooperative security fabric.

13 We did, as petitioner did say, we did focus post-institution on
14 cooperative security fabric. It's -- it's -- I forgot the superlatives he used, but
15 there was -- there was no -- no menace in our and our strategy here. We
16 focused -- it's essentially the same terms from fabric.

17 The issue is we -- this is a Fortinet term. This is a term that Fortinet
18 coined. It's in our documents. It's our term to describe our products. A little
19 difficult to do that pre-institution. We felt, pre-institution, that the term
20 fabric, its ordinary meaning -- by the way, their expert agrees with us on
21 many aspects that it is -- does -- does encompass or it does envision a, more
22 of a mesh topology.

23 Post-institution, we've focused on the term, on the cooperative
24 security fabric. I'll move on to Slide 18. Our expert, he testified in his
25 declaration that he understood this term cooperative security fabric to be an
26 ordinary -- excuse me, a term that has a meaning to one of skill in the art.

1 Now, again, as with the 458, there's a little bit of misrepresentation of what
2 we're doing here.

3 We are not jumping to extrinsic evidence to define the term. We
4 started with the ordinary meaning. We're doing exactly what Phillips tells us
5 to do. We're all familiar with that case. I am going to read a quote from it.

6 And in Phillips they say, the Court said that we can turn to these
7 sources because the meaning of a claim term -- this is at 13 and 14 of
8 Phillips -- as understood by persons of skill in the art is often not
9 immediately apparent. Because patents frequently use terms idiosyncratic,
10 the Court looks to those sources available to the public that show what a
11 person of skill in the art would have understood the disputed language to
12 mean.

13 Of course, those sources include the claims, the spec, the prosecution,
14 but also includes extrinsic evidence concerning relevant, scientific principles
15 and the meaning of technical terms and state of the art. That's what we did.
16 We started with the ordinary meaning, as our expert explained, we went to
17 the extrinsic evidence to support that notion, that ordinary meaning.

18 I have on this slide -- this is counsel -- counsel criticized our expert
19 for going to Google patents. He did this to confirm -- and their expert, I'll
20 get to this, their expert didn't --

21 JUDGE GIANNETTI: Let me interrupt you. Sorry to interrupt you.
22 Judge Giannetti.

23 Now, I'm having a problem here. You say its plain ordinary meaning
24 and then you tell me that this is a term that Fortinet coined, a coined term.
25 That suggests to me not plain ordinary meaning, but lexicography going on
26 here. And I don't hear that in your argument here on plain meaning. Would

1 you help me with that?

2 MR. GLASS: Yes. I -- I -- I --

3 JUDGE GIANNETTI: Or whatever you want to call it, but I'm
4 having trouble reconciling those two points of view.

5 MR. GLASS: The term has a meaning -- I should have -- I should
6 have focused on the last part of that statement.

7 The term has a meaning, ordinary meaning to those of skill in the art.
8 Those in this art understand that CSF, it's not just a term you can tease apart.
9 It's not a term that you just take the constituent words, define them and
10 combine them back together. This is a term that people in this art
11 understand is a Fortinet term. Our expert did.

12 JUDGE GIANNETTI: Is it characterized as such in the patent? I
13 don't recall.

14 MR. GLASS: It does not.

15 JUDGE GIANNETTI: But it's -- so it's just, it doesn't say Fortinet,
16 that it's used by Fortinet? So there's no association with them, with Fortinet
17 in the patent; is that correct?

18 MR. GLASS: The -- the -- the specification does not do that. The
19 specification does not say this is a Fortinet term. It does not.

20 JUDGE GIANNETTI: Well, wouldn't you expect if this was a coined
21 term, that it was being used in a lexicographic sense, wouldn't you expect
22 that to see that in the specification?

23 MR. GLASS: I can't speak to what the thinking was in drafting this,
24 but it is a term that those of skill in the art understand. It is a term that has,
25 and it has in a -- and more specifically --

26 JUDGE GIANNETTI: This is really -- well, so it's not really a coined

1 term in the sense that -- well, maybe it could be a coined term that has
2 become so well known in the art that when you see, say, CSF, a person of
3 ordinary skill would immediately associate them with Fortinet?

4 MR. GLASS: I think so. Your Honor, I think you're correct. And we
5 made an analogy in one of the footnotes, I believe, to the coined term cases
6 in the specification, when you coin a term. That's analogous, but not exactly
7 what's going on here. This is a term that has a meaning, a technical meaning
8 to those of skill in the art. An example, for example --

9 JUDGE GIANNETTI: What is your basis for that? Your expert says
10 that?

11 MR. GLASS: Our expert, as we often turn to experts, we often turn to
12 experts for the ordinary -- for the meaning of terms, especially for technical
13 terms. And again, that's why we went to -- we go to the specification, we go
14 to the extrinsic evidence, we go to Fortinet documents that were publicly
15 available, to confirm that meaning.

16 I'll give an example. I don't -- I don't know how -- I hesitate because I
17 don't know how well this flies out but if you, for example, if you look 50
18 years ago, if you asked an IBM or engineer, any engineer, "What is a hard
19 drive," they would do exactly what's petitioners have done. They would
20 take the two words, separate them apart, construe them, and say something
21 to the effect that, you know, what is a hard drive? From D.C. to New York,
22 that's a -- that's a hard drive.

23 The term has -- now, that term has reached ubiquity that CSF has not.
24 I'll concede that. But no one, no one of ordinary skill in the art would
25 consider defining hard and drives separately, combining them together. You
26 get exactly something different than what the claim is talking about using

1 that term.

2 That's kind of what we're getting at here. This is a term that has a
3 meaning to those in this industry, and that's why we turn to the -- turn to the
4 extrinsic evidence. That's why we turn and we look at the specification to
5 see that it is construed consistently with that understanding.

6 JUDGE GIANNETTI: Rather than the testimony of your expert, is
7 there any evidence of what, what this term would mean to a person in the
8 ordinary school?

9 MR. GLASS: Yes, the -- again, the extrinsic evidence on Slide 19,
10 this is -- these are public documents. We've cited to this in our -- we cited to
11 this in our response, public documents from Fortinet published before our
12 patents. These were published in 2016 before our patent. I'll go through a
13 few of these examples.

14 This is a printout from Fortinet website. It depicts, on its face, a
15 cooperative security fabric. It's entitled -- it's a book called the -- it's entitled
16 "The Fortinet Cookbook." It's a document intended for technical people. It's
17 a document, again, publicly available on our website. I believe it's still
18 publicly available on our website.

19 JUDGE BELISLE: So, counsel, this is Judge Belisle. Let's stay on
20 your slide, it has the two images, Slide 19. So the right hand, topology 200.
21 What part of that is a mesh topology?

22 MR. GLASS: I'm sorry, say that again.

23 JUDGE BELISLE: Are you saying that what is shown in topology
24 200 on the right-hand side of the slide represents a mesh topology?

25 MR. GLASS: I -- we are saying that represents a cooperative security
26 fabric, and it has multiple -- because it has multiple interconnected, multiple

1 interconnected paths, and it --

2 JUDGE BELISLE: Well, you're saying that they're interconnected
3 because they all originate from a single system?

4 MR. GLASS: Correct.

5 JUDGE BELISLE: But you would agree that none of the leaves here
6 are interconnected to each other.

7 MR. GLASS: I -- that's what's shown in this figure, Your Honor, yes.
8 Just like -- and just like the cooperative security fabric in the Fortinet
9 publication, they're interconnected by being connected to the root.

10 And again, what -- because that's what this patent is all about. This
11 patent is all about inspecting incoming and outgoing traffic; they
12 interconnect at that internet facing root.

13 JUDGE BELISLE: So patent owner's position that an interconnected
14 network is what's shown in topology 200?

15 MR. GLASS: That is a -- that is correct. That is a cooperative
16 security fabric with interconnected, multiple interconnected paths.

17 JUDGE GIANNETTI: The claim could read on this?

18 MR. GLASS: The claim could read on this, correct.

19 JUDGE GIANNETTI: What about this, the diagram to the left?

20 MR. GLASS: This is -- this is, again, just to be clear, this is from
21 Fortinet's -- again, prior to the patent 2016 -- Fortinet Cookbook. It's part of
22 a cooperative. It's a part of a collection that was published by Fortinet called
23 the Cooperative Security Fabric Collection.

24 This shows, here we have the interconnected paths that connect at the
25 public facing -- the incoming -- the public-facing node that inspects the
26 incoming and outgoing traffic from the internet. And those are, those are the

1 touchstones of Fortinet's cooperative security fabric that inspects incoming
2 outgoing traffic. And again, that is the point of the -- that is the entire point
3 of this patent.

4 It sits on -- the node sits on the edge, and it inspects incoming and
5 outgoing traffic, and everything converges within the network on that route
6 in an interconnect -- in interconnected paths. And this is commensurate,
7 exactly commensurate with Figure 2 of the patent.

8 JUDGE GIANNETTI: Is there anything in the record that these
9 postings on a website would have been known to persons of ordinary skill?
10 There's a lot of stuff on the internet that --

11 MR. GLASS: So, there is. And to that point --

12 JUDGE GIANNETTI: -- that's obscure that a person of ordinary skill
13 may not and would never see.

14 MR. GLASS: Well, we -- we said that this was publicly available,
15 that it was publicly accessible to those of skill in the art. I believe there
16 was -- and that actually -- so, I'll make this clear. We got this, this
17 version -- well, it's exactly the same version that was available in 2016. This
18 version, we produced from the Wayback Machine.

19 Really, to address the point you're raising, to -- to dispel any issue that
20 this was publicly available. It was objected to. We did serve supplemental
21 evidence on Petitioner attesting to the public availability. There was no
22 motion to exclude.

23 JUDGE GIANNETTI: So let's assume it was publicly available. That
24 doesn't mean that a person of ordinary skill in the art would be aware that.

25 MR. GLASS: There's been no -- there's been no objection based on it.
26 There's been no argument based on it. There's been no argument based on

1 that's to the effect that one of ordinary skill in the art would not have known
2 this. Ordinary is the major player in this --

3 Fortinet is the major player in this field. They are the ones that
4 designed and came up with and created these systems. So, and our expert
5 has testified -- I can get the -- I can get a paragraph number four that. Our
6 expert has testified that the -- were familiar with Fortinet products in their
7 documentation. That's not been disputed. I can have someone point that
8 out --

9 JUDGE GIANNETTI: What is the -- so what is the -- what does the
10 petitioner's expert say?

11 MR. GLASS: I'm sorry, excuse me?

12 JUDGE GIANNETTI: Does petitioner's expert have any --

13 MR. GLASS: On this point? No. The fact that this was publicly
14 available, that persons of ordinary skill in the art were aware of this. These
15 publications, no. There's no testimony from their expert on this. I'll confirm
16 that. I'm sure Counsel, if there is any, he'll point it out. But I haven't seen it.

17 JUDGE GIANNETTI: All right. Thank you.

18 MR. GLASS: This -- this is not just -- and one of my associates is
19 pulling the paragraph for me as we speak. This is --

20 JUDGE BELISLE: While that's happening, again, back to that figure.
21 Just go back one slide again.

22 Your definition includes things like "multiple interconnected paths."
23 So in topology 200 on the right-hand side, what is the multiple part of that?

24 MR. GLASS: Well, we have the multiple interconnected -- I'm sorry,
25 I think I spoke over you, Your Honor.

26 JUDGE BELISLE: No, keep going.

1 MR. GLASS: The multiple interconnected paths converge on the
2 root. That's how they're interconnected. And again, that that was our
3 attempt, really, to capture the notion of what this patent is about. This patent
4 is about inspecting incoming and outgoing traffic. That's why these paths
5 interconnect and converge at that public facing, at the internet-facing node.

6 JUDGE BELISLE: Okay. So let's play on that. If I take off the red
7 and the green pathways --

8 MR. GLASS: Okay.

9 JUDGE BELISLE: -- does your claim not cover the system from root
10 220 to branch to 230 to leaf 240?

11 MR. GLASS: It has given -- excuse me. I'm sorry.

12 JUDGE BELISLE: I was going to say, even if it's implementing the
13 cooperative aspect where it's, you know, doing the inspection, flagging and
14 saying it's done the inspection so the next system doesn't need to do it?

15 MR. GLASS: That -- that would no longer be a fabric. That would
16 simply be two nodes. And that, I believe is that's what -- that's one of the
17 figures that petitioner has in their petition. I forget the page where it shows
18 just the route and leaf. That's no longer -- that's no longer a multiple
19 interconnected paths. It's not -- it's no longer a fabric.

20 So that is that -- that goes to one of their points, Your Honor, that they
21 say one of our hidden limitations that we require more than two points.
22 That's a threat. That's simply a threat. And that's not a hidden limitation;
23 that's part of our construction. So I -- I agree with you, yes, on their art
24 construction, we would require more than two nodes.

25 JUDGE BELISLE: Well, I mean, it would -- you -- and what I just
26 said, you'd have the route 220 communicating with branch 230, which in

1 turn communicates with leaf 248. So there's, you have three systems.

2 MR. GLASS: Mm-hmm.

3 JUDGE BELISLE: And seemingly performing the security analysis
4 that the claim is getting at. But what I'm hearing you say is, because of your
5 use of multiple interconnected paths in the definition of this CSF, that
6 wouldn't be covered by the claim.

7 MR. GLASS: They're not interconnected, Correct. That's just one
8 path. It's not multiple paths.

9 JUDGE BELISLE: So what does adding the red pathway do to the
10 system, other than just providing another system for analysis? That second
11 pathway with the red is not doing anything for the blue pathway.

12 MR. GLASS: That is the topology that this patent is concerned. And
13 that's the cooperative, that's what -- that is what the cooperative security
14 fabric is. And that's exactly, again, how it's described in the documentation
15 that we walk through in our papers.

16 JUDGE GIANNETTI: It's Judge Giannetti. This looks more like a
17 hub and spoke like configuration. Doesn't look very mesh like to me. Am I
18 right?

19 MR. GLASS: It's a fabric. So it's a fabric of fabric as we've gone
20 through in the -- in the slides and in the brief, fabric is interwoven and made
21 up of multiple threads. Hub and spoke, I don't believe we -- we haven't
22 argued that in our papers. I don't believe Petitioner has. Again, this is a
23 cooperative security fabric. Whether it looks like a hub and spoke, I -- I
24 really don't know the answer to that.

25 JUDGE GIANNETTI: Okay, thank you.

26 JUDGE CALVE: So Mr. Glass, Judge Calve. Let me ask you back to

1 that slide, please.

2 What is the significance of these red, green and blue paths being as
3 you quote or state "connected" at the root? Is there some interaction
4 between the red and the green path or the red and the blue?

5 MR. GLASS: It's really the inner -- it's really the interaction between
6 the branch and the root. And again, because this is addressing, it's in the
7 beginning of the path. It's addressing the growth and in the networks that
8 have gotten larger. We have multiple entities within the network. We need
9 to protect the packets as they are coming into and out of the network. So
10 that is what they're interacting with; they're interacting with that root node at
11 220.

12 JUDGE CALVE: Right. But it looks more like this as tassels than
13 fabric. You have a root and then you have three tassels, three separate
14 strands that do their redundancy only within the strand. So only within the
15 green, red, the blue. There's not cross-talk among the different branches. So
16 the redundancy, it's -- this essentially reads on what I understand to be the
17 prior art.

18 The prior art does redundancy inspections and elimination along the
19 strand, and you've done that. You just have three strands that start or end at
20 the same place, but there's no real interconnection. They just have a
21 common starting or ending point.

22 MR. GLASS: Well, again, what we're -- what's also going on in this
23 topology is the inspection of incoming and outgoing traffic. So they're
24 tied -- they're very much tied together. I mean, again, I -- I can't comment as
25 to whether that's, those are tassels or fabric, but it is tied together at the
26 notion that we are inspecting incoming and outgoing traffic through multiple

1 interconnected paths. They're interconnected at the node and that's why.
2 Everything falls -- everything works through that root node 220 or the box
3 external on Exhibit 2013.

4 JUDGE CALVE: (Inaudible.)

5 JUDGE BELISLE: Is the --

6 MR. GLASS: Yeah.

7 JUDGE CALVE: I'm sorry.

8 JUDGE BELISLE: I was just going to ask, Counsel, how do you
9 define interconnected? What does that mean to you in computer
10 networking? Or what does that mean to patent owner? Computer
11 networking from Fortinet --

12 MR. GLASS: Interconnected? I don't believe we have that in our
13 papers, but to put a definition on, its multiple connections. It's multiple
14 connections between nodes.

15 Now, I understand the point, Your Honor, because -- and I understand
16 that in Figure 2, for example, there's no connection between 230 and 250.
17 And I, if I could surmise that, if that's what you're driving, this is a more
18 simpler version of interconnected paths. They interconnect at the root.

19 JUDGE BELISLE: Doesn't "interconnected" suggest, at a bare
20 minimum, that they can communicate with each other because they're
21 interconnected?

22 MR. GLASS: In the context of this patent, no, Your Honor. They're
23 connected at the root.

24 JUDGE BELISLE: Okay. I understand your argument.

25 MR. GLASS: Okay. I'll move on to Slide 20. Again, this is
26 consistent with other internal -- excuse me, other published documents from

1 Fortinet. This is -- this is Exhibit 2012. Again, it's entitled, "The
2 Cooperative Security Fabric." Also published on our website in 2016.

3 Entirely consistent with how we are proposing to construe this, this
4 term. This is installing -- it relates to installing a FortiGate. That's the
5 appliance that implements this fabric. When we install the initial FortiGate,
6 that will be the internet facing, the internet-facing FortiGate.

7 Again, this is directed to those of skill in the art on how you set up
8 this cooperative security fabric. The initial FortiGate is internet facing. We
9 then add two additional FortiGates, and the security fabric is set up between
10 them. So again, it's entirely consistent with how we have -- how we have
11 defined the term requiring incoming and outgoing traffic, multiple
12 interconnected paths.

13 I've gone through the spec, we walked through portions of
14 specification. The specification is entirely consistent with how we are
15 framing the term Figure 2 is consistent as well with how we're framing the
16 term. We've walked -- excuse me. We've walked through these sections in
17 our briefs. I'm not going to walk through those again.

18 We asked their expert. Their expert also agreed with us that one of
19 the goals of the cooperative security fabric was to inspect incoming and
20 outgoing traffic. We asked him, the CSF has -- we asked him -- actually, I
21 don't have the question up here, but we asked him, "Would you agree that at
22 a minimum, CSF must coordinate security operations performed on network
23 traffic passing through the applications?"

24 Eventually, he agreed. He said the objective of the CSF was
25 according to security operations of network passing through them. Again,
26 getting to that notion of incoming and outgoing traffic. We asked them prior

1 to that, excuse me, prior to that, citing to Your Honors' institution decision,
2 that the '825 patent describes methods of performing security operations on
3 network traffic, passing through a cooperative security fabric through CSF,
4 and he agreed.

5 That is one of the -- that is one of the -- that is one of the objectives as
6 it's described of the CSF, network traffic passing through the fabric. We
7 asked him also during his deposition, "You're not aware of any other
8 examples in the '825 patent that talks about performing security operations
9 on traffic between two subnetworks?"

10 And he said very expressly, "There's no example like that in the
11 patent."

12 Again, this patent, it comports. We're not saying it defines it. We're
13 not saying it's lexicographic, but it's consistent with how we've described
14 this term.

15 I will point out later on, he was asked on cross, there is an
16 embodiment in the patent that discusses a VPN. That VPN is never
17 described as being part of this cooperative security fabric. There was no
18 discussion of that being, those packets being inspected. But he did testify
19 very plainly, there's no example of any internal inspection in the -- in the
20 patent.

21 JUDGE BELISLE: Counsel, this is Judge Belisle again. Can
22 we -- let's go to Claim 1 itself, and show me where we are interpreting Claim
23 1 to require -- to require both incoming and outgoing traffic.

24 MR. GLASS: That, let me pull up the claim. It's really in the
25 cooperative security fabric. And that's how we are interpreting that term,
26 cooperative security fabric.

1 JUDGE BELISLE: So but for that term, you would agree that the
2 claim just saying "receiving traffic" does not necessarily require both
3 directions.

4 MR. GLASS: So that is -- that is a loaded question. I mean, that is
5 where we focused this. That is where we focused this analysis. That is
6 where the notion of incoming and outgoing traffic comes into play in this
7 claim, in the cooperative security fabric, yes.

8 JUDGE BELISLE: It's a very powerful term, cooperative security
9 fabric.

10 MR. GLASS: I am --

11 JUDGE BELISLE: The spec does not actually define it?

12 MR. GLASS: So again, I apologize for hesitating, Your Honor. I'm
13 getting, unfortunately, kicked out of Adobe at the moment.

14 JUDGE BELISLE: Oh, we've all been there.

15 MR. GLASS: So, I may lose -- okay. So getting back to
16 your -- getting back to your question, apologies. Getting back to your
17 question. Yes, that is where -- the cooperative security fabric, that is where
18 we are building in this notion of external -- the internal/external
19 communications, and that is based on the technical meaning of that term, a
20 person of ordinary skill in the art. So the short answer is yes.

21 JUDGE BELISLE: Okay.

22 JUDGE CALVE: Mr. Glass, if you would comment, please, on the
23 specification of the '825 and Column 2 beginning it around lines 47. So
24 Column 2, line 47. Well, if you pull that up, that would be great. Then we
25 can all see it.

26 MR. GLASS: That is going -- unfortunately, that is going to be a

1 problem.

2 JUDGE CALVE: That's all right. I can read it into the record.

3 MR. GLASS: Wait, wait, wait. I -- Can you see that, Your Honor?

4 JUDGE CALVE: Perfectly. If you can zoom that in a little.

5 MR. GLASS: What section are you referring to?

6 JUDGE CALVE: We want Column 2, line 47. I think we're down at
7 the bottom of this page. So the bottom here, is that -- yeah. And just, if you
8 could magnify that a little bit, please.

9 MR. GLASS: Can't make any promises, but I'll try.

10 JUDGE CALVE: Perfect. Okay. So Judge Belisle was -- and we're
11 both, you know, all the panel is seeing that the claim just claims traffic in
12 one direction. Why don't we just limit the claim to this one embodiment that
13 you describe here? "According to one embodiment of the invention, a first
14 network security appliance of CSF receives incoming network traffic,
15 determines if it's transmitted, etc."

16 There's no bidirectional communication, so one of your own
17 embodiments is just a single direction without any indication that
18 there's -- there's some bidirectional. Isn't that within the scope of the claim?

19 MR. GLASS: Again, I would respond to that by saying, again, that's
20 built into the notion of what a cooperative security fabric is. This is an
21 invention that's operating within the CSF. So, yes, that's -- the patent does
22 describe, that embodiment describes receiving the packet from a first
23 network appliance within the CSF.

24 JUDGE CALVE: So what are all the terms we need to read into
25 bidirectional here? It -- it's bidirectional. So the claim just requires them to
26 be participating. And then it seems to the rest of the body of the claim

1 seems to describe for the public's notice function what that participation
2 entails, and that's the filtering traffic or performing operations like traffic in
3 one direction.

4 So that seems to be pretty clear. What does adding bidirectional
5 traffic do with this claim?

6 MR. GLASS: Well, again, that's the -- that is the point of the patent.
7 The patent is to --

8 So in terms of bidirectional, I mean, we're -- we're saying that this is
9 inspecting incoming and outgoing traffic at the paths that are interconnected.
10 And again, that is -- that is the point of this patent. This point of the patent
11 is to protect network or subnetworks within the network from external
12 malware, from external viruses, etc. This is a device that sits on the edge of
13 the network. This is exactly how we described it.

14 JUDGE CALVE: Well, that, I think you proved too much. If it's just
15 to protect from external, then you're just concerned with incoming and
16 you've just proved the other case. I don't think you mean that.

17 You're talking bidirectional. It's -- if it's only protecting from this
18 external, inter-network in the wild west, then you just need to do incoming,
19 which is what you're claiming, perhaps. But we'll set that aside.

20 MR. GLASS: Well, I --

21 JUDGE CALVE: What -- what do you say to Mr. Millikan's
22 comment? All of these Keohane and Chandra, they sit on the edge of an
23 internet. You've criticized them for not having an internet, but an internet is
24 an inner network of networks. So they both sit on networks and there's
25 traffic coming both ways. Mr. Millikan most recently commented it's
26 TCP/IP.

1 So they either outright disclose bidirectional, or it certainly would be
2 extremely obvious given the knowledge in the art, and without even
3 knowing what a hard drive means, we know that's bidirectional in the
4 internet, right? So -- so what are we to do with the prior art?

5 It Seems to -- even if we read bidirectional, and I don't see that that
6 really gets you much, because the prior art either outright discloses it to a
7 skilled artisan who's knowledgeable how this actually works, or it's certainly
8 obvious. They're just showing you one link in the chain, which is exactly
9 what you're claiming and exactly what your one embodiment at Column 2
10 shows, so what's really missing there in the prior art?

11 MR. GLASS: So again, on Keohane -- I'll focus on Keohane.
12 Keohane only inspects incoming traffic. And two, there's no multiple
13 interconnected paths. In Keohane, it's very clear Keohane takes action to
14 prevent the introduction of data, of malware into the network. That's
15 Keohane. So there is no -- there's no inspection of outgoing traffic.

16 In Keohane, there's also no -- there's no disclosure that there is
17 multiple pathways of receiving data packets from the internet that are
18 cooperatively inspected. So while there may be a disclosure at 302 of mail
19 gateway receiving a data packet from another channel, it's not disclosed
20 anywhere that it is in any way cooperatively inspected. How could it be?
21 There's nothing for it to trust.

22 So there's no disclosure in Keohane of cooperativeness on the
23 multiple -- because it's not just multiple incoming paths, multiple
24 interconnected paths. It also has to be a cooperative arrangement.

25 JUDGE CALVE: I think Mr. Millikan suggests that at least in
26 Keohane, the slide you have up, that the mail gateway 302 receives, traffic

1 interconnects at the mail gateway. And by the way, the client performs
2 some security functions, too. So you have two elements that are network
3 security appliances, and traffic comes either through firewall 300 or
4 externally to the mail gateway. Doesn't that do interconnected paths with
5 multiple nodes?

6 MR. GLASS: There's no disclosure that when that pathway is
7 received, when that data is received that mail gateway from that, if it's not
8 received from the firewall, there's no cooperative scanning going on.
9 There's no cooperative inspection.

10 JUDGE CALVE: There's a cooperation between the mail gateway
11 and the client. I think the client picks up what isn't done upstream of it,
12 so -- and the claims don't require particular functions.

13 MR. GLASS: Well, again, the way -- the way that Keohane describes
14 that, that when -- there's no disclosure, there's no disclosure in Keohane, that
15 when that mail client receives it from that different channel, that there is
16 cooperation going on.

17 JUDGE CALVE: Okay. Thank you.

18 MR. GLASS: Okay. I will --

19 JUDGE BELISLE: Counsel, can you just explain what you just said?
20 There's no cooperation going on? You seem to be using this term of needing
21 cooperation with the multiple spokes, if you will, of the Figure 2. What is
22 the cooperation that's going on between -- maybe we can go back to that
23 Figure 2 on your slide that was on the right-hand side of the slide.

24 MR. GLASS: We jumped to it.

25 JUDGE BELISLE: That one's fine. So when you say there's no
26 cooperation, where is the cooperation that you're talking about in topology

1 200?

2 MR. GLASS: The cooperation is between the branch leafs, at least
3 between the branch leaf nodes and the root.

4 JUDGE BELISLE: What are they cooperating on?

5 MR. GLASS: On inspecting the incoming traffic that is received
6 through the new, through the root. And that's not what's going on in
7 Keohane.

8 JUDGE BELISLE: So when the branch 230 --

9 MR. GLASS: And again, in Keohane, the problem with Keohane
10 there's no cooperation with another appliance. And that's expressly required
11 by the claims. The client is not compliance; the client is a client in Keohane.

12 JUDGE BELISLE: So in this topology 200, are you saying, like,
13 branch 230A cooperates with branch 230B to do something?

14 MR. GLASS: It cooperates with the root 220. In Keohane, what
15 the -- the hypo that counsel proposes that there was an incoming packet to
16 the mail server that was passed through the client. The claims require
17 appliances, not clients. So there's no cooperative -- cooperation between
18 two appliances in that, in that figure.

19 JUDGE BELISLE: I'm having great difficulty understanding what it
20 is, like branch 230A and branch 230B, is -- is cooperating on. What is
21 it -- they both have something that they're analyzing for security purposes,
22 and then feeding that back to the root somehow?

23 MR. GLASS: Correct. So --

24 JUDGE BELISLE: And then exchanging that information with each
25 other?

26 MR. GLASS: So the way the patent works, Your Honor, is root 220

1 performs security analysis on an incoming data packet. That is then
2 recognized by branch 230. Branch 230 recognized that that has occurred
3 and will not re perform that, that analysis.

4 JUDGE BELISLE: Right. So branch 230 won't re-perform it because
5 root 220 already did it.

6 MR. GLASS: Correct.

7 JUDGE BELISLE: But how is branch 230B somehow cooperating
8 with branch 230A? At -- seemingly at most, branch 230B could be told the
9 same thing. Here's the same data that's been reviewed, so you don't have to
10 review it. Now you can move on to your next, you know, the next
11 component in the pathway.

12 MR. GLASS: Right. Well, 230B is cooperating with the root 220.

13 JUDGE BELISLE: But it's not cooperating with 230A.

14 MR. GLASS: That's correct. It's cooperating with the root 220. And
15 those are both network appliances, which Keohane, again, that's going back
16 to the Keohane figure.

17 Keohane, even in the hypo from counsel, Keohane does not disclose
18 cooperation between the mail server and another network appliance. It's a
19 client that is described in that figure.

20 JUDGE BELISLE: Okay. Thank you.

21 MR. GLASS: I am running out of time. I am going to focus for the
22 remainder of my time just on fabric, because that is something Your Honors
23 pointed out in the institution decision, asked us to comment on. Your
24 Honors, based on our dictionary definition, the Newton's Telecom
25 Dictionary, Your Honors, as counsel pointed out in his presentation, that the
26 fabric was a network topology such as the physical structure of a switch or

1 network.

2 Now, we stepped over -- in counsel's presentation, we stepped over
3 the remainder of this dictionary definition. Again, much like a piece of
4 cloth, physical logic communication channel threads are interwoven.
5 They're complex, predictable, interwoven number of networks, and that is
6 what is captured. That is what we were driving at pre-institution, that we
7 have interconnected, interconnected connections.

8 This is shown. We've shown this in the -- we've provided extrinsic
9 evidence, Exhibit 2007.

10 I'm not going to walk through that. That shows a fabric, one example
11 of fabric on slide 28. We pointed to, I believe this is Exhibit 2011. We
12 pointed to a patent that Petitioner cited in another IPR that explains that a
13 fabric, again, has these multiple interconnected -- multiple interconnected
14 connections.

15 JUDGE BELISLE: Counsel, let's move back one slide, please.

16 MR. GLASS: Correct.

17 JUDGE BELISLE: Okay. So in the image on the right of Slide 27,
18 what's highlighted in yellow and declared as fabric. If I'm picking up all the
19 lines correctly; every single one of those blue components is connected to
20 every single one of those black rectangular components?

21 MR. GLASS: And that is -- that -- that's one example of interconnect,
22 correct. I understand -- I understand your point, Your Honor. That is
23 not -- that is not exactly what's shown in the patent. That is --

24 JUDGE BELISLE: Well, it's beyond that exactly shown in the patent.
25 What is shown in Figure 2 is a completely different type of topology in
26 computer networking than what's shown right here as described as fabric.

1 So that's our tension that we're dealing with right now --

2 MR. GLASS: Well, I'll --

3 JUDGE BELISLE: -- is why -- is what's shown in the patent is
4 wholly different topology-wise than what's shown here on this image that
5 you're presenting to us.

6 MR. GLASS: And I'll address this from a different perspective.
7 Patent -- petitioner would say that one connection between two nodes, that's
8 a fabric.

9 The point of us showing this is that a fabric is much more than just
10 one connection between two nodes. When we say a fabric, we're not
11 just -- and that, that is key to their -- that's key to their positions, that a fabric
12 includes one connection between two network appliances. So we could just
13 draw one -- and they have this one in their petition -- one node connected to
14 another node with one line, that's a CSF.

15 The point of us raising this is that there's much more involved in a
16 fabric. There's these -- there's more than just one node in one connection.

17 JUDGE CALVE: Well, Mr. Glass, if I might interrupt a minute. I
18 think this definition on the left, this Newton's Telecom, they're talking about
19 packet switched networks, cisco routers. There's no dedicated point-to-point
20 connection. Although, in the day you can buy a point-to-point connection
21 through Cisco routers, but we'll set that aside. But it's a packet switched
22 network that weaves its way; it has nothing to do necessarily with security.

23 What you've described in your patent is essentially a point-to-point
24 connection, like the old telephone system. There's only one path between
25 the root and any of the end units. That's a point-to-point connection. You
26 can call it what you want to do, but that's exactly what the industry calls it

1 and that's well known.

2 We're not talking packet switched where it goes from the root, like
3 Judge Belisle said, it doesn't -- there's -- there's no tiers of these appliances
4 where it can go from either of the tiers. It only goes to one path every single
5 time and it goes -- and it doesn't matter which way it's going. That's a
6 point-to-point connection, plain old twisted wire like they had -- had.
7 There's nothing new about that.

8 And this, this definition is misleading because you're talking about
9 packet switching. This is Cisco. This isn't what you've described this in the
10 825 and what this fabric definition is. I'm sorry, that's -- that's my
11 understanding.

12 MR. GLASS: And again, I would just -- I would bring -- get back to
13 the point, Your Honor, that it's more than --

14 The reason we focused on this, it's more than just a point-to-point
15 connection. It's multiple connections. If you want to look at it one way, it's
16 multiple point-to-point connections in that fabric. And that's what this
17 is -- it's not -- the claims don't require, the claims are not looking at the
18 simple point-to-point connection. That's not what these claims are about.
19 They're about, again, a fabric.

20 JUDGE CALVE: Well, one reason, because it is a plain old
21 point-to-point connection, you're able to piggyback these security
22 applications so that they can work with each other, right? Because they
23 know that they're always going to get something from the one in -- the node
24 immediately upstream. Your own patent says the next hop. So we hop
25 down the hops. It always knows the hop before and the hop after.

26 There's no -- there's no variation on that. That's why I'm saying it

1 reminds me of a point to point, and that's why it's easy to predict. You don't
2 have something where it weaves its way through, where one node can
3 receive packets from multiple upstream nodes. You don't have that and you
4 don't have peer appliances that are communicating in parallel; rather, it's all
5 serial communication.

6 MR. GLASS: At that -- at that level, that level is shown in Figure 2, it
7 is, again, it's going back -- we're going back to what I've said previously. It
8 is the multiple connections by virtue of its connections to the node, to the
9 exterior facing.

10 JUDGE CALVE: Okay. Thank you. Thank you.

11 MR. GLASS: Let me just flip through my slides. I may -- and Your
12 Honors, I think I've made the points I'd like to make. I would like to keep
13 some time for rebuttal. Your Honors, I -- unless there are any questions, I
14 will bag the remaining remainder of my time for rebuttal.

15 JUDGE CALVE: Okay. I mark you at, I think about 20 minutes, Mr.
16 Glass. So yeah, we'll --

17 MR. GLASS: Thank you.

18 JUDGE CALVE: You're very welcome. Thank you for answering
19 questions. Mr. Millikan, do you have any rebuttal that you'd like to make?

20 MR. MILLIKAN: Just one point, Your Honor. Counsel commented
21 on how Keohane did not have cooperation at the client level and sort of
22 along Figure 3. If you look at Keohane 35 to 37, it talks about that
23 cooperation, including the client performing security operations based on
24 previous operations.

25 That's it, Your Honor. With that, we rest on the papers.

26 JUDGE CALVE: Thank you. Mr. Glass, you're --

1 MR. GLASS: Just on that point, it's exactly what I said earlier, Your
2 Honor, in that -- in that figure in Keohane, that's a client, not a network
3 appliance.

4 JUDGE CALVE: Thank you. Any other questions from the panel?

5 JUDGE BELISLE: Nothing for me.

6 JUDGE GIANNETTI: Nothing for me.

7 JUDGE CALVE: Okay. Thank you. Excellent -- exceptional
8 briefing, great arguments. Thank you for answering our questions. We'll
9 take this under advisement. This hearing is now adjourned. Thank you.
10 (Whereupon, at 3:12 p.m., the proceedings were concluded.)

IPR2023-00459
Patent 10,084,825 B1

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