

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS INCORPORATED,

Petitioner,

v.

NETSOCKET INCORPORATED,

Patent Owner.

Case No. IPR2023-00607

Patent No. 7,190,698

Friday, April 5, 2024

9:05 a.m. PDT

Remote Deposition of DR. PAUL CONGDON

(This proceeding was conducted via Zoom.

All participants appeared remotely.)

STENOGRAPHICALLY REPORTED BY:

Deanna J. Dean, RDR, CRR

Henderson Legal Services

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Friday, April 5, 2024

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9:05 a.m. PDT

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Remote deposition of DR. PAUL CONGDON,

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held via Zoom videoconference, before Deanna J.

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Dean, a Registered Diplomate Reporter, Certified

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Realtime Reporter, and licensed court reporter

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of the state of New Hampshire.

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I N D E X

Examination	Page
PAUL CONGDON	
By Attorney Huh	7

E X H I B I T S

Number	Description	Ref.
Exhibit 2004	Declaration of Paul Congdon	19
Exhibit 1001	US Patent No. 7,190,698	58
Exhibit 1016	Document Titled "RATES: A Server for MPLS Traffic Engineering"	62

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on the
3 record.

4 Here begins Clip 1 in the video deposition
5 of Dr. Paul Congdon, taken in the matter of
6 Cisco Systems Incorporated v. Netsocket
7 Incorporated, in the United States Patent and
8 Trademark Office before the Patent Trial and
9 Appeal Board, Case No. IPR2023-00607.

10 Today's date is April 5, 2024. The time
11 on the video monitor is 9:05 a.m. Pacific
12 Daylight Time.

13 This deposition is being held remotely via
14 Zoom videoconference. The court reporter is
15 Deanna Dean on behalf of Henderson Legal
16 Services.

17 My name is Eric Vavrasek and I am the
18 video camera operator, also on behalf of
19 Henderson Legal Services.

20 Will counsel please introduce themselves
21 and state whom they represent, beginning with
22 the party noticing the deposition.

23 ATTORNEY HUH: This is Gregory Huh from
24 law firm Haynes and Boone representing Cisco
25 Systems Inc.

1 ATTORNEY PYMENTO: Julian Pymonto from the
2 law firm of Fabricant LLP representing
3 Netsocket.

4 ATTORNEY BURGER: Oded Burger from the law
5 firm of Daignault Iyer LLP representing
6 Netsocket.

7 THE VIDEOGRAPHER: Thank you, counsel.
8 Will the court reporter now please swear
9 in the witness and then we may proceed.

10 THE REPORTER: My name is Deanna Dean. I
11 am a New Hampshire licensed stenographic court
12 reporter.

13 At this time, do all parties agree to
14 waive any objection, now or in the future, to me
15 swearing in the witness remotely?

16 ATTORNEY HUH: Yes.

17 ATTORNEY PYMENTO: No objection.

18 DR. PAUL CONGDON,
19 a witness called for examination, having been first
20 duly sworn according to law, was deposed and
21 testified as follows:

22 EXAMINATION

23 BY ATTORNEY HUH:

24 Q. Great.

25 Good morning, Dr. Congdon.

1 **A. Good morning.**

2 Q. Have you been deposed before?

3 **A. This is -- yes. This is the third time.**

4 Q. Okay. So you understand that you are
5 under oath today?

6 **A. I do.**

7 Q. And that during this deposition I'll be
8 asking you questions.

9 Do you understand that?

10 **A. Yes, I do.**

11 Q. You understand that the oath requires that
12 you answer my questions truthfully and completely?

13 **A. Yes, I do.**

14 Q. Do you have any other device that may be
15 used to communicate with counsel during the
16 deposition?

17 **A. No. Well, I have my cell phone here off
18 to the side, but nothing -- nothing other than
19 that. And I'll get it out of the way.**

20 Q. Do you have email open, for example?

21 **A. I do not.**

22 Q. Do you have any chat panes open?

23 **A. Only the chat for this Zoom meeting.**

24 Q. Okay. Are you aware that you may not
25 consult or confer with counsel about your testimony

1 during the breaks?

2 **A. Yes, I am.**

3 Q. And you agree to not communicate with
4 counsel during the deposition. Correct?

5 **A. That's correct.**

6 Q. Okay. Do you have any documents in front
7 of you, sir?

8 **A. I do not.**

9 Q. Do you have any electronic documents on
10 your computer that you are accessing?

11 **A. No. There's -- I have a folder that I --**
12 **empty folder I created to put the exhibits into.**
13 **But other than that, there's no other screens open**
14 **on my computer.**

15 Q. Okay. So during today's deposition, I'll
16 be providing exhibits that were of record or that
17 may be new exhibits, and I'll provide those
18 documents in the chat box. And you'll be able to
19 access the documents and download them locally to
20 your computer and then you can view the documents.

21 Do you understand that?

22 **A. Yes, I do.**

23 Q. Okay. And what I would ask is that you
24 not look at notes or any other local documents, and
25 if that's necessary, then just let us know, and

10

1 then we can understand if that, in fact, is the
2 best approach.

3 Do you understand that?

4 **A. Yes, I do.**

5 Q. Okay. And, clearly, today is not a --
6 it's not a memory competition. So I'll be happy to
7 provide you the documents so you can then consider
8 them.

9 And if there's something you need, just
10 let me know and I can see if I can obtain it for
11 you.

12 **A. Okay.**

13 Q. Okay. Are you engaged by Netsocket in
14 connection with the '698 patent?

15 **A. Yes, I am.**

16 Q. And when were you engaged by Netsocket?

17 **A. I'm not exactly sure of the exact date. I**
18 **believe it's in December of 2023. It may have been**
19 **a little earlier. May have been as early as**
20 **October.**

21 Q. You don't recall if it was after
22 Thanksgiving or not?

23 **A. I don't recall the exact date. I know**
24 **there wasn't a lot of time I spent on it until near**
25 **the December -- November/December time frame.**

1 Q. Okay. And who approached you first in the
2 context of your engagement for Netsocket?

3 ATTORNEY PYMENTO: Objection.

4 A. That would be Oded Burger, who is on the
5 call, and his firm.

6 Q. Were you aware of Netsocket before this
7 engagement?

8 A. Yes. I was familiar with Netsocket before
9 this engagement, yes.

10 Q. How so?

11 A. Well, they were a vendor within the
12 industry. I've been participating in networking
13 for, you know, the last 35 to -- or more years.
14 And Netsocket was one of the vendors that was very
15 prominent at the time when I was -- when I was
16 working at Hewlett-Packard.

17 Q. And when was that?

18 A. Well, I first joined Hewlett-Packard in
19 1985, and I retired from there in 2013.

20 Q. Okay. So after your interaction with
21 Netsocket in the context of your Hewlett-Packard
22 work, have you had any other interaction with
23 Netsocket?

24 A. After 2013, no. I would say no. No
25 interactions.

1 Q. Have you done any other work for Netsocket
2 after 2013?

3 A. No, I have not.

4 Q. Is this the only matter that you're
5 engaged by Netsocket?

6 A. Yes, this is the only matter.

7 Q. Were you engaged in other matters in the
8 last year for Netsocket?

9 A. No, I was not.

10 Q. Do you have any interest in Netsocket,
11 financial or otherwise?

12 A. No, I do not.

13 Q. So how many times have you worked as an
14 expert witness before?

15 A. This is only the second time.

16 Q. And you testified that you had been
17 deposed three times prior to today?

18 A. Two times prior to today, yes. That's
19 correct.

20 Q. Two times?

21 A. Yeah.

22 Q. When was the last time you were deposed?

23 A. Again, I don't exactly remember the exact
24 date. But it was this fall sometime in 2023.

25 Q. Okay. And was that in a patent-related

1 matter?

2 A. Yes.

3 Q. Was that in the context of an IPR?

4 A. No.

5 Q. What was that context?

6 A. The context was in -- with respect to
7 infringement and a subsequent declaration that was
8 made regarding -- regarding that.

9 Q. And was that a District Court litigation?

10 A. Yes, I believe so.

11 Q. And then the previous time, other than the
12 last time, was when?

13 ATTORNEY PYMENTO: Objection. Form.

14 A. Again, sorry. I don't recall the exact
15 date. But I believe that was in the summer
16 sometime, perhaps June. And that was with respect
17 to the expert report, the infringement report in
18 that case that I wrote.

19 Q. Understood.

20 So I'm a little bit ahead, but I want to
21 just refresh your memory. During the deposition,
22 I'm going to be asking you questions. You'll have
23 opportunities for breaks. And if you need a break,
24 please let me know, and we'll accommodate as best
25 as we can. What I would ask is that if there's a

1 question pending, that you please answer the
2 question. Then we can move to a break.

3 Is that okay?

4 **A. That's okay, yeah.**

5 Q. Okay. So in preparation for today's
6 deposition, did you review IPR-related documents?

7 **A. Yes, I did.**

8 Q. Did you review the petition?

9 **A. Yes. I reviewed portions of the petition,**
10 **yes.**

11 Q. Which portions, sir?

12 **A. Well, I would need to see that to tell**
13 **you. But I -- I skimmed the petition again since**
14 **the creation of the, what we call the disclosure.**

15 **So it was just the arguments about why the**
16 **petition believes various claims were obvious or,**
17 **you know, not valid.**

18 **Again, if you want to bring up -- we can**
19 **look specifically at the document. But it's a**
20 **general review of that.**

21 Q. Okay. Did you review the '698 patent in
22 preparation for your deposition today?

23 **A. Yes, I did.**

24 Q. Did you review the patent in totality?

25 **A. Yeah, I reviewed it, yes.**

1 Q. Did you review it in totality?

2 A. **Yes, I reviewed it in totality.**

3 Q. And you understood it. Correct?

4 A. **Yes, I understood it.**

5 Q. In preparation for today's deposition, did
6 you review the cited exhibits?

7 A. **Yes, I did.**

8 Q. The exhibits cited by the petition?

9 A. **Yes.**

10 Q. As well as any exhibits cited by the
11 patent owner response?

12 A. **Yes, also those as well.**

13 Q. Did you review the Xiao reference, which
14 is filed as Exhibit 1005?

15 A. **Which -- I believe there's more than one**
16 **Xiao reference, isn't there? Xiao 1, Xiao 2 -- or**
17 **Xiao, X-a-i-o. Yes, I did review that.**

18 Q. And did you review that in totality?

19 A. **Yes.**

20 Q. Did you also review the Gibson reference?

21 A. **Yes, the Gibson patent.**

22 Q. That's filed as Exhibit 1006.

23 And you mentioned the Schelen -- well, you
24 mentioned Xiao, but it's Schelen 1 and Schelen 2.

25 Did you review those as well?

1 **A. Yes, I did.**

2 **Q. Great.**

3 And in preparation for your deposition
4 today, did you review your declaration, which is
5 filed as Exhibit 2004?

6 **A. Yes, I did.**

7 **Q. Did you review the board's decision in**
8 **preparing for this deposition?**

9 **A. The board's decision? No, I don't recall**
10 **that specifically. Which -- that's not -- you're**
11 **talking about claim construction or petition or**
12 **patent history or any of those. Right? You're**
13 **talking about another document?**

14 **Q. Yes. The board in instituting the IPR**
15 **filed a decision, which is a paper in the IPR**
16 **proceeding.**

17 **A. Yeah, I don't recall -- I imagine I looked**
18 **at that earlier, but I don't recall looking at that**
19 **in preparation for this deposition this week.**

20 **Q. Did you review anything else in**
21 **preparation for this deposition?**

22 **A. No. Just the -- again, the references**
23 **that were made by the initial patent response.**
24 **There were a number of old internet drafts and**
25 **things like that. I skimmed some of those as well.**

1 **I think that was included already in your list.**

2 Q. Okay. Did you review anything that's not
3 part of the already filed exhibits in preparation
4 for today's deposition?

5 A. **Only -- only any notes that I had taken**
6 **during the development of the declaration.**

7 Q. When did you start preparing for this
8 deposition?

9 A. **I would say late last week. Like, you**
10 **know, the end of last week.**

11 Q. Right before Easter?

12 A. **Correct.**

13 Q. And how many times --

14 A. **In earnest -- I'm sorry. Sorry to**
15 **interrupt you. Yeah, I mean, that's preparing in**
16 **earnest. I knew about the deposition obviously**
17 **before that. But I spent more focused time**
18 **starting on Friday of last week.**

19 Q. And how much time did you spend preparing
20 for this deposition?

21 A. **I'm not sure exactly. I mean, it's kind**
22 **of hard to answer because of, you know, there's a**
23 **lot of work that was done prior to that which would**
24 **potentially be included in that. But in earnest,**
25 **since Friday, I would say, you know, 8 to -- 8 to**

1 **10 hours. 8 hours, maybe.**

2 Q. And did you feel that 8 hours was
3 sufficient for you to prepare?

4 A. Well, I've prepared as best I could in the
5 time that I had. I mean, reading all of the --
6 there's a lot of exhibits, a lot of material
7 referenced, and reading that in detail would, of
8 course, take a significant amount of time. One can
9 always be more prepared. So -- but I did the best
10 I could given the time I had.

11 Q. Did you meet with anyone to prepare for
12 your deposition today?

13 A. Well, I had a phone call with counsel
14 prior to the deposition.

15 Q. What counsel, sir?

16 A. **Julian Pymonto.**

17 Q. Anyone else?

18 A. Well, I had discussions with Oded Burger,
19 but that was prior. So, no. Really only Julian.

20 Q. And when did you meet with Julian or have
21 a call with him regarding today's deposition?

22 A. **Yesterday.**

23 Q. And before yesterday, did you have a call
24 with him regarding today's deposition?

25 A. **Not a phone call. I had a phone call long**

1 **before when we were preparing the declaration, but**
2 **no other phone calls specific to this deposition.**

3 Q. And how long was your phone call with
4 counsel regarding today's deposition?

5 A. **Yesterday's phone call was approximately**
6 **two hours.**

7 Q. Have you done anything else to prepare for
8 today's deposition?

9 A. **Nothing that I -- that we haven't**
10 **mentioned yet, no.**

11 Q. Did you perform any experiments or
12 simulations to prepare for today's deposition?

13 A. **I did not.**

14 Q. Did you perform any calculations for
15 today's deposition?

16 A. **I did not.**

17 Q. Okay. I'm going to share your declaration
18 in this chat box so you can have access to it.

19 A. **Okay.**

20 Q. Just bear with me so I can find it.

21 Okay. You should be receiving in the chat
22 box a PDF document that has Exhibit 2004 on it
23 titled "Declaration of Paul Congdon."

24 Do you see that?

25 A. **I do not see that yet.**

1 Q. Okay. Just maybe give it some time. It's
2 going to send through --

3 A. **Okay. It just came through.**

4 Q. Okay. Great.

5 A. **Okay. Download that.**

6 Q. And if you could just open that and
7 confirm this is your declaration, in fact.

8 A. **Okay. Yes, this looks like the
9 declaration.**

10 Q. Any reason to believe that it's not your
11 declaration?

12 A. **No.**

13 Q. Okay. Are there any errors in your
14 declaration that you'd like to correct today?

15 A. **None that I'm aware of.**

16 **One second. I have -- there were -- when
17 it opened in Microsoft Edge, there were other tabs
18 open, so I'm closing all of these other tabs.**

19 Q. Thank you.

20 A. **Yes. Okay. I only have the declaration
21 visible now.**

22 **I'm not aware of any errors that need to
23 be corrected or that were significant to correct.**

24 Q. Okay. Understood.

25 Let me just focus for a little -- short

1 period of time on your declaration, what you did to
2 prepare the declaration.

3 So in your declaration at paragraph 14, if
4 you don't mind turning there, please.

5 A. Mm-hmm.

6 Q. You state that in preparing your
7 declaration, you considered all papers and exhibits
8 filed in IPR 2023-00607. Correct?

9 A. That's correct.

10 Q. Other than the papers and exhibits filed
11 in the IPR, did you consider anything else?

12 A. The test -- I suppose the testimony of
13 Dr. Henry Houh, or he -- that's included in the
14 list of exhibits. I'm not sure if that was
15 included in the list, but I reviewed that. I
16 reviewed his deposition transcript.

17 Q. Okay. And anything else that you reviewed
18 other than the exhibits or papers filed in this
19 IPR?

20 A. Well, I recall reviewing or attempting to
21 find out more information about Netsocket products
22 and things that were publicly referenced. And
23 there may have been some other papers at the time I
24 had reviewed for consideration, but I don't recall
25 the exact names or I -- you know, I would have to

1 open a folder on my computer to look at other
2 documents that I might have downloaded to prepare
3 for this.

4 Q. Did you prepare your declaration?

5 A. Yes, I did.

6 Q. So what products specifically from
7 Netsocket did you review in preparing for --

8 A. Well, I don't -- sorry.

9 I don't recall the exact names, but they
10 had -- I don't recall the exact names of their
11 products, but they had some sort of quality of
12 service control, some type of bandwidth broker-type
13 products.

14 Again, I would have to reference my notes
15 or research to remember -- recall the exact product
16 numbers. I just don't off the top of my head
17 remember them.

18 Q. Is there a reason why you did not include
19 Netsocket products as exhibits to your declaration?

20 A. There wasn't -- personally I --

21 ATTORNEY PYMENTO: Objection.

22 THE WITNESS: Oh. Sorry. Go ahead,
23 Julian.

24 A. The amount of public information I was
25 able to find was pretty limited. It really didn't

1 **add any value to the declaration. So . . .**

2 Q. Okay. Other than Netsocket products, did
3 you consider anything else in preparing for
4 declaration?

5 A. **Do you mean other products or --**

6 Q. No. Just generally.

7 So you testified in your declaration that
8 you considered all papers and exhibits filed in IPR
9 2023-00607, and then you've also testified that
10 you've considered Netsocket products.

11 Other than Netsocket products and the
12 exhibits and papers filed in the present
13 proceeding, did you consider anything else?

14 A. **Yeah.**

15 ATTORNEY PYMENTO: Objection. Form.

16 A. **As I mentioned there, I recall doing some**
17 **general research on, you know, QoS at the time and**
18 **what was happening in forums such as the IETF.**

19 So I have looked at other IETF RFCs and
20 prior work. I was involved in the development of
21 some of those documents. I was refreshing my
22 memory. But there was nothing material that was
23 discovered from those that needed to go into the
24 declaration. But I was again refreshing myself on
25 how things were at the time of the invention.

1 Q. As part of your process for refreshing
2 your memory, did you see any documents that were
3 inconsistent with opinions that you provided in
4 your declaration?

5 ATTORNEY PYMENTO: Objection.

6 A. Again, I was reviewing those documents to
7 refresh my memory. I didn't find any documents
8 that were, again, needed or substantial to include
9 in there or anything that was counter to the
10 opinions in the paper.

11 So I would say neither -- there were
12 concepts that were consistent with what's in the
13 declaration, but didn't add material value to
14 incorporate as exhibits.

15 Q. Okay. So did you see anything that was
16 inconsistent with the opinions in the declaration?

17 ATTORNEY PYMENTO: Objection.

18 A. As I mentioned, no, I didn't find anything
19 that was inconsistent as well.

20 Q. Okay. So let's turn back to your
21 declaration -- paragraph 14 and 15. Okay? -- so
22 where you considered all papers and exhibits filed.

23 A. Mm-hmm.

24 Q. As part of your considering all papers and
25 exhibits, did you read all of the papers and

1 exhibits filed in IPR2023-00607?

2 A. I at least looked at them and scanned
3 them. I certainly read several in detail in
4 totality, as you stated before. But I would say I
5 did not read all the papers in complete totality.
6 Several, I may have just, you know, skimmed or
7 looked for the pertinent information.

8 Q. Okay. So your answer was with respect to
9 papers, and I want to focus on the exhibits.

10 A. I'm sorry. I meant -- when I said
11 "papers," I meant the exhibits that were papers at
12 the time or RFCs or things of that nature. I
13 considered them, you know. So I looked at all of
14 them.

15 Q. Okay. Understood.

16 Let's just go back to paragraph 15.

17 A. Mm-hmm.

18 Q. Your statement is "I also considered all
19 papers and exhibits filed."

20 What do you mean by "all papers" in that
21 statement?

22 A. Again, several of the exhibits are papers,
23 or research papers, if you will. So that's what
24 I -- I guess that's what I mean by "papers."

25 Q. Okay. So just so I understand now,

1 circling back, because all the papers that would be
2 research papers would be filed as exhibits, did you
3 review or -- did you read all of the exhibits filed
4 in IPR2023-00607?

5 ATTORNEY PYMENTO: Objection. Asked and
6 answered.

7 A. Yeah, I -- I considered them all. So I
8 looked at all of them. Some I read in much more
9 detail than others, but I considered them all for
10 the declaration.

11 Q. Did you understand all of the exhibits
12 filed in the present IPR?

13 A. Yes, I understood them all.

14 Q. Even though you didn't completely read all
15 of them?

16 ATTORNEY PYMENTO: Objection. Form.

17 A. Yeah. Correct. I mean, I've been in the
18 industry for quite a while, and I was, again, an
19 active participant at the time of the inventions
20 and topics. And so I'm familiar with these things
21 enough to understand them.

22 Q. Did you rely on any information that's not
23 contained in your declaration for rendering your
24 opinions?

25 A. No.

1 Q. Did you review any deposition transcripts,
2 written discovery, or pleadings filed in related
3 litigation?

4 A. I reviewed the transcript of Dr. Henry
5 Houh. I'm not sure how you say his last name.

6 Q. Henry Hough.

7 A. Henry Hough. Yeah, I reviewed the
8 transcript of Dr. Henry Hough.

9 Q. That transcript is from the present IPR.
10 Did you review any litigation documents?

11 A. I reviewed the patent history. If that
12 would qualify as a litigation document, I'm not
13 sure. You might need to clarify what kind of
14 litigation documents you're referring to, or what
15 would be an example.

16 Q. Documents filed in related District Court
17 litigation.

18 A. Oh, in District Court. Not for
19 consideration of this particular declaration. I've
20 been -- I'm working with, again, Oded and his firm
21 in the District Court matter.

22 Q. Right. So were any documents from
23 District Court reviewed in preparation for your
24 declaration?

25 ATTORNEY PYMENTO: Objection. Asked and

1 answered.

2 **A. Yeah, I don't believe in specific**
3 **preparation for this declaration.**

4 ATTORNEY HUH: Julian, just a quick thing.
5 Asked and answered is not a proper objection.
6 It's objection. Form.

7 ATTORNEY PYMENTO: You can stick to asking
8 the questions; I'll stick to the objections. If
9 it's an improper objection, I'm sure it will be
10 reviewed by the board later. But go ahead.

11 ATTORNEY HUH: It's a speaking objection
12 implying to the witness how to answer, and it's
13 improper under the rules.

14 ATTORNEY PYMENTO: Yeah, I disagree. But
15 objection to form.

16 You can proceed, counsel.

17 ATTORNEY HUH: I know when I can proceed.

18 ATTORNEY PYMENTO: All right. Just making
19 sure.

20 ATTORNEY HUH: Julian, please stop
21 speaking.

22 ATTORNEY PYMENTO: Please stop making
23 ridiculous remarks.

24 ATTORNEY HUH: It's not ridiculous.

25 ATTORNEY PYMENTO: Just go ahead and

1 proceed with the deposition.

2 ATTORNEY HUH: Julian, stop interrupting.
3 Stop interrupting and stop providing speaking
4 objections.

5 ATTORNEY PYMENTO: Objection to form.

6 BY ATTORNEY HUH:

7 Q. So who wrote your declaration, Doctor?

8 A. I did.

9 ATTORNEY PYMENTO: Objection. Form.

10 THE WITNESS: Sorry.

11 Q. And you personally wrote every word. Is
12 that correct?

13 A. Well, I worked with counsel to fine-tune
14 the paper. At the end, obviously, I'm not a
15 lawyer, so some of the legal material, I worked
16 with counsel to obtain. But this is -- this --
17 this is a paper I wrote, yes.

18 Q. You personally typed this declaration out?

19 ATTORNEY PYMENTO: Objection. Form.

20 A. As I mentioned, I worked with counsel back
21 and forth to get the document in shape. So I
22 didn't type perhaps every single letter on the
23 page. I obtained some of the material, as I
24 mentioned, that's legal in nature. That was kind
25 of not my exact expertise, so some of the wording

1 **for that was provided through editorial cycles back**
2 **and forth.**

3 Q. So who wrote the first draft of the
4 declaration?

5 ATTORNEY PYMENTO: Objection. Form.

6 I'm going to instruct the witness to the
7 extent that there's any privileged information
8 related to communications for the purposes of
9 this line of questioning.

10 ATTORNEY HUH: There's no communications
11 here. I'm asking who wrote the first draft.

12 ATTORNEY PYMENTO: I said to the extent
13 that, you know, he would think about it, talking
14 about any communications, to clarify.

15 Q. You can answer, Dr. Congdon.

16 A. **I provided the initial material for this**
17 **declaration.**

18 Q. You provided the first draft of the
19 declaration. Is that correct?

20 A. **I provided written material that would be**
21 **considered, yeah, an initial draft. It wouldn't**
22 **have been formatted and in the proper -- in the**
23 **proper, you know, kind of style that is used for**
24 **such documents. But I provided written material**
25 **that would serve as an initial draft.**

1 Q. Were any opinions provided to you by
2 counsel?

3 A. Well, as -- there's certain things I note
4 in the declaration that I've been informed by
5 counsel about, again, mostly legal matters. And so
6 those aren't necessarily opinions. They're more
7 statements of fact or procedure for the legal
8 process.

9 Q. Okay. So were any opinions provided to
10 you by counsel?

11 A. Opinions, no.

12 ATTORNEY PYMENTO: Objection. Form.

13 A. Opinions, I provided -- I mean, I'm
14 stating the opinions, and those opinions were
15 developed through discussion/interaction with
16 counsel and reviewing material and discussing that.
17 The specific opinion would ultimately be mine in
18 this declaration.

19 Q. In reaching the opinions in your
20 declaration, did you perform any calculations?

21 A. I did not do any mathematics or
22 calculating analysis of any of the -- any of the
23 opinions that are provided aren't really
24 calculation in nature or required calculation.

25 Q. And in providing the opinions in your

1 declaration, did you perform any simulations?

2 **A. I did not.**

3 Q. So let's turn to your declaration at
4 page 7 where you address the level of ordinary
5 skill in the art.

6 Let me know when you're there, please.

7 **A. I'm there.**

8 Q. So at paragraph 28, you state that "My
9 qualifications and experience exceed those of a
10 person of ordinary skill in the art."

11 Did I read that correctly?

12 **A. That is correct.**

13 Q. What do you mean by that statement?

14 **A. Well, if you look at what I considered a
15 person of ordinary skill in the art for this
16 particular patent, the level of qualifications are
17 something that I have, clearly have, and have
18 beyond that as it mentioned.**

19 **So I guess, to me, it's fairly obvious
20 that I have qualifications above and beyond what
21 the current person of ordinary skill in the art has
22 as described in paragraph 26 and 27.**

23 Q. Are you stating that you're an expert on
24 the subject matter of the '698 patent?

25 **A. Yes, I believe I'm an expert on the**

1 **subject matter.**

2 Q. Now, the patent was filed, or the earliest
3 claim priority is April 13, 2000.

4 A. **Correct.**

5 Q. Did you have sufficient qualifications and
6 experience to qualify as an expert in the '698
7 patent as of that time?

8 A. **Yes, I believe I did.**

9 Q. As of April 2000, were you an expert in
10 network communications?

11 A. **Yes, I was.**

12 Q. As of April 2000, were you an expert in
13 virtual lease lines?

14 A. **Yes, I was an expert in networking and
15 including the use of virtual lease lines.**

16 Q. As of April 2000, were you an expert in
17 traffic engineering?

18 A. **Yes, I believe I could be considered an
19 expert in traffic engineering at that time.**

20 Q. As of April 2000, were you an expert in
21 bandwidth brokers?

22 A. **Again, yes, I would be considered -- I
23 believe I could be considered an expert with
24 respect to bandwidth brokers at the time. Given
25 this deposition -- excuse me. I mean, I -- when**

1 you're saying "expert," yeah, I mean, I would
2 consider that I could be considered an expert for
3 that, yes.

4 I'm trying to relate this back to the
5 definition of a person of ordinary skill in the
6 art, but you're talking specifically now about
7 being an expert. I don't know that we have a -- do
8 we have an equivalent definition there of "expert"?

9 Q. Based on my understanding of your
10 testimony in the context of paragraph 28, your
11 qualification and experience exceed those of a
12 person of ordinary skill in the art.

13 So if I understand your testimony
14 correctly -- and correct me if I'm wrong -- an
15 expert would be someone that exceeds the
16 qualification and experience of a POSITA?

17 A. Yeah. Using that --

18 ATTORNEY PYMENTO: Objection. Form.

19 A. Using that definition of "expert," then I
20 certainly would qualify as an expert in April 2000
21 with respect to bandwidth brokers, virtual lease
22 lines, all of the technologies included in this
23 patent.

24 Q. Again, just to clarify, when I say
25 "POSITA," I'm just using an abbreviation for

1 "person of ordinary skill in the art."

2 Do you understand that?

3 A. Yes, I do.

4 Q. Okay. So as of April 2000, were you an
5 expert in DiffServ?

6 A. Yes, I was.

7 Q. As of April 2000, were you an expert in
8 MPLS?

9 A. Yes, I was.

10 Q. As of April 2000, were you an expert in
11 setting up LSPs?

12 A. Setting up LSPs? You mean operating MPLS
13 equipment? I mean, I understand -- I would be -- I
14 understand the procedure of setting up an LSP, what
15 an LSP is. It was not my job to have hands-on
16 experience with equipment where LSPs were being
17 established through interacting with the equipment.

18 So I need further description of what you
19 mean by setting up LSPs. Is that strictly
20 understanding the process or actually setting one
21 up yourself?

22 Q. Well, that you have sufficient
23 qualifications and experience to exceed the level
24 of a POSITA to set up LSPs.

25 A. Yes, I believe I had at that time frame

1 **exceed the experience of a POSITA for setting up**
2 **LSPs.**

3 Q. Let me just step back for a second.

4 You testified that you are an expert in
5 network communication. Do you recall that?

6 A. **Yes, I do.**

7 Q. Just briefly, what are networks?

8 A. **What are networks? Specifically in the**
9 **context of computer networks, I mean, the word**
10 **"network" can be used in many different contexts,**
11 **but what I'm assuming you're talking about is**
12 **communication networks --**

13 Q. Yes.

14 A. **-- telecommunication networks.**

15 Right. So they are -- they are
16 interconnections, you know, of communication
17 technologies, linked protocols/devices, for
18 enabling internet IP-based communications.

19 Q. Do you have an understanding of local
20 areas?

21 A. **Absolutely understand local area networks.**
22 **I'm assuming you were going to say, when you said**
23 **"local areas," you implied local area networks.**

24 Q. Yes, local areas in the context of
25 networks. What is a local area?

1 A. So a local area network, a LAN, typically
2 an IEEE 802 defined network, which is -- again,
3 perhaps Ethernet is the best example of that.
4 There are other local area network technologies,
5 but it's an interconnection of nodes and links,
6 again operating most commonly at layer 2 in the ISO
7 stack.

8 Q. Do you have an understanding of a domain?

9 A. Again, in the context of a network domain
10 or an autonomous domain?

11 Q. In the context of computer networks.

12 A. Yes. In the context of computer networks,
13 domains are administrative domains or kind of a --
14 often associated with a layer 3 network that is
15 under the control of a specific operator.

16 Autonomous domain is used frequently to
17 describe the -- managed by a separate -- you know,
18 an entity.

19 Q. Is a computer network and a domain
20 different?

21 A. Well, a computer network, depending on how
22 it's used, in which context, but a computer network
23 could encompass a network domain or multiple
24 network domains.

25 Q. Just so I understand your understanding of

1 what a domain is, is a domain a computer network
2 that's controlled by a single entity?

3 ATTORNEY PYMENTO: Objection. Form.

4 **A. Well, I would say managed and operated by**
5 **an operator, you know. So "controlled" has a lot**
6 **of different meanings, again depending on the**
7 **context in which it's used. But a network domain**
8 **is usually a computer network that is, let's say,**
9 **managed and operated by a network operator.**

10 Q. And in this sentence, you used the word
11 "network operator." Previously, you used the word
12 "entity."

13 Are these different things?

14 ATTORNEY PYMENTO: Objection. Form.

15 **A. Again, a lot of this is -- those words are**
16 **context-dependent. I would say in the way I was**
17 **describing them, no, they're not different things.**
18 **An entity could be an organization; could be an**
19 **enterprise. And an operator is a person**
20 **responsible for, you know, operating that network**
21 **domain. So I did use that sort of interchangeably**
22 **there.**

23 But I guess I would probably further
24 clarify that. An entity is probably a larger scope
25 than an individual that's operating a network, in

1 **the way I was using it.**

2 Q. Okay. So can a network domain include
3 more than one local area?

4 ATTORNEY PYMENTO: Objection. Form.

5 **A. A local area network, yeah. A network**
6 **domain can certainly include more than one local**
7 **area network, yes.**

8 Q. Okay. Let's step back to your
9 qualifications and experience, effectively prior,
10 you know, as of April 2000, when you testified that
11 you were an expert in the subject matter of the
12 '698 patent.

13 So you testified that you are an expert in
14 bandwidth brokers as of April 2000. What is a
15 bandwidth broker?

16 ATTORNEY PYMENTO: Objection. Form.

17 **A. Well, we have a claim construction, I**
18 **believe, discussion about a definition of a**
19 **bandwidth broker in the context of this patent, and**
20 **we should probably refer to that.**

21 Q. You're welcome to refer to it. I'm asking
22 as of April 2000, what was your understanding of a
23 bandwidth broker? I'm not asking for a
24 construction. But go ahead.

25 ATTORNEY PYMENTO: Objection. Form.

1 A. Yeah. So in April 2000 time frame, a
2 bandwidth broker was some -- again, some kind of
3 entity, say -- let's say a software entity or a
4 software running on a hardware entity that was
5 responsible for managing resource allocations,
6 doing admission control and managing resource
7 allocations in a domain or in a local area network.
8 Again, depending on the scope of the bandwidth
9 broker, you could have multiple of those within a
10 network domain.

11 But the bandwidth broker again would be
12 some entity that's responsible for admission
13 control and resource management, and, you know,
14 which would involve potentially configuring North
15 America devices as well to support the resource
16 requests.

17 Q. Okay. And how did you become aware of
18 bandwidth brokers as of April 2000?

19 ATTORNEY PYMENTO: Objection. Form.

20 A. Well, around -- in April 2000 I was the
21 chief technology officer for Hewlett-Packard's
22 network business. I was responsible for our
23 product directions, understanding the industry
24 trends, making decisions about technology.

25 At the time I also was a participant in

1 the IETF in that time frame, attending meetings
2 where quality and service discussions were taking
3 place, the development of DiffServ and IntServ. I
4 particularly participated in the subnet bandwidth
5 manager RFC development.

6 So as the chief technology officer of
7 Hewlett-Packard's networking, I interacted with our
8 research department, HP Labs, who was responsible
9 for network research at the time. Quality of
10 service was a very important topic, quality of
11 service on the internet, and of which bandwidth
12 brokers play a part.

13 So I was familiar through a number of
14 engagements with what was going on in the industry
15 at that time.

16 Q. Why was the industry trending towards
17 bandwidth brokers?

18 ATTORNEY PYMENTO: Objection.

19 Q. Or was it using bandwidth brokers?

20 ATTORNEY PYMENTO: Same objection. Form.

21 A. One of the problems the industry has is
22 always evolving their solutions and touching -- and
23 requiring modifying more multiple components of the
24 network in order to achieve a new solution. That's
25 always a challenge.

1 The bandwidth broker offered an
2 opportunity to drop in a component that could --
3 could enable functionality on existing equipment
4 without requiring a lot of upgrades to existing
5 equipment.

6 Also at the time, there were concerns
7 about scalability of quality of service, you know,
8 the initial ideas behind involving what's called
9 IntServ, integrated services. It was difficult to
10 scale and difficult to create an end-to-end
11 interoperable solution. So a bandwidth broker
12 offered a very nice migration path and solution to
13 augment existing equipment to support the needs of
14 quality of service at the time, or differentiated
15 service at the time.

16 Q. I'm sorry. I'm just reading the answer.
17 It's lengthy.

18 A. A little bit of a dissertation there.

19 Q. I'm just going to try to summarize it, but
20 please correct me if I'm wrong.

21 Basically, it was recognized that it was
22 technically desirable to have been a bandwidth
23 broker to allocate resources, to provide quality of
24 service, scaling, and interoperable solutions. Is
25 that correct?

1 ATTORNEY PYMENTO: Objection. Form.

2 A. Yeah, that's -- that's an important aspect
3 of it. I mean -- yes. I mean, that's a true
4 statement. I guess the -- clearly, the motivation
5 was to continue -- in general, the motivation for
6 quality of service over the internet was to provide
7 service for applications that require -- had
8 different requirements at the time. So, you know,
9 things like voice calls, voice and video over the
10 internet, it was believed that we needed special
11 service, quality of service for those applications
12 to communicate.

13 So there was a desire to enhance internet
14 service to support those applications. That sounds
15 great, but to make that work end-to-end is
16 difficult or may have required upgrading or
17 modifying a lot of existing equipment.

18 So one of the benefits that a bandwidth
19 broker had was the ability to come in and help
20 configure those -- configure the existing equipment
21 in order to support some of those new applications,
22 without having to upgrade everything in the
23 network.

24 So that was one of the things I was trying
25 to indicate was there's a migration path towards

1 getting to the ultimate goal of supporting
2 differentiated services over the internet or over
3 internet technologies. And a bandwidth broker was
4 a great step in getting to that solution, because,
5 again, it didn't have to touch every -- every
6 device to make the solution work.

7 Q. So when you have a network and you want to
8 implement a bandwidth broker for end-to-end quality
9 of service, that network is going to have different
10 protocols, perhaps, based on different networks
11 that it traverses. Right?

12 ATTORNEY PYMENTO: Objection. Form.

13 A. Possibly, yes.

14 Q. And at the time, to provide
15 interoperability, bandwidth brokers were utilized
16 across the path. Correct?

17 ATTORNEY PYMENTO: Objection. Form.

18 A. Yes, I think that's a true statement. I
19 think not just interoperability but to -- to allow
20 kind of an upgrade of functionality, of different
21 types of networks as well. Right? So you can hide
22 the differences between different local area
23 networks or their capabilities, and have a
24 bandwidth broker can -- can hide that.

25 So it's more than just interoperability.

1 **It's also maybe a migration towards new**
2 **functionality.**

3 Q. Okay. And your answer previously
4 mentioned DiffService. Do you recall that?

5 A. Well, what I was trying to say was, when I
6 mean differentiated services, what I'm trying to
7 say -- I wasn't specifically intending to reference
8 DiffServe. That is -- that is an example. But
9 what I mean by differentiated services is I need to
10 distinguish certain types of traffic over the
11 network to give it different quality of service
12 treatment. So I need to differentiate the traffic
13 on the network.

14 So that -- when I was saying
15 "differentiated service," that's what I mean. It's
16 a higher-level general concept. DiffServe is a
17 very specific approach to doing that that the IETF
18 has developed, and it's in use.

19 Q. Just for closure, what is your
20 understanding of DiffServe?

21 A. DiffServe? Well, again, there's specific
22 RFCs that are written at the IETF that specify
23 that -- and I don't -- you know, I don't know the
24 numbers off the top of my head. But the concept is
25 that you have a mark -- a code point, as it's

1 called -- in the packets. And that code point
2 identifies the type of treatment that devices in
3 the network are supposed to give it, the
4 differentiated treatment of that packet should have
5 over other packets. It's called a per-hop
6 behavior.

7 And so there's a code point in the network
8 packets that identifies that distinct --
9 differentiates that packet from another and
10 associates it with a per-hop behavior, which would
11 be perhaps a queueing technique, a prioritization
12 technique. There's a number of general
13 quality-of-service mechanisms that could be applied
14 to a packet.

15 And so the idea, as network packets enter
16 the network at the edge, you determine the per-hop
17 behavior you would like these packets to have. You
18 mark them with that. And the devices that are
19 deeper in the network are able to provide that
20 per-hop behavior to those packets without
21 maintaining a large amount of state, as it's known,
22 where they don't have to redo all of the work or
23 maintain individual flow state for that packet.
24 They can very easily provide the per-hop behavior
25 by just looking at the code point. And, again,

1 there's a series of -- of RFCs which are
2 effectively standards or specifications that
3 indicate how that procedure is supposed to take
4 place.

5 Q. Okay. At the time, it was known to
6 utilize bandwidth brokers with DiffServe. Correct?

7 ATTORNEY PYMENTO: Objection. Form.

8 A. I can't recall specifically. I mean, when
9 you're saying at the time, you're talking about,
10 say, April of 2000?

11 Q. Prior to then.

12 A. Prior to then?

13 I can't recall specific dates at which
14 that would be done off the top of my head. I would
15 have to look at some documents and things. But it
16 was known that a -- that a -- around that time
17 frame, that you needed to do -- for differentiated
18 services, and particular DiffServe, to work
19 correctly, you do need to do admission control of
20 network packets before you give them the DiffServe
21 code point. And a bandwidth broker was a -- was
22 one means of doing that.

23 So I would say yes, they were used
24 together. I don't -- I can't say specifically what
25 year or date off the top of my head.

1 Q. Okay. And you testified that you're an
2 expert in MPLS. What is your understanding of
3 MPLS?

4 A. MPLS stands for multiprotocol label
5 switching. Again, it's a technique that was
6 developed to allow the networks to scale and
7 perform very quickly by applying a label to a
8 packet. Again, it's a tag that allows the MPLS
9 routers to very easily and quickly decide how to
10 forward those packets without, again, having to
11 maintain a whole lot of state, a per flow state.

12 Cisco Systems had proposed a system called
13 tag switching, which ultimately resulted in the set
14 of specifications that define how you do MPLS. So
15 you're applying a tag to a packet that identifies
16 the next hop, if you will, through the network.
17 And so the MPLS routers themselves do not have
18 to -- they just need to look at the tag. They have
19 a local database that tells them for that tag how
20 to forward it in a very simple way.

21 So, again, it's kind of an alternative
22 approach to how old traditional IP routers had
23 worked in the internet, and was an approach to
24 provide higher performance and better scalability
25 by reducing the amount of work required to forward

1 **traffic through the core of a network.**

2 Q. Okay. Were MPLS networks and DiffServe
3 networks used separately and apart from each other,
4 or could they interoperate?

5 ATTORNEY PYMENTO: Objection. Form.

6 A. Well, they -- they existed at the time.
7 **They could be used independently. They could be --**
8 **with the appropriate mechanisms in place, they**
9 **could be interconnected.**

10 Q. Did you ever interconnect DiffServe and
11 MPLS network domains, so that way, they could
12 operate together?

13 ATTORNEY PYMENTO: Objection. Form.

14 A. So, again, personally at the time of this,
15 **I was the chief technology officer of networking,**
16 **so my job was to understand these technologies. I**
17 **didn't particularly have hands-on experience**
18 **configuring devices to do that specific activity.**
19 **But I understood the technology enough to know how**
20 **it would be done or, you know, to propose whether**
21 **that should be done for our products, for example.**
22 **But I did not myself configure any devices to make**
23 **that work.**

24 Q. As of 2000 April, did the products that
25 you were responsible for allow for MPLS and

1 DiffServe network domains to interoperate?

2 ATTORNEY PYMENTO: Objection. Form.

3 A. Our product portfolio very briefly had an
4 MPLS product as part of it. We worked with third
5 parties to do that. So we did -- and it was not a
6 very successful product for us. Our product focus
7 was much more in the local area network arena, and
8 we had some interactions with core networking and
9 wide area networking. That's why we needed to have
10 those features.

11 So we didn't particularly have a solution
12 that we created that was intended to operate that
13 way with DiffServe and MPLS networks. It wasn't
14 our product focus area.

15 Q. Okay. So, previously, you testified, "I
16 understood the technology enough to know how it
17 would be done," implying utilizing DiffServe and
18 MPLS domains together.

19 So how did you obtain that understanding
20 if the products that you oversaw did not implement
21 that?

22 ATTORNEY PYMENTO: Objection. Form.

23 A. Again, by participating in the IETF. By
24 working with our research labs, HP Labs, and by
25 keeping an eye on technology as it was being

1 developed to help set a direction for our product
2 portfolio. So it was my job to understand those
3 technologies and if they were applicable to the
4 markets that we were -- we were addressing. So it
5 was my job to understand that.

6 Q. So was it known in the art how to make
7 MPLS and DiffServe domains interoperate?

8 ATTORNEY PYMENTO: Objection. Form.

9 A. I would say this was at a very early --
10 again, dates, I can't specifically tell you which
11 dates. But in this time frame, my general
12 recollection is that this was an evolution, a very
13 early time. And so MPLS was very important
14 technology, and so people -- but it wasn't used
15 perhaps in the local area or, say, within the
16 enterprise networks or campus networks, but it was
17 important to make those networks interoperate or
18 to -- or it was important to connect, interconnect
19 them.

20 So it was an evolving -- an evolving
21 space. So people were considering different --
22 different approaches at the time.

23 Q. Was it known in the art to utilize
24 bandwidth brokers with MPLS domains?

25 ATTORNEY PYMENTO: Objection. Form.

1 A. I'm trying to remember when MPLS and
2 bandwidth brokers became discussed widely or much
3 more widely. I don't know the exact dates again.
4 I do recall companies such as Google that discussed
5 the use of bandwidth brokers and MPLS, and I don't
6 know -- I don't have specific reference to their
7 presentations at the time, but -- and I don't
8 recall the exact time, but -- but there were
9 certainly discussions of using bandwidth brokers
10 and MPLS together.

11 Q. Do you recall reviewing any exhibits in
12 the present IPR proceeding that, in fact, evidence
13 or that actually depict a bandwidth broker in an
14 MPLS domain?

15 ATTORNEY PYMENTO: Objection. Form.

16 A. Well, I recall the -- in the discussions
17 and in the declaration I wrote, discussions about
18 the bandwidth broker and MPLS domain with respect
19 to the Xiao paper. The paper is somewhat of a
20 technology survey of the time, if you will, and
21 there's discussions of bandwidth brokers and
22 DiffServe networks. There's discussion of MPLS.
23 So all those technologies were described in that
24 paper at the time.

25 And the IPR, or the -- you know, in some

1 of the -- some of the documents reviewed, there was
2 an assertion that Xiao was discussing a bandwidth
3 broker in the MPLS network, but as I recall, the
4 paper was a little unclear on that specific point.

5 Q. Setting aside the Xiao reference, do you
6 recall any other exhibit depicting a bandwidth
7 broker in an MPLS domain?

8 ATTORNEY PYMENTO: Objection. Form.

9 A. Not a specific bandwidth broker as kind of
10 described by the '698 patent. The Gibson patent
11 talks about admission control and paths set up and
12 things with respect to MPLS networks, but doesn't
13 specifically identify a bandwidth broker as
14 described in the '698 patent.

15 The Schelen references don't talk about
16 MPLS at all.

17 Q. Setting aside Xiao, Gibson, or the Schelen
18 references, do you recall any other exhibit
19 exhibiting a bandwidth broker in an MPLS domain?

20 ATTORNEY PYMENTO: Objection. Form.

21 A. Other than the '698 patent itself, which I
22 guess is an exhibit, I don't off the top of my head
23 recall that.

24 Q. If you had seen a depiction of a bandwidth
25 broker in an MPLS domain, would that imply to you

1 that, in fact, it was known in the art to utilize a
2 bandwidth broker and an MPLS domain?

3 ATTORNEY PYMENTO: Objection. Form.

4 A. I think I could only answer that in the
5 context of the picture, or how it was shown, or,
6 you know, what's depict -- you know, what -- how is
7 the picture described. That is -- it would be
8 difficult to answer that without having that
9 context.

10 Q. Well, you testified, Doctor, that you
11 reviewed all the exhibits and you understood them;
12 and sitting here you don't recall a bandwidth
13 broker being depicted in the MPLS domain. Is that
14 correct?

15 ATTORNEY PYMENTO: Objection. Form.

16 A. I think you mentioned early on in this
17 that this wasn't a memory test, and -- so I don't
18 remember every image or picture in all the papers.

19 But my recollection was that, other than
20 the '698 patent where the bandwidth broker is
21 explicitly talked about operating in an MPLS
22 network, I don't -- there was definitely other
23 papers that weren't as clear on that. So I don't
24 recall a specific paper right now.

25 Q. You're free to review your declaration if

1 you would like and identify any exhibit that you
2 considered in your declaration that depicts a
3 bandwidth broker in an MPLS domain.

4 ATTORNEY PYMENTO: Objection. Form.

5 **A. I don't believe I'm referencing any other**
6 **exhibits than Xiao, Schelen, Gibson, and the**
7 **testimony in the patent itself.**

8 Q. So is it fair to say that if you had seen
9 a document or an exhibit that was filed in the
10 present IPR and it illustrated a bandwidth broker
11 in an MPLS domain, you would have cited to it
12 inside of your declaration. Is that correct?

13 ATTORNEY PYMENTO: Objection. Form.

14 **A. Again, other than the actual '698 patent**
15 **itself --**

16 Q. Sorry, Doctor. Are you --

17 **A. I'm still looking at the references.**

18 **So the exhibits that I made, I don't**
19 **believe I referenced any exhibits other than the --**
20 **other than the ones that were described. And, you**
21 **know, the declaration's really in response to, you**
22 **know, the statements that combining these certain**
23 **exhibits or certain papers would render things**
24 **obvious.**

25 Q. Is there a reason why you would exclude an

1 exhibit from your declaration that, in fact, showed
2 a bandwidth broker in an MPLS domain?

3 ATTORNEY PYMENTO: Objection. Form.

4 A. Other than there wasn't one that existed
5 at the time? I -- I don't -- I don't see why I
6 would have excluded anything.

7 Q. Would you have excluded it because it was
8 inconsistent with the opinions provided in your
9 declaration?

10 ATTORNEY PYMENTO: Objection. Form.

11 A. No.

12 Q. Would it surprise you to learn that, in
13 fact, there is an exhibit on the current IPR
14 depicting a bandwidth broker in an MPLS domain, and
15 that exhibit is not the patent at issue and it's
16 not the primary or secondary references used in the
17 combination?

18 ATTORNEY PYMENTO: Objection. Form.

19 A. I wouldn't be particularly surprised. I
20 mean, all -- at this time there was a lot of
21 research and a lot of different approaches being
22 proposed, again to address creating what they call
23 differentiated services for new avocations. So
24 this was a huge focus in the industry.

25 So I wouldn't be particularly surprised

1 that somebody had a, you know, had a discussion
2 about a bandwidth broker in an MPLS network.
3 That's not the complete essence of the '698 patent.
4 It's a little bit more involved than just having a
5 bandwidth broker and an MPLS together. But -- so I
6 wouldn't be surprised if there were not -- weren't
7 such a -- such a reference.

8 Q. We've been going for almost an hour and a
9 half. Dr. Congdon, if you would like a break, we
10 can do that.

11 A. Yeah, I would appreciate a break. That
12 would be great.

13 Q. Sure.

14 ATTORNEY HUH: Julian, is that okay with
15 you?

16 ATTORNEY PYMENTO: That's fine with me.

17 THE WITNESS: Yeah. Doesn't have to be
18 long. Just a bio break would be nice.

19 THE VIDEOGRAPHER: Okay. Going off the
20 record at 10:31 a.m.

21 (Recess taken from 10:31 a.m.
22 to 10:41 a.m.)

23 THE VIDEOGRAPHER: Back on the record at
24 10:41 a.m.

25 * * *

1 BY ATTORNEY HUH:

2 Q. Great. Welcome back, Dr. Congdon.

3 Did you speak with counsel during break?

4 A. I did not.

5 Q. Okay. Let's turn to the '698 patent. I'm
6 going to provide the patent for you. And let me
7 know when you receive it and when you can open it.
8 It should be in the chat box.

9 A. I received it, and I'm in the process of
10 opening it.

11 Q. Great.

12 A. There we go.

13 Q. Okay. So what I'd like to do is I'd like
14 to understand your -- I'd like to ascertain your
15 understanding of how the '698 patent sets up LSPs.

16 Can you review the patent and maybe inform
17 me on your understanding, please.

18 A. Yeah.

19 ATTORNEY PYMENTO: Objection. Form.

20 A. Okay. Just a second.

21 Q. You can take your time.

22 A. Yeah.

23 So there's a couple different places where
24 the setup of LSPs are discussed. I mean, in the
25 limitation -- the final limitation of Claim 1, it

1 kind of describes that it performed the label --
2 LSP setup.

3 And then in the specification of the text,
4 they talk a little bit about -- the description,
5 you know, in column 7, line 50, talked a little bit
6 about possibly setting up an LSP. There may not be
7 a need. If an LSP exists, they may not have to set
8 one up there.

9 And then also in column 10 -- well, again
10 that's Claim 1.

11 Column 9, they talk, you know, a little
12 bit about the service actually -- service
13 implementation step where the bandwidth broker has
14 to implement the granted service. So once it's
15 been agreed to that the service can be granted, so
16 that -- the bandwidth broker at that point does
17 configuration of specific devices, its devices or
18 LSP setup at that time.

19 So is there a specific question you'd
20 like --

21 Q. Well, I mean -- so my question was,
22 clearly it describes the concept of LSP setup in an
23 MPLS domain, and I believe you cited some of those
24 portions.

25 My question is how? How is an LSP set up

1 in the context of the '698 patent?

2 ATTORNEY PYMENTO: Objection. Form.

3 A. Well, so the label switch routers would
4 need to be configured. Their forwarding tables,
5 the tags would need to be configured.

6 So one way in which that could be done,
7 and I don't think it's specifically --

8 A. Well --

9 Q. -- I'm being too specific about it.
10 I'm sorry.

11 Q. I don't mean to cut you off. I'm trying
12 to help you.

13 A. Okay.

14 Q. I'm not asking for you to tell me how a
15 POSITA would do it.

16 A. Okay.

17 Q. So I'm asking you how does the patent
18 describe doing it.

19 Let me guide you, if I may, to, for
20 example, column 6, line 60 through 61.

21 ATTORNEY PYMENTO: Counsel, just for
22 future, just don't cut off the witness when he's
23 answering the question. If you have guidance to
24 provide, you can do it after he answers. Just
25 for the future.

1 Q. Okay. So, Dr. Congdon, if you would like
2 to continue with how a POSITA would do it, please
3 do so. And then we can move to my specific
4 question.

5 A. Well, in column 6, around line 60, what
6 we're talking about is a specific way that -- where
7 that functionality that was described in the RATES
8 reference, which was work at the time. And so
9 they're referencing using the setup mechanism used
10 in RATES, which would be one way of doing that.

11 Q. Okay. So in column 6 at line 32, there's
12 a title. Can you read that, please, title on the
13 record.

14 A. **"Detailed Description of Preferred**
15 **Embodiments of the Invention."**

16 Q. Thank you.

17 So under the detailed description of the
18 preferred embodiments of the invention of the '698
19 patent, it describes utilizing the RATES teachings
20 to set up LSPs for MPLS. Correct?

21 A. Yeah. What it's describing in column 60
22 is -- specifically, it says, "For MPLS networks the
23 LSP setup mechanism used in RATES is used." So,
24 yes.

25 Q. Okay. So one embodiment of the '698

1 patent implements the RATES teachings for LSP
2 setup. Right?

3 **A. That's what the patent in line 60 is**
4 **saying, yes.**

5 Q. Okay. Have you looked at the RATES
6 teachings to understand how the LSP is set up in
7 the preferred embodiment of the '698 patent?

8 ATTORNEY PYMENTO: Objection. Form.

9 **A. I have not -- I have not looked at the**
10 **RATES paper in detail. I'm relying on my kind of**
11 **intuition of what it's doing, configuring the label**
12 **switch router -- configuring the actual labels**
13 **themselves in the label switch routers. But I did**
14 **not look at the RATES reference in detail to say**
15 **that.**

16 Q. I'm going to pass you in the chat box the
17 RATES paper that's referenced in column 6 of the
18 '698 patent.

19 **A. Okay. It's appeared. I'm downloading it.**

20 **Okay. I have the paper "RATES: A Server**
21 **for MPLS Traffic Engineering."**

22 Q. And do you recall reviewing this paper in
23 preparing your declaration?

24 **A. I did not read this paper in totality. I**
25 **recall just looking at the reference and skimming**

1 **it. So . . .**

2 Q. Did you have an understanding that this
3 exhibit is the RATES paper cited in the patent at
4 issue?

5 A. **Yes, I understand that this is the paper**
6 **that was cited.**

7 Q. Do you have an understanding of how the
8 RATES paper, filed as Exhibit 1016, teaches setting
9 up an LSP?

10 ATTORNEY PYMENTO: Objection. Form.

11 A. **Again, I didn't read it in totality. I**
12 **was basing it off of my understanding of how you**
13 **would configure devices at the time to set up an**
14 **LSP, and this server facilitated that activity.**

15 Q. RATES discloses a server that is used for
16 interdomain traffic engineering. Correct?

17 A. **I'm not familiar with it discussing**
18 **interdomain in the paper. That's a -- hold on.**
19 **"Through development for MPLS applications, the**
20 **RATES implementation has many similarities in**
21 **components to an intradomain differentiated service**
22 **bandwidth broker."**

23 **So they're comparing it with an**
24 **intradomain. You're saying an interdomain. Right?**

25 Q. So it's an intradomain server. Is that

1 correct?

2 **A. Yeah. It says "intradomain." "The RATES**
3 **server uses the client specific implementation for**
4 **an intradomain traffic engineering."**

5 **So it's, yeah, "intra."**

6 Q. Okay. And if we -- if I could direct your
7 attention to page 9 of RATES, second column to the
8 right under the "Conclusion" heading, the last
9 sentence of the conclusion, do you mind reading
10 that in the record, please.

11 **A. The last sentence of the conclusion states**
12 **that "RATES has components with functions similar**
13 **to those needed in a bandwidth broker and is**
14 **extensible for the use as an intradomain bandwidth**
15 **broker."**

16 Q. Do you understand what that statement is
17 saying, sir?

18 **A. Yes, I do.**

19 Q. And what is your understanding?

20 **A. That RATES as specified here is similar,**
21 **you know, to a bandwidth broker, for an intradomain**
22 **bandwidth broker. So -- yeah. I mean, it's a**
23 **pretty straightforward statement.**

24 Q. Okay. And just -- let's turn back to the
25 original question, which was how RATES teaches

1 setting up an LSP.

2 Let me direct your attention to page 2,
3 please, second column on the right. It's the first
4 paragraph, and it's the sentence about 11 lines
5 down, beginning with "Before mapping packets onto
6 an LSP."

7 Do you see that sentence, sir?

8 **A. Okay. So "before" -- "before mapping" --**
9 **I see that sentence. "Before mapping packets onto**
10 **an LSP, the LSP is set up, along an explicit**
11 **route" --**

12 Q. And how is it set up, Doctor?

13 ATTORNEY PYMENTO: Objection. Form.

14 **A. "-- if specified using a signaling**
15 **protocol permitting resource reservation such as**
16 **RSVP or CR-LDP."**

17 **So it's saying that the LSP is set up**
18 **using signaling protocols, and they give examples**
19 **of signaling protocols that could be used such as**
20 **RSVP or CR-LDP.**

21 Q. Okay. So taking that together with the
22 '698 patent's teachings that it utilizes RATES for
23 setting up an LSP, is it fair to say that the '698
24 patent contemplates setting up an LSP using a
25 signal protocol permitting resource reservation

1 such as RSVP or CR-LDP?

2 ATTORNEY PYMENTO: Objection. Form.

3 A. Well, my recollection, the '698 patent
4 doesn't specifically list or mention those
5 protocols as a means of doing setup, but it does
6 mention is that it does -- that it achieves
7 setup -- one embodiment is to achieve setup using
8 the mechanisms used in RATES. So sort of
9 indirectly it is referencing those protocols, but
10 it's not specifically referencing them here. And,
11 again, I think that's one -- one embodiment.

12 Let's see.

13 Well, it does state that the LSP setup
14 along the explicit route is specified using RSVP.
15 So it does specifically state that as an approach
16 to do LSP setup in column 2 of the '698 patent,
17 line 35.

18 Q. Do you mind reading into the record what
19 you're speaking to, sir?

20 A. So in the background -- this is the
21 background of the invention. In column 2 of the
22 '698 patent, line 35, there's a mention that --
23 that -- it's really a sort of similar description
24 of what was in the RATES paper, so as background.
25 But it talks about the LSP being set up along the

1 **explicit route, if that's specified, using a**
 2 **signaling protocol permitting resource reservation**
 3 **such as RSVP.**

4 Q. And if I understand this correctly, you're
 5 citing the '698 patent, column 2, lines 35 to 38.
 6 Correct?

7 A. **38. That is correct, yes.**

8 Q. So it's fair to say that utilizing RSVP or
 9 CR-LDP is within the scope of setting up an LSP in
 10 the '698 patent. Correct?

11 ATTORNEY PYMENTO: Objection. Form.

12 A. **Yeah. In the -- as we mentioned, in the**
 13 **detailed embodiment of the patent, it describes**
 14 **using the approach of RATES for LSP setup, and that**
 15 **approach as described in the RATES paper involves**
 16 **RSVP or CR-LDP as signaling protocols to do that.**
 17 **So that's one embodiment of doing that.**

18 Q. Thank you.

19 Let's turn back to the Claim 1, which you
 20 previously referred to in your testimony, sir.

21 Let me know when you're there, please.

22 A. **I'm there.**

23 Q. Okay. So in Claim 1, you previously cited
 24 performing LSP setup. Correct?

25 A. **Yeah. Claim 1, the final paragraph or**

1 **section of Claim 1 discusses performing LSP setup.**

2 Q. Does it mention LSP once, or does it
3 mention the setup twice?

4 ATTORNEY PYMENTO: Objection. Form.

5 A. Well, specifically what it mentions is
6 it's characterizing that step iv comprises the
7 following step, which is performing LSP setup and
8 passing resource requests from a bandwidth broker
9 to at least one intradomain IDB, or intradomain
10 broker, is responsible for control and
11 label-switched path setup.

12 So it's -- it mentions LSP setup twice in
13 that sentence.

14 Q. Do you have an understanding in the
15 context of the claim which entity is performing the
16 LSP setup?

17 A. As the claim is stated, it's the -- that
18 there's a request from a bandwidth broker to at
19 least one intradomain, 1DB, or IDB, intradomain
20 broker, where each intradomain broker is
21 responsible for admission control and
22 label-switched path setup.

23 So the intradomain broker is ultimately
24 performing the setup, at least one.

25 Q. And in the context of your statement and

1 description of the patent, the request may be an
2 RSVP request. Is that correct?

3 **A. That's one possible way in which that**
4 **request could be done, yes.**

5 Q. Another way the request could be done is
6 using CR-LDP. Correct?

7 ATTORNEY PYMENTO: Objection. Form.

8 **A. That's what the RATES paper describes.**
9 **This patent references that they're using the RATES**
10 **mechanism. I don't believe that the '698 patent**
11 **itself mentions anything about CR-LDP, but I need**
12 **to verify that.**

13 Yeah, it doesn't.

14 So, indirectly, that would be the case
15 through the RATES -- the reference from RATES.

16 Q. Understood.

17 Let's turn to your declaration at
18 paragraph 62, please.

19 **A. Okay.**

20 Q. In the second sentence in that paragraph,
21 you state -- and I'll read it into the record so
22 it's clear -- "In contrast to Gibson, a person of
23 ordinary skill in the art would have understood
24 that the '698 patent's objective is to achieve
25 dynamic allocation of the best path within the MPLS

1 domain at runtime using communication."

2 Did I read that correctly?

3 **A. Yes, you did.**

4 Q. Is it your opinion or understanding that
5 to teach the setting up of an LSP as recited in
6 Claim 1, the prior art must show dynamic addition
7 of a new LSP?

8 ATTORNEY PYMENTO: Objection. Form.

9 **A. Well, it was my opinion that you show the**
10 **dynamic allocation of a best path within an MPLS**
11 **domain at runtime. So that could involve**
12 **establishing that best path doing the LSP setup.**

13 Q. Okay. Just so I understand what you
14 believe the claim requires, would a prior art
15 teaching of dynamic addition of a new LSP path be
16 sufficient to teach performing LSP setup as recited
17 in Claim 1?

18 ATTORNEY PYMENTO: Objection. Form.

19 **A. Let me try to parse that.**

20 **So with respect to LSP setup, if there was**
21 **a prior art reference that's talking about dynamic**
22 **setup, that would discuss that particular element,**
23 **to make sure I'm understanding the question**
24 **correctly.**

25 **So we're trying to achieve allocation of a**

1 **best path within an LSP domain at runtime. So that**
2 **could involve doing dynamic LSP setup.**

3 Q. Let me ask you one clarifying question so
4 I understand.

5 Do you believe that the claim requires
6 choosing the best path for an LSP? And if so,
7 where is that in the claim?

8 ATTORNEY PYMENTO: Objection. Form.

9 A. **The claim requires performing an LSP**
10 **setup. So the final limitation in Claim 1 requires**
11 **performing an LSP setup.**

12 Q. The words "best path" are not present.
13 Correct?

14 A. **That's -- not in that part. Yeah, not in**
15 **that specific part of the claim element.**

16 Q. Does any claim require best path to be
17 selected?

18 ATTORNEY PYMENTO: Objection. Form.

19 A. **Yeah, we're not -- there's nothing in**
20 **Claim 1 that indicates anything about a best path,**
21 **just the LSP, the label-switched path.**

22 Q. Okay. So let me go back to my original
23 question prior to our best path discussion.

24 Would a prior art teaching of dynamic
25 addition of a new LSP path be sufficient to teach

1 performing LSP setup as recited in Claim 1?

2 ATTORNEY PYMENTO: Objection. Form.

3 A. Well, provided it contains the additional
4 limitations, wherein each intradomain broker is
5 responsible for admission control. So it has to do
6 with admission control as well. I mean, there's
7 additional limitations to the claim than just doing
8 the LSP setup. But if it did those other
9 limitations, then, yeah, that would be the case.

10 Q. I'd like to turn to your declaration at
11 paragraph 71.

12 A. Okay.

13 Q. And if you don't mind turning to
14 paragraph 71 at -- as presented on page 29, because
15 paragraph 71 spans two pages.

16 A. Correct.

17 Q. And there's a block quote, and then you
18 have a statement pertaining to what a POSITA would
19 have understood.

20 Do you see that statement?

21 A. Correct, after the block of text from the
22 testimony.

23 Q. Correct.

24 A. Yes.

25 Q. For clarity of the record, please read in

1 your testimony of what a person of ordinary skill
2 in the art would have understood.

3 **A. "A person of ordinary skill in the art**
4 **would understand that prior usage information can**
5 **be used as an indicator of future usage and enable**
6 **the ability to reserve or plan resource accordingly**
7 **ahead of time."**

8 Q. What do you mean by that statement?

9 **A. Well, what I mean by that statement is**
10 **that you can use -- if you keep track of the use of**
11 **resource allocations on a particular interface over**
12 **time, that can be used as an indicator for**
13 **establishing an advanced reservation in the future.**

14 Q. Okay. Is it your position that usage
15 information as recited in the claim can be used to
16 determine ahead of time if the bandwidth usage will
17 exceed available link bandwidth after adding a new
18 potential load?

19 ATTORNEY PYMENTO: Objection. Form.

20 **A. The claim recites having a data structure**
21 **which is keeping resource information over time,**
22 **and that database of resource information over time**
23 **is used as part of the admission control for an**
24 **advanced reservation.**

25 Q. Okay. So I understand there's a data

1 structure. I'm not -- I'm focusing on what is
2 usage information and how do you use it, because
3 the previous statement that you quoted in the
4 record pertains to usage information.

5 Do you see that?

6 **A. Yeah. The statement --**

7 ATTORNEY PYMENTO: Objection. Form.

8 **A. The statement I read does reference, yeah,**
9 **usage information.**

10 Q. Right. So I want to understand, what do
11 you mean by "usage information"?

12 So you provided testimony of what you
13 believe it means, and I'm just trying to clarify so
14 I understand what you think may be characterized as
15 usage information.

16 **A. Right. So --**

17 ATTORNEY PYMENTO: Objection. Form.

18 **A. Resource usage information is what we're**
19 **talking about, so it would be information about how**
20 **that resource has been used. And so the resource**
21 **is, you know, primarily here link bandwidth and**
22 **reservation requests for that link bandwidth.**

23 So we keep track of the requests for
24 bandwidth and the usage of the bandwidth in order
25 to try to determine whether we can use that --

1 well, to use that in the future for -- for advanced
2 reservations, for -- yeah.

3 Q. Okay. So I think I understand what you're
4 saying. I want to understand this in the context
5 of your understanding of usage information.

6 Can usage information be used to determine
7 ahead of time if the bandwidth will exceed
8 available link bandwidth after adding a new
9 potential load?

10 ATTORNEY PYMENTO: Objection. Form.

11 A. Yeah. If I understand the -- kind of the
12 hypothetical scenario you're talking about, you're
13 trying to determine whether the bandwidth is going
14 to get exceeded. That's what admission control is
15 all about. And so you're using usage -- the record
16 of usage information in order to make that
17 decision.

18 Q. And that's one use case for usage
19 information. Correct?

20 A. Yes. Correct.

21 ATTORNEY HUH: I believe I'm close to done
22 with this deposition, Julian. I'd like to take
23 a 5-minute break and review some answers to see
24 if we need any clarity. Maybe we could take a
25 5-minute break and reconvene afterwards.

1 ATTORNEY PYMENTO: Sure. That sounds
2 good.

3 ATTORNEY HUH: Thank you.

4 THE VIDEOGRAPHER: Going off the record at
5 11:18 a.m.

6 (Recess taken from 11:18 a.m.
7 to 11:21 a.m.)

8 THE VIDEOGRAPHER: Back on the record at
9 11:21 a.m.

10 ATTORNEY HUH: Dr. Congdon, thank you very
11 much for your time today. We have no further
12 questions.

13 THE WITNESS: Thank you.

14 ATTORNEY PYMENTO: No questions from me
15 either.

16 ATTORNEY HUH: Thank you everybody.

17 THE VIDEOGRAPHER: Anything else, counsel,
18 on the record before I read us off?

19 ATTORNEY HUH: Nothing from our side.

20 ATTORNEY PYMENTO: Nothing on our end
21 either.

22 THE VIDEOGRAPHER: Okay. We are going off
23 the record at 11:21 a.m.

24 THE REPORTER: Can I just get transcript
25 orders, please?

1 ATTORNEY HUH: I'll need a rough
2 transcript as well as an expedited final draft,
3 please.

4 THE REPORTER: Okay. And Julian?

5 ATTORNEY PYMENTO: I don't think we need
6 either.

7 THE REPORTER: Okay. Have a nice weekend,
8 everybody.

9 (Witness excused and deposition concluded
10 at 11:21 a.m.)
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1 CERTIFICATE OF REPORTER

2

3 I, Deanna J. Dean, Registered Diplomate
4 Reporter, Certified Realtime Reporter, and New
5 Hampshire licensed court reporter, the officer
6 before whom the proceedings were taken, do hereby
7 certify that the foregoing transcript is a true and
8 accurate record of these proceedings; that said
9 proceedings were taken in Stenotype note by me on
10 the April 5, 2024 , commencing at 9:05 a.m. PDT and
11 ending at 11:21 a.m. PDT.

12 I further certify that present on behalf of
13 Party Cisco Systems Incorporated were Gregory Huh
14 of Haynes and Boone, LLP, and on behalf of Party
15 Netsocket Incorporated Julian Pymonto of Fabricant
16 LLP.

17 I further certify that I am not related to, nor
18 associated with any of the parties or their
19 attorneys, nor do I have any disqualifying
20 interest, personal or financial, in the actions
21 within.

22 Dated this 9th day of April, 2024, at Hillsborough
23 County in the State of New Hampshire.

24

25



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