

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC., et al.
Petitioner

v.

NETSOCKET, INC., et al.
Patent Owner.

IPR2023-00607
Patent 7,190,698

Record of Oral Hearing
Held: June 25, 2024

Before RICHARD M. LEBOVITZ, STACEY G. WHITE, and
GARTH D. BAER, Administrative Patent Judges.

IPR2023-00607
Patent 7,190,698

APPEARANCES:

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

1:02 p.m.

JUDGE BAER: Sorry about that. Thanks, Ahmed. Good afternoon, everyone. This is our hearing for IPR 2023-00607 between Petitioner Cisco and Patent Owner NetSocket, Inc. I'm Judge Baer. With me, as well, are Judges Lebovitz and Judge White.

Let's get the parties' appearances, if we could. Please, who do we have for Petitioner?

MR. FOSTER: Good afternoon. This is Theo Foster with the firm of Haynes and Boone representing Petitioner Cisco Systems. Also with us on the line here in the meeting room is Gregory Huh. Mr. Huh will be presenting on behalf of Petitioner today.

JUDGE BAER: Thank you, Mr. Foster. And who do we have for Patent Owner, please?

MR. PYMENTO: Julian Pymonto on behalf of Patent Owner NetSocket with the law firm of Fabricant. With me is my colleague, who is lead counsel on this case, Mr. Rubino.

MR. RUBINO: Good afternoon, Your Honors. This is lead counsel, Mr. Rubino. I am also here with Mr. Pymonto, and I'm just in an office on the other side. And if I need to be on video, I can hop over and physically sit next to him, but, for now, I'm wondering if this is okay.

JUDGE BAER: Yes, that's just fine. Who will be presenting, though, your case?

MR. RUBINO: Mr. Pymonto will be presenting.

1 JUDGE BAER: Mr. Pymonto. Great. All right. Welcome,
2 everybody. It's good to have you all here. We appreciate you making the
3 effort to do this.

4 We set out our procedure in our hearing order. But just to make sure
5 we all have the details here, each party will have 60 minutes of total time to
6 present your case. We do have the full record in front of us, and the slides
7 you all sent, we have those, as well. But just to facilitate keeping the record
8 clear, if you would, if you're referring to a slide or to an exhibit, if you
9 would mention what slide you're referring to, what page number of the
10 exhibit, that would help us to keep the record clear.

11 Before we get going, does counsel for Petitioner have any questions
12 for us? Mr. Huh?

13 MR. HUH: No questions, Your Honor.

14 JUDGE BAER: Great. And what about counsel for Patent Owner,
15 any questions for us before we get started?

16 MR. HUH: No questions, Your Honor.

17 JUDGE BAER: Great. With that, I will put 60 minutes on the clock.
18 Mr. Huh, you will go first, and I will try to remind you -- well, first of all, do
19 you want to reserve any time for rebuttal?

20 MR. HUH: Yes. I would like to reserve 20 minutes for rebuttal,
21 please.

22 JUDGE BAER: Great. So I'll put 40 minutes on the clock, and I'll try
23 to remind you when you're, you know, getting close, but, if you would pay
24 attention to your clock, as well. And with that, we're ready to begin. You

1 may start when you're ready.

2 MR. HUH: Very good. Thank you, Your Honors. On the record, this
3 is Gregory Huh on behalf of Petitioner in IPR 2023-00607 for the 698
4 patent. For reference, on slide 2, I provided a copy of the 698 patent's
5 Figure 4, as well as Claim 1, which I'll be addressing here today.

6 Turning to slide 3, I've outlined four key points for discussion, and I'll
7 first address how the prior art teaches a preamble, including that the network
8 domains including MPLS domain, to establish a virtual lease line (VLL).

9 If we turn to slide 4, provided is Claim 1 with the relevant
10 language highlighted in yellow. And I'll read it into the record just for
11 clarity: Method in a packet-based communication network, including
12 network domains wherein at least one domain is a multiprotocol label-
13 switching MPLS domain, to establish a virtual lease line (VLL).

14 So let's turn to slide 5. The petition at pages 19 through 28 explained
15 in detail how Xio discloses the noted features. For example, the petition
16 analyzed Xio's Figure 4, which is provided on slide 5 in modified form,
17 which illustrates a DiffServ ISP that provides service to customer networks
18 CN1 and CN2. In Figure 4 on slide 5, customer network CN1 would be a
19 source customer network to the left, and CN2 is a destination to the right.

20 And we further explain in our petition how Xio discloses at page 14
21 that MPLS can be used to gather with differentiated services to provide
22 quality of service. And Xio further states that DiffServ and MPLS can
23 easily interoperate.

24 Now, based on these teachings, we explained that it would have been

1 obvious to a person skilled in the art to utilize an MPLS ISP domain in the
2 context of Xio's Figure 4 either in parallel or in a series or in both. For
3 reference, today, I've provided a copy of the petition's rendering of a series
4 example where the MPLS domain is illustrated in Figure 4 in red.

5 JUDGE LEBOVITZ: This is Judge Lebovitz. Can I ask two
6 questions? One is do you have a definition of network domain?

7 MR. HUH: A definition of a network domain? I don't believe that the
8 parties have provided specific constructions for that term, Your Honor, but I
9 would note that Xio discloses that those are different domains. So, for
10 example, ISP1 is an ISP DiffServ domain, and the CN1 is a customer
11 network 1 domain.

12 JUDGE LEBOVITZ: Okay. The reason why I was asking, of course,
13 is this comes up later on. And the second note, and I just want to note that,
14 in the context of what I'll call the X reference, there's CN1 and then there's
15 CN2. And what I think Xio is always talking about in terms of the DiffServ
16 and the MPLS are actually the ISP domains because, in one of the figures,
17 when he's talking about MPLS, he definitely has bandwidth brokers at either
18 end. So I believe, and maybe you can confirm that, when he's talking about
19 MPLS and DiffServ, he's talking about the ISPs.

20 MR. HUH: Right. So if we just step through Figure 4, for example,
21 Your Honor, as illustrated on slide 5, we have a CN1 customer network
22 domain to the left. It has its own bandwidth broker at the top, right, which is
23 connected to an ISP domain, ISP1, which also has a bandwidth broker at the
24 top, which is the first grade-out domain which is an ISP1. That, in the

1 context of Figure 4, is a DiffServ domain. That's correct.

2 Based on Xio's further teachings, the MPLS can be used together with
3 differentiated services to provide quality of service, we explained that it
4 would have been obvious to utilize an MPLS domain as a second ISP, for
5 example, which is illustrated in the context of Figure 5, I'm sorry, of slide 5,
6 Figure 4, in a series. But it could also be, alternatively, a provided in
7 parallel or in series. And that would be another ISP domain. So, for
8 example, you may have one ISP service with one customer network, which
9 may be MPLS, you may have, you know, as a practical real world scenario,
10 we cited references that teach that in real world scenarios. I believe that's
11 Exhibit 1019. You know, you either have MPLS and DiffServ domains
12 utilized together, you know, to provide quality of service, and this is
13 specifically what Xio itself teaches at page 14, which teaches that MPLS can
14 be used together with differentiated services to provide quality of service.

15 JUDGE LEBOVITZ: Yes. And that point is pretty clear, so I don't --

16 MR. HUH: Right.

17 JUDGE LEBOVITZ: -- think you have to pound it anymore, hammer
18 it anymore.

19 MR. HUH: Okay. Very good. We understand that Figure 5 in Xio is
20 illustrated as an MPLS ISP, but, you know, that MPLS ISP is not somehow,
21 you know, a part and cannot be used together with the ISP implementation
22 of a DiffServ in Figure 4, which was our petition's position based on the
23 teachings and additional evidence cited in the petition of knowledge in the
24 art.

1 And I would note that the fact that you would utilize MPLS and
2 differentiate its services together was confirmed during deposition by Patent
3 Owner's own expert, Dr. Congdon, and you can see this on slide 8, Your
4 Honor, where he was asked during deposition, and I'll quote it into the
5 record. This is Exhibit 1045, page 51, 6 through 19, and the question was so
6 was it known in the art how to make MPLS and DiffServ domains
7 interoperate, and he provides a lengthy answer, but, ultimately, he testifies
8 that it was important to make these networks interoperate or it was important
9 to interconnect them.

10 JUDGE LEBOVITZ: The only thing that bothered me about that
11 statement was he didn't tell you when, right, because we have to know this
12 as of the filing date, and he did say I can't specifically tell you the dates. But
13 I think, with respect to the X reference, I think it's a moot point.

14 MR. HUH: Okay. Very good. So, yes, so the answer to your
15 question is the claim just requires that you have, going back to slide 4, you
16 have communication network including network domains and wherein at
17 least one domain is a multiprotocol label-switching MPLS domain. And
18 that's precisely, when you combine the teachings of Xio, when you
19 implement an MPLS together with differentiated services in the context of
20 Figure 4, you would have that limitation map. Are there any questions on
21 that point, further questions?

22 And when we turn to the next slide, Your Honors, slide 6, we also
23 addressed how Xio teaches that MPLS and DiffServ provide premium
24 service that supports virtual lease lines. So if we look at slide 6, the petition,

1 at 25 citing to Xio at 11, which is reproduced on this slide here, and Xio
2 teaches that premium service is suitable for creating virtual lease lines or
3 virtual private networks. And what you see to the right of slide 6, petition
4 25 through 26, explaining that Xio teaches that DiffServ be used as premium
5 service and also that premium service is used in MPLS. And based on these
6 teachings, we explained that it would have been obvious to a person skilled
7 in the art, when you're implementing DiffServ and MPLS together to
8 provide premium service, you also support virtual lease lines and provided
9 reasons to do that, as well.

10 Turning to slide 7, the petition provided numerous reasons to combine
11 MPLS and DiffServ domains together. And I would note that I believe a
12 majority of these reasons weren't even addressed by Patent Owner or
13 refuted. So, for example, first, we explained that, again, Xio itself teaches
14 that MPLS can be used together with DiffServ and that these easily
15 interoperate. But, additionally, we explained, for example, that there are
16 different implementations, whether parallel or series or both, where you'll
17 have various benefits that result in the combination. I'm not going to walk
18 through these, but these were extensively briefed, as well as supported by
19 the deposition testimony, the declaration testimony of Dr. Houh, and he was
20 cross-examined on these points. But, you know, numerous reasons to
21 combine. We only need one reason to make the proposed combination,
22 Your Honors.

23 Turning to slide 8, I've already addressed that Patent Owner's expert
24 testified that it was important at the time to make MPLS and DiffServ

1 interoperate.

2 JUDGE LEBOVITZ: Can I ask a question here?

3 MR. HUH: Yes.

4 JUDGE LEBOVITZ: Can you state the reason again or it being
5 obvious to put the MPLS and the DiffServ together?

6 MR. HUH: Yes. So if we step back to slide 7 then and their reasons
7 to combine. So in the instance where you would have a series example, as
8 illustrated on our slide 5 currently, right, where you have a series example,
9 we explain that it would be obvious to utilize MPLS domain and DiffServ
10 domain together, first of all because they provide quality of service. You're
11 able to provide quality of service across multiple domains. If you have an
12 MPLS domain on its own and you did not allow it to be connected, you
13 cannot provide quality of service to the destination.

14 But another example was where you provide, you know, where you
15 have extensive differences across multiple domains. To reach the
16 destination, you will ultimately traverse an MPLS domain. As another
17 example, you would have ISPs in parallel where you have parallel ISPs, one
18 DiffServ and one MPLS. They would provide redundancy, so, if one goes
19 down, you still have an alternative backup domain to provide an ISP. So
20 redundancy was another reason.

21 JUDGE LEBOVITZ: Okay. Thank you. You can go on. I just
22 wanted to make sure I got that.

23 MR. HUH: Yes. And if you look at the petition just briefly,
24 numerous reasons for each limitation were provided in the petition, not just

1 one reason for implementation. And each reason to combine was supported
2 by evidentiary references, not just Dr. Houh's testimony itself. So we had
3 evidence supporting his testimony on the reasons to combine, the references,
4 and the various implementations.

5 Now, I want to just briefly address turning to slide 9, the Patent
6 Owner's surreply presented a new argument, which was untimely and never
7 presented in the Patent Owner's response. This is Patent Owner surreply at 8
8 shown on slide 9 where they argue that now what matters is the remaining
9 claim language, that the interoperation allows establishing a virtual lease
10 line, a VLL. This argument is presented on the first instance in its surreply.
11 The Patent Owner presented no virtual lease line argument in its Patent
12 Owner response that we were able to respond to. We would ask that the
13 Board not consider this untimely argument because it wasn't briefed by the
14 parties and it was waived, in fact, by Patent Owner.

15 I would also note just briefly that this is pure attorney argument not
16 supported by its expert or any other additional evidence. And it also actually
17 includes a new claim construction on page 9 of its Patent Owner surreply
18 that there could only be one virtual lease line allegedly, which is not even
19 supported by the specification of its own patent.

20 JUDGE LEBOVITZ: This sounds like an enablement argument, I
21 think, because the last sentence he doesn't show any details, right?

22 MR. HUH: I can't make out whether this is an enablement argument
23 or a new construction argument or a combination of both.

24 JUDGE LEBOVITZ: Okay.

1 MR. HUH: What we do know is that it wasn't presented in the Patent
2 Owner response.

3 JUDGE LEBOVITZ: Okay.

4 JUDGE BAER: Mr. Huh, the question, though, is -- I understand
5 your argument about waiver. Assume we disagree with you about waiver.
6 Do you have a substantive reply to the argument?

7 MR. HUH: Yes, yes, we do. And, again, our petition explained,
8 going back to slide 6, that Xio teaches that premium service is used for
9 creating virtual lines. This is Xio at page 11. And Xio further teaches that
10 both DiffServ and MPLS support premium service. So when you have a
11 premium service in both a DiffServ domain and the MPLS domain, which is
12 used for creating virtual lease lines, you do have a virtual lease line across
13 both the DiffServ and the MPLS domain. So the argument about
14 enablement, if that's such an argument that was presented either at the
15 response or belatedly, has no merit because, clearly, Xio teaches that you
16 have premium service implemented in both DiffServ and MPLS and it's used
17 for creating virtual lease lines. Does that make sense, Your Honor?

18 JUDGE BAER: Yes. Thank you.

19 JUDGE WHITE: Just to be clear, though are you saying that that is
20 sort of an end-to-end service, that that virtual lease line is going to take you
21 from your source to your destination? Is that your position?

22 MR. HUH: Yes, that's correct. If Your Honor would like, we can --
23 you know, so for example, our petition on page 48 explained how you would
24 have an end-to-end quality of service provided by way of a virtual lease line.

1 And this was actually petition 44 through 48, and we illustrated in an
2 example of a parallel ISP where you have a parallel MPLS and a parallel
3 DiffServ domain servicing CN1 and CN2.

4 JUDGE LEBOVITZ: And to point it out, and I think we'll get to it,
5 the X reference does say that you can put them together, so that implies that
6 one of ordinary skill would know how to put them together. And it also says
7 something about they're kind of not visible what's happening in the domain.
8 So all that matters is that the information comes to the, you know, from the
9 DiffServ to the MPLS and the MPLS doesn't know how it got there, it just
10 knows that it's got the resource information or whatever information is being
11 transported; is that correct?

12 MR. HUH: Yes, that's correct. And, effectively, I would note that
13 this is precisely what the 698 patent also does. If we go back to slide 2, we
14 can see in slide 2, which is Figure 4 of the 698 patent, where in the context
15 of the MPLS domain, which is domain b to the right of Figure 4, we have a
16 domain A which is DiffServ, a domain B which is MPLS. Again, this is,
17 you know, on top of Xio teaches. And if you look at domain B, domain B
18 has two local areas. You can see like two smaller circles within domain B.
19 Those are local areas within the MPLS domain. And then, within those
20 areas, there are LSPs. The dotted lines and the domain B correspond to
21 LSPs, right.

22 So, yes, there's a virtual lease line and its implemented in the MPLS
23 domain utilizing LSPs, which is different than in domain A, which is not
24 utilizing LSPs. So there are differences from how you implement the path;

1 but, nonetheless, the virtual lease line, even though there's a difference in
2 when the domains meet and you have to change for the protocol differences,
3 nonetheless, it is one virtual lease line across, and that's exactly the way it
4 will be implemented in Xio where when you have MPLS and DiffServ
5 connected together, as we illustrated on our slide 5, Figure 4 in series, even
6 though the MPLS domain would have LSPs within it, right, because they'll
7 effectively change how you handle that communication within the MPLS
8 domain because it has label switch paths, that is still a virtual lease line. It's
9 a single virtual lease line because the communication traverses all of those
10 as a virtual lease line per domain.

11 So Xio's teachings and also Gibson's teachings are really on top of the
12 698 patents. So Gibson provides, for example, the local areas. That's
13 exactly what the MPLS domain in the 698 patent is. It has local areas within
14 it.

15 JUDGE LEBOVITZ: Two things. I want to make sure that we get to
16 the local area argument that you just mentioned now and also the one
17 argument where the BBA looks to all the other domains. I can't remember
18 the exact language, but those are two very important things. Could we get to
19 those?

20 MR. HUH: Sure. Let's just get to them right now then. Let's get to
21 the BBA first, which starts on slide 18. I'm sorry. Yes, slide 18. Slide 18, I
22 provided, again, Claim 1 of the 698 patent with the relevant language
23 highlighted in yellow, and this is reciting that the BBA -- and, by the way,
24 BBA corresponds to the source bandwidth broker. BBA establishes the

1 different domains involved to reach the destination that worked DST, which
2 is CN2 in the context of Xio, right. So BBA is the bandwidth broker in
3 CN1, and the destination network is CN2.

4 And then, first, I would note that our petition, turning to slide 19, we
5 spend, I believe, three or more pages explaining how Xio teaches service-
6 level agreements that inform the bandwidth broker of the source of the ISPs
7 involved. So when you have an ISP, whether it's in parallel or in series, if
8 you have parallel ISPs for example, those ISPs are servicing that customer
9 network and the customer network knows of its own ISPs. So the service
10 level agreement informs the customer network bandwidth broker of the ISPs
11 involved to reach a given destination.

12 So if we just kind of focus on the parallel example. I don't have it on
13 the slides, but it was illustrated on page 48 of the petition, when you have a
14 bandwidth broker and it has two ISPs in parallel, much like how you would
15 have a connection, for example, with Verizon or any other, you know, your
16 home ISP provider, your modem knows where to go to get connection
17 outside to a given destination, right, because it knows I have a service with
18 my Verizon or, you know, whatever your provider may be. You'd be aware
19 of that, and that's what Xio teaches regarding the service level agreements.
20 And we spent over three pages explaining how the service-level agreements
21 inform the bandwidth broker of the ISP involved to reach the customer
22 network.

23 JUDGE LEBOVITZ: So I'm sorry to interrupt now. So you're
24 saying, and I'm just repeating what you're saying, that your SLA that you

1 have tells the customer network what ISPs to use, correct?

2 MR. HUH: Yes. So just focus on Xio's example where you have an
3 ISP, let's say we have two parallel ISPs and going to a customer network 2,
4 because you're aware of and you know that you have to use these two ISPs
5 to get there, you have established via your service-level agreements that you
6 have to use those ISPs to access that customer network 2, where your
7 destination is.

8 JUDGE LEBOVITZ: Okay. And then you added, well, it was in the
9 original declaration. You cited Exhibit 1025, and 1025, right, said that same
10 thing, right?

11 MR. HUH: Yes, yes. Right. But what I want to first note is we had
12 two positions on this limitation. One was that Xio alone teaches this
13 because by way of its service-level agreement teachings. That argument was
14 never addressed by Patent Owners in response. Patent Owner response
15 completely ignored our reliance upon Xio to teach this limitation on its own.
16 And if you look at Patent Owner's response at 17 through 18, a portion
17 which is provided on slide 20, Patent Owner simply argues in a conclusory
18 manner that, you know, the references cannot teach, disclose, teach, or
19 suggest this limitation. They never addressed the service-level agreement
20 that we relied upon in Xio, and then they focused specifically on the second
21 reference that Your Honor just addressed, which was the Schelen-1
22 reference, which is provided on slide 21 for your viewing.

23 And let's turn to the additional teaching of the prior art that we relied
24 upon and how this reference also teaches the limitation at issue. So, again,

1 Patent Owner waived any argument and conceded Xio's teachings of a
2 service-level agreement. And then, if we turn to Schelen-1's teachings
3 provided on slide 21, which is Exhibit 1032, page 452, and I'll read it into
4 the record for clarity. It teaches such reservation agents, and I'll pause here
5 for a second. Reservation agents here correspond to bandwidth brokers.
6 That's undisputed. So such reservation agents advertise themselves
7 periodically on a well-known multicast address giving, one, their identity
8 and, two, which routing domain AS they are responsible for.

9 JUDGE LEBOVITZ: Hold it right there because, okay, you're saying
10 the X reference teaches an SLA where it uses, where the SLA specifies the
11 ISPs to look at. And you're saying, well, that address is that particular
12 limitation in the claim. Then you go on to -- and then I was actually talking
13 about Exhibit 1025, where they talked about campuses, how they will
14 contract with other ISPs which you're saying is consistent with X.

15 But now your second argument -- so that was your first argument.
16 Your second argument is you're looking at Schelen and you're talking about
17 them talking to, them advertising each other. And that's where Patent Owner
18 said, well, you're adding another claim interpretation, and the way I
19 understood it was this is just a fact that you're citing. But how does this fact
20 teach the limitation in the claim?

21 MR. HUH: Right. So just briefly, going back to the initial part, yes,
22 1025 is evidence that the service-level agreements, in fact, do inform and
23 allow the bandwidth broker to establish the domains involved. So that was
24 evidence for the initial proposition. But now focusing on Schelen-1, which

1 is a part of the combination at issue here, which is an additional way to
2 address this limitation, so this teaches that the bandwidth brokers, they all
3 communicate utilizing a multicast address. It would be like all of us, you
4 know, here today saying I'm Gregory Huh, I live in Dallas. You know,
5 wherever you and whatever your domain is. And because I know, right, so
6 if we just go, as an example -- if we turn to slide 5 and let's just use the
7 example on slide 5 of the series, right, where you have series domains and
8 bandwidth brokers, when all the bandwidth brokers illustrated on Figure 4
9 communicate utilizing the multicast address, they all inform each other of
10 what their identity is. And the first one would say I'm CN-1, I'm the
11 bandwidth broker for the customer network 1. The second one would say
12 I'm the bandwidth broker for the ISP 1. The third one would say I'm the
13 bandwidth broker for the ISP 2, and the last one would say I'm the
14 bandwidth broker for the CN-2 domain, right? They all say who they are
15 and what domain they're responsible for.

16 Now, with this implementation, when the ISP 1 and ISP 2 domains
17 advertise themselves, they are informing the bandwidth broker 1 for the
18 customer network 1 that these are the domains in this line in order to reach
19 this customer network 2. So because they advertise who they are and what
20 domain they're responsible for, then the customer network 1 bandwidth
21 broker would know how to send the path messages in order to reach the CN-
22 2.

23 JUDGE LEBOVITZ: How would they know? I mean, how would
24 they know? I mean, saying I'm a domain, how would they know which

1 domains to go through to pass the information? I mean, on one hand, you
2 seem to be saying they would know that from the service-level agreement,
3 but how else would they know that? That's the problem that I'm having.

4 MR. HUH: Well, if these are the domains, if you have instances
5 where these are the only domains at issue right, let's say you have four
6 domains in a given network and you know all the players in the network,
7 these are the ISPs. When you pass it through these ISPs, you will reach the
8 customer network.

9 For example, and maybe it's simpler just to, for example, go to the
10 parallel example illustrated in the petition on page 48, right, where, on page
11 48, we provide an example of parallel ISPs where you have a parallel
12 bandwidth broker in an MPLS and then you also have Figure 4 at the
13 bottom. And when all of these bandwidth broker advertise who they are and
14 what domain they're responsible for, think, for example, in the instance
15 where CN-1 bandwidth broker to the left is aware of, because they
16 advertised the ISP through bandwidth broker of the MPLS domain and it's
17 also aware of the ISP 1 of the DiffServ domain at the bottom, it knows that
18 these two domains are connected to it directly. And the only other outlined
19 domain would be the CN-2 domain to the right.

20 So if you only have, in this example, for instance, where you have the
21 parallel and you know that you have two ISPs servicing you, and then those
22 two are advertising themselves, right, because they're on this shared channel,
23 and they say I'm the bandwidth broker for the MPLS, I'm the bandwidth
24 broker for the DiffServ, then you know the domains and you also know that

1 CN-1 is advertising, and that's the customer domain. So that domain would
2 be accessible via the ISP that's servicing you.

3 So, in this way, it's established, the claim requires establishing the
4 different domains involved. It's established that the domains involved to
5 reach CN-2 to the right are the MPLS domain and the DiffServ domain.

6 JUDGE LEBOVITZ: Did Dr. Houh have any comment on this? I
7 can't remember -- I mean, I know he addressed it in the declaration, but I'm
8 not quite sure if he went into the detail that you just went into.

9 MR. HUH: The detail that I just went through right now, Your
10 Honor?

11 JUDGE LEBOVITZ: Yes. Oh, I'm just asking was it addressed in the
12 declaration and where? We're looking at Exhibit 103.

13 MR. HUH: Yes. So it would have been Exhibit 103. So this would
14 be --

15 JUDGE LEBOVITZ: Oh, on page 42, like around 83, around
16 paragraph 83.

17 MR. HUH: Within Dr. Houh's declaration, it would be around
18 paragraph 227 to 228.

19 JUDGE LEBOVITZ: Oh, okay.

20 MR. HUH: Which is later in the analysis of the claim itself within the
21 actual analysis. Right. So here we have -- this would be example in 225
22 where it says consistent with the analysis at 102 to 101, the path messages
23 request from the source as a premium service, and he walks through the
24 example of the parallel that I just walked through where right above

1 paragraph 226 he's illustrating the parallel example where the bandwidth
2 broker at the CN-1 to the left is establishing the different domains involved
3 to reach CN-2. I'm sorry. That's --

4 JUDGE LEBOVITZ: I see that. Thank you.

5 MR. HUH: So you're right. Also, paragraph 88 through 89, as well,
6 in Dr. Houh's declaration where we addressed this limitation and we say that
7 it would have been obvious to a POSITA, in view of Schelen-1, for Xio's
8 bandwidth broker, see analysis at 103, to use the map and routing
9 information performed at mission control of an incoming RSVP path
10 message.

11 So just briefly, going back to the SLA argument, that was addressed in
12 Dr. Houh's testimony at 204. And then we addressed the additional reliance
13 upon Schelen at 216, as well as in the combination and the reasons to
14 combine the references.

15 JUDGE BAER: Mr. Huh.

16 MR. HUH: Yes. Can you hear me?

17 JUDGE BAER: I can. Just to let you know you have five minutes
18 until you're into your rebuttal time. It's fine if you want to use some of your
19 rebuttal time. I just wanted to let you know.

20 MR. HUH: Thank you, Your Honor. So, again, just touching one
21 more time on this point regarding establishing, we presented arguments
22 regarding Xio on its own, which was not rebutted by Patent Owner at all.
23 And Schelen-1's teachings of all of the bandwidth brokers sharing their
24 information and the routing they're responsible for, at least in the instances

1 where you have the parallel ISPs, those would be the domains that would be
2 ultimately utilized.

3 Now, let me turn briefly to the last point regarding the local areas that
4 Your Honor asked me about initially, and that was addressed in our petition
5 at 59. Part of that is presented on slide 25. Actually, let's turn to slide 24,
6 and this is in the context of setting up the LSP. This is the last limitation in
7 Claim 1.

8 So this recites performing LSP label switch path to LSP setup and
9 passing resource requests from the bandwidth broker (BB) to at least one
10 intradomain one DB where, in each intradomain, one DB is responsible for
11 admission control and label switch path (LSP) setup. And we explained in
12 our petition that, turning to slide 25, that Gibson is focused on MPLS
13 network domain where connected to that network domain is an end point
14 and, effectively, you have an admission manager, 30, which is actually part
15 of the MPLS network domain that is performing the admission control
16 within that domain, and this is explained how the admission manager
17 corresponds with the bandwidth broker. We explained that in our petition,
18 and we specifically also -- it's shown on slide 13. So I want to make clear
19 that our position has always been is that the admission manager corresponds
20 to the bandwidth broker of the MPLS domain, and that's on slide 13, where
21 Gibson teaches that the admission manager is part of the management layer
22 of the MPLS communications network. And also Gibson discloses that the
23 admission manager provides admission control. This is Gibson, column 7,
24 26 through 48, and also Gibson at column 6, lines 11 through 16.

1 JUDGE LEBOVITZ: That's clear in your petition --

2 MR. HUH: Yes.

3 JUDGE LEBOVITZ: -- but the question that we have has to do with
4 why those MPLS clouds not different domains, and I guess they are
5 characterized by someone as a local area, but it's going to be a different
6 domain.

7 MR. HUH: Right. Yes. So I want to now focus now, going to slide
8 25, so the admission manager on slide 25, we have Figure 1 of Gibson
9 reproduced and we explained in context of Figure 1 how Gibson's admission
10 server 35 together with the connection manager correspond to the
11 intradomain broker. And we can see in the context of Figure 1 where we
12 have that those entities control the LSP setup within the clouds 15 through
13 16 and which are the MPLS clouds, which that's where the actual label
14 switch path configuration occurs within there. And if we look to Gibson's
15 teachings on slide 25, Gibson, column 8 through 24, this is discussing Figure
16 1 directly above on slide 25, Gibson teaches that, although picture has a
17 single entity in Figure 1, an administrative server 35 may take the form of
18 multiple servers that administer their local area. So these local areas, which
19 are below 15 and 16, illustrated as MPLS clouds, are the local areas within
20 the MPLS network. And all of the entities at the top are actually part of the
21 management layer of the MPLS network. So the administrative manager to
22 the left, 30, is actually performing admission control within that network, so
23 anything coming in is going to be going through admission manager 30.
24 That's the main entity up-front doing admission control. So that entity

1 controls anything coming in. It says, hey, if you want to come in here, I'm
2 going to control and see if I can actually permit you to come in and give you
3 path access through the LSPs.

4 And during the operation, the admission manager, if we turn to slide
5 26 briefly, we can see how this actually works to set up an LSP, and this is
6 just a more focused version of Figure 1, which is Figure 2 of Gibson on slide
7 26, the admission manager 30 sends a request for a new LSP. This is
8 admission control entity sending a request for a new LSP to the
9 administrative server 35, which then works together with the connection
10 manager 32 to dynamically set up a new LSP in the local area at the bottom
11 here, which is a cloud.

12 JUDGE BAER: Just to let you know, Mr. Huh, this is Judge Baer.
13 Just to let you know you're now a minute into your rebuttal time.

14 MR. HUH: Thank you, Your Honor. So these entities work together
15 to set up the LSP. And because the administrative manager is the one
16 basically acting as the entity that permits admission into the MPLS network,
17 it is the bandwidth broker that brokers the bandwidth broker internally via
18 the administrative server and the connection manager. And what I would
19 note is, Your Honors, is the administrative server in Gibson is a traffic
20 engineering server, and this is exactly what the 698 patents intradomain
21 broker is, as well. If you look, Your Honors, at slide 29, we explained that
22 the 698 patent, the intradomain broker on slide 29 we explained corresponds
23 to RATES, and this is clear in the 698 patent. And RATES stands for
24 routing and traffic engineering server.

1 So the 698 patent did not invent the concept of intradomain broker.
2 That concept was disclosed by RATES. And if we look at the way that
3 RATES operates, it operates just like Gibson, which utilizes COPS for LSP
4 setup. This is Exhibit 1016, page 9. So Patent Owner attempted to
5 distinguish Gibson by saying that it uses COPS.

6 JUDGE LEBOVITZ: Well, I just wondered why you didn't use that
7 disclosure about RATES as an admission because, I mean, there's a whole
8 discussion by Patent Owner about bandwidth brokers and intra-bandwidth
9 brokers, and then there is that whole prior art in their own patent about
10 RATES and MPLS.

11 MR. HUH: Right. So we did respond to this in our reply identifying
12 and part of that -- go ahead.

13 JUDGE LEBOVITZ: Yes, I know you did. I'm just asking, I guess,
14 I'm saving a useless point at this time that this could have been used as an
15 admission, rather than using it as a response, because they did make a big
16 deal about this when it seemed that the patent itself had said that this kind of
17 architecture was known.

18 MR. HUH: Right. I mean, their expert admitted during deposition, at
19 the petition stage, it's hard to anticipate or preemptively argue all the
20 arguments that someone would make. So, you know, so we addressed the
21 arguments as they come in Patent Owner's response. But, you know, we did
22 cite Patent Owner's expert during deposition in our reply admitting that the
23 698 patent does, in fact, utilize rates, including COPS, for LSP setup.
24 There's really nothing novel about the intradomain broker. I mean, all they

1 did was just copy what RATES did and said we aren't going to use that, in
2 fact.

3 But just briefly, setting back to the local areas, Gibson itself discloses
4 the local areas. Again, as shown on slide 25, Gibson, column 8, 22 through
5 24. And we have Dr. Houh's testimony on this point, as well. And this is
6 exactly how the 698 patent works, which they have their own local areas, as
7 shown on Figure 4. Domain B has two local areas just like Gibson. So local
8 areas do not make a different domain.

9 If there's no questions, I'll stop here in the interest of time.

10 JUDGE BAER: Great. I will stop the clock here. You'll have 15
11 minutes of rebuttal time when we come back. Give me just a minute to
12 write that down.

13 MR. HUH: Thank you very much.

14 JUDGE BAER: Thank you. And, Mr. Pymonto, I'll put -- first of all,
15 do you want to reserve any time for surrebuttal?

16 MR. PYMENTO: I'll reserve 10 minutes, if that's okay.

17 JUDGE BAER: Fifty minutes on the clock, and you can begin
18 whenever you're ready.

19 MR. PYMENTO: Sure. If we could turn to page 11 of Patent
20 Owner's demonstratives, we can clearly show that Petitioner relied or says it
21 relied on its reply on the combination of Xio's teaching of DiffServ with
22 Xio's teaching of MPLS. But if you just look at Petitioner's fabricated
23 figure, it does not combine the figure that corresponds to MPLS with the
24 figure that corresponds to DiffServ. It does not combine the figure that

1 corresponds to MPLS with the figure that corresponds to DiffServ. In fact, it
2 just adds the center section of Figure 4 in red, re-labels it an MPLS domain,
3 and then slaps on an ISP label and ISP bandwidth broker inside that center
4 section.

5 JUDGE LEBOVITZ: Right. We understand that. But, again,
6 Petitioner pointed out in two different places in the X reference, the X
7 reference says that those two can interoperate. It was at the beginning on
8 page 14 of Xio, the beginning of the section on MPLS, and then it was later
9 on in the section saying that they can both interoperate. So why is this an
10 issue? I mean, why are their statements not sufficient to get us to both those
11 put together?

12 MR. PYMENTO: They're not sufficient because the disclosure in Xio
13 of DiffServ and the disclosure of Xio regarding MPLS would not enable a
14 person of skill in the art to add this center section, creating a bandwidth
15 broker in the middle of their figure, as shown here.

16 JUDGE LEBOVITZ: Sorry. But I didn't see an enablement argument
17 made. Where's the argument that a person of ordinary skill in the art, despite
18 the statement by X, that they interoperate together? And I think also you
19 took something out of context on page 14 where it says that the MPLS
20 domain, there was a sentence there -- what was it? On page 14 where it says
21 the MPLS effect is combined within the ISPs that use MPLS. If you're
22 familiar with the expression whatever happens in Rome stays in Rome, that's
23 what that's saying. It's saying that whatever happens in the MPLS network
24 nobody needs to know about because it's transparent to the other ISPs

1 because they can easily interoperate in the end of that sentence.

2 So I'm just having trouble with why you're belaboring this point when
3 it seems pretty clear that they can be put together.

4 MR. PYMENTO: It's not a matter of whether they can be put together
5 or interoperate. It's a matter of whether they can interoperate in specifically
6 this manner with specifically this figure that Petitioner created. I think that's
7 the issue here where the bandwidth broker suddenly appears where a
8 combination of, for example, Figure 5, that is the only embodiment of MPLS
9 and Xio does not have that. So I think that's really the distinction that Patent
10 Owner is trying to draw here.

11 JUDGE WHITE: Help me to be clear on this. Is it the combination of
12 the MPLS in Figure 4? Is it specifically calling out MPLS that your issue, or
13 is it the configuration more so?

14 MR. PYMENTO: Thank you, Your Honor. It's exactly the
15 configuration. Petitioner is saying that it's combining the disclosure of
16 DiffServ with the disclosure of MPLS. But if you look at its proposed
17 configuration, that's clearly not what it's doing. It just slaps on the label
18 MPLS domain for the part of the figure that it adds on. So that's exactly the
19 distinction.

20 JUDGE WHITE: Let's take it one step at a time. Do you take Figure
21 4, you know, without any sort of annotation? Do you have any reason to
22 believe that that ISP right there could not be MPLS?

23 MR. PYMENTO: The reason is that it's listed under this section
24 called DiffServ, and so, you know, under deposition, we asked Dr. Houh

1 what his understanding of all the disclosure under that section would mean,
2 and he said that that would be related to specifically DiffServ. And so under
3 that understanding, Figure 4 corresponds to DiffServ.

4 JUDGE WHITE: Okay. I'll take you with that. So ISP 1, based on
5 your reading, is DiffServ. And the annotation or the sort of extension that
6 Petitioner seems to be making through their obviousness argument is, you
7 know, of course there would be more ISPs out here other than just ISP 1 if
8 you're dealing with a real world setup, so there's no reason why your ISP 2
9 or your ISP 2005, which ever other ISP you're dealing with in this network,
10 there's no reason why that couldn't be MPLS. What is at error in that?

11 MR. PYMENTO: It seems to be arguing in the negative that just
12 because there's a disclosure that it cannot be MPLS that we can suddenly
13 shoehorn that in there, slap a label called MPLS domain, and say there's a
14 bandwidth broker in that ISP cloud in the annotated figure. That's Patent
15 Owner's argument.

16 JUDGE LEBOVITZ: And just, by the way, we don't have to look at
17 those configurations. We can ignore the configurations and just go to what
18 the X reference Exhibit 1005 says, right? I mean, if you're arguing that
19 maybe there's something wrong with these configurations, the claim doesn't
20 require any particular configuration, it just requires that you can have both.

21 MR. PYMENTO: It requires that you can have both in the
22 preliminary part of the preamble. However, subsequent claim limitations, it
23 does require a bandwidth broker corresponding to each of the domains. That
24 includes the at least one MPLS domain, as well as any DiffServ domains.

1 JUDGE LEBOVITZ: If you go to the background of your own
2 patent, right, it talks about the MPLS architecture having a RATES server.
3 And what does it say? It's on page, it's on column 4 of the 698 patent, which
4 is the Svenberg patent. If you look at column 4, it says, I'm looking at line
5 3, BB, so that's a bandwidth broker, has many similarities to RATES. It's
6 described in the context of DiffServ, right, while RATES operates in MPLS.
7 And, of course, there are differences there, but I'm just feeling a little like
8 your own patent background is saying you can use some kind of bandwidth
9 broker, intra-bandwidth brokers in both of these. So, again, so the fact that,
10 even if X says, well, you don't need one in MPLS, your own background
11 gives an example where you do have something very similar to a bandwidth
12 broker. So if you can respond to that.

13 MR. PYMENTO: Sure. The problem is that Petitioner relies on the
14 combination of DiffServ with MPLS, not necessarily that, sure there could
15 be a bandwidth broker in MPLS, there could be a bandwidth broker in
16 DiffServ, but they rely on their combination of the disclosures in Xio with
17 respect to both DiffServ and MPLS and the combination of which does not
18 teach that there's a bandwidth broker associated with every single network
19 domain, as the preamble requires.

20 I also wanted to touch base on the enablement issue that Your Honors
21 mentioned. It's Patent Owner's position that that's really an anticipation
22 issue. In obviousness, the inquiries whether there's a reasonable expectation
23 of success in combining those two different disclosures within Xio.

24 JUDGE LEBOVITZ: I think we were, or at least when I was

1 commenting, I was just noting that the issue wasn't raised about enablement.

2 MR. PYMENTO: Right. Because for those reasons, it's an
3 obviousness combination, as opposed to anticipation.

4 Moving on to slide 13 of NetSocket's demonstratives, at the outset, we
5 just want to point out that this is not a new argument. We're responding to
6 the argument that Petitioner brought up in its reply for the first time that it
7 was combining the separate disclosures of MPLS and DiffServ. And the
8 reason being is that because the VLL, as Your Honors mentioned or hinted
9 at, it's not necessarily inherent that, by teaching of VLL, you will have a
10 VLL specifically between the source and the destination in different
11 domains. In fact, the 698 patent in column 4, lines 46 to 59, talks about how
12 the issue is actually of great importance. It could be possibly a mix of
13 DiffServ and MPLS networks, but a service that is only available within one
14 provider domain is unlikely to be successful where you need a combination
15 of both, of different types of services.

16 And if you look at Xio, it specifically says that the MPLS effect is
17 confined within the ISPs that use MPLS. So this directly contradicts the
18 disclosure in the 698 that's trying to be encapsulated by this claim limitation.

19 JUDGE LEBOVITZ: The way I read that was what I said, what stays
20 in Rome stays in Rome or whatever. I'll repeat it again. Because it said
21 what happens in the domain in terms of trafficking is invisible to the other
22 domains, and the advantage of that is that you can, what that paragraph says
23 the advantage is is, because it's invisible, when you get to the end of the
24 domain, it can interoperate with another domain because the other domain

1 doesn't have to know and doesn't know what's happened in the MPLS. It
2 just knows it's got the information there.

3 And you say the limitation on interoperation precludes a VLL, and I'm
4 not sure what that explicit limitation is. Are you saying the explicit
5 limitation is that it says that the MPLS effect, that means that, previous to
6 that, I think they're describing the advantages of using MPLS. So they're
7 saying all these advantages, the MPLS effect, only works in that domain. It
8 doesn't spill over. And because it doesn't spill over, that's a good thing
9 because it can interoperate with different architectures, like DiffServ.

10 MR. PYMENTO: That was not necessarily Patent Owner's
11 understanding of the VLL, which has to be established between the source
12 and destination in different domains. I mean, I take Your Honor's point that
13 each of these domains can be segregated from each other, and, so as long as
14 the information is provided between the two, they will be able to
15 interoperate and that's fine. But the claim language does require that the
16 VLL is established across different domains between a source and a
17 destination, so there has to be a level of transparency between the domains.
18 And that's just not shown by the disclosure in Xio.

19 JUDGE WHITE: Is your point being that it needs to be, I don't know,
20 encapsulated somewhat so it doesn't matter which domain it's going through,
21 whether it's going through the DiffServ or whether it's going through the
22 MPLS, and you don't think that that's what's taught?

23 MR. PYMENTO: That's correct. That's correct, Your Honor. I want
24 to jump to the claim limitation where BBA establishes the different domains

1 to reach the destination network. I understand that was a point of contention
2 in the previous round of questions. The claim language is pretty clear.
3 There is one bandwidth broker called BBA that establishes the different
4 domains involved to reach the destination network.

5 If you turn to page 21 of our demonstratives, we point out specifically
6 for Schelen-1 that it teaches a multicast address. From Petitioner's counsel,
7 we are to understand that these bandwidth brokers in Schelen-1, they
8 communicate with each other so as to establish a path. But that's not what
9 the claim limitation says point blank, and it's not a claim construction or
10 interpretation. It is just what the claim language says. There is one
11 bandwidth broker that establishes the different domains involved. And,
12 quite frankly, we did not see a description of that from Dr. Houh's
13 declaration as to what Petitioner's counsel extrapolated during his argument.

14 As to whether the SLA --

15 JUDGE LEBOVITZ: Okay. I'm looking for the paragraph, but Dr.
16 Houh, however you say it, does reference in his original declaration 1025,
17 Exhibit 1025, which talks about and shows a campus having an SLA or
18 agreement with other ISPs. So he uses that. So maybe that it might not have
19 been articulated that clearly, but, at least when I looked at it and I said, okay,
20 let me look at Exhibit 1025 and there were two figures in 1025 and it did
21 talk about the campus knowing about other ISPs, that seemed to be
22 consistent with the idea that the bandwidth broker in the CN-1, in the client
23 network or customer network 1, would have an agreement and it would
24 know what the other campuses, you know, what the other networks it could

1 communicate with and then, on the multicast, would tell it, okay, here they
2 are so I know how to get there.

3 Okay. I'm done. You can address --

4 MR. PYMENTO: Thank you, Your Honor. I understand that
5 disclosure, but knowledge is different than establishment. And the claim
6 language talks about establishing the different domains. Using Petitioner's
7 counsel's example, if each of us disclosed our addresses, we would have
8 knowledge of each other's addresses. That doesn't necessarily imply that one
9 would establish the proper path to reach a certain destination, and I think
10 that's the distinction that, you know, Patent Owner is trying to drive across,
11 that knowledge is not establishment.

12 JUDGE WHITE: I have a different question. What about the service-
13 level agreement, the SLA argument? I take it that it is Petitioner's position
14 that you guys did not really respond to that portion of the argument saying
15 that just the disclosure of the service-level agreement alone was enough. Do
16 you dispute that, that that was not responded to? And if so, could you
17 describe what your response to that argument was and where we can find it?

18 MR. PYMENTO: Sure. Let me try to find a reference for you in
19 Patent Owner's response.

20 JUDGE WHITE: Thank you.

21 MR. PYMENTO: So my understanding is that we addressed this
22 broadly in our surreply, specifically on page 15, because the same argument
23 would apply to the SLA argument, which is that, again, you know, if the
24 bandwidth brokers are communicating to each other, to the extent that there

1 are bandwidth brokers, that's not the claim language, which is that one
2 bandwidth broker is establishing all the domains.

3 JUDGE WHITE: So it was only addressed in the surreply and not in
4 your Patent Owner response? If you need to get back to me in your rebuttal
5 time, that's fine. I don't want to eat up all your time on the search.

6 MR. PYMENTO: Sure. I will address it in my surreply, but my
7 understanding is that the general argument is there for both.

8 JUDGE LEBOVITZ: You would say where again? I'm sorry. I was
9 opening up the surreply. Where did you say the argument was?

10 MR. PYMENTO: It would be on page 13 of the surreply. Page 13.

11 JUDGE LEBOVITZ: Okay. Thanks.

12 MR. PYMENTO: I'd like to turn to the intradomain broker arguments
13 for claim limitation, and that's on page 27 of our demonstratives. Again, this
14 isn't really a claim construction argument or interpretation. It's pretty clear
15 that the plain language of the limitation talks about an intradomain broker,
16 meaning a broker inside the domain. As it were anyway, you know, the
17 burden for bringing up claim construction is on Petitioner, and this was not
18 an issue that was raised. So it's strange that the admission managers, if you
19 turn to page 28 of our demonstratives, as shown in Gibson, the highlighted
20 red box, shows, it specifically says the admission managers at the edge of
21 the network. We're not talking about an intradomain broker where you have
22 a broker that's inside a domain.

23 JUDGE LEBOVITZ: Well, hang on a minute. Sorry to interrupt, but
24 the admission manager being at the edge of the network is still in the

1 network and the admission manager is, according to Petitioner, the
2 bandwidth broker. The intradomain broker, according to Petitioner, is the
3 administrative server and the connection manager. And, essentially, in
4 Gibson's architecture, it looks like the admission manager is delegating to
5 the administrative server and the connection manager to do the LSP setup, to
6 do the routing setup.

7 So if being at the edge of the network, they're using that term because
8 I think that it's capturing what information is coming at the end, at the
9 beginning, and letting go at the end, so it's controlling what's coming in and
10 out of the network. You can respond.

11 MR. PYMENTO: Sure. Well, it's funny that you mention that the
12 admission manager is the bandwidth broker, according to Petitioner,
13 because, if you look on page 29 of our demonstratives, we can see that that
14 theory changed from the petition to the reply. In the Petitioner, on page 57,
15 for example, Petitioner relies on the connection managers and the
16 administrative server being the intradomain broker, as you pointed out, Your
17 Honor. However, on the reply, they say that the thing that performs the LSP
18 setup, AKA the intradomain broker, is the coordination between the
19 admission manager and the administrative server. So, you know, it is a little
20 confusing from Patent Owner's perspective to respond to the change in
21 theory between the two. But our understanding is that at least the
22 administrative manager or, sorry, the administrative server sits outside the
23 networks. And so regardless of the combination of administrative server, the
24 connection manager or administrative server with admission manager, there

1 is a component of this that is outside of the domain, the intradomain broker.

2 JUDGE LEBOVITZ: Do you have evidence to support it being
3 outside the network? I don't even know what outside the network would
4 mean, but where's the evidence of that? Because it did look to me like Dr.
5 Congdon's, he probably did make a statement, something like that, but
6 oftentimes it was conclusory. He was just saying it's not what Petitioner
7 says it is.

8 MR. PYMENTO: And my reply to that is sometimes it's fairly
9 obvious from the picture itself. I mean, if we look at, for example, the
10 petition at page 58, the figure shows the administrative server sort of flying
11 above it all. It's not within a certain domain. Maybe I misspoke earlier
12 when I said outside of the network. I meant to say outside of the domain.

13 JUDGE LEBOVITZ: Oh, okay, yes. And I misspoke, too. But,
14 again, remember, that's a picture of software, right, so it's just a picture of
15 software to let your brain, because we're not going to read whatever
16 language it's coded in, so it's just a picture. It's at the edge of the network. I
17 understand that as being the edge because that's where it's controlling what
18 gets into that domain or the edge of the domain, what gets in there and out of
19 there. But, again, it's software, so that is just a picture because our brains
20 absorb information easier with pictures.

21 MR. PYMENTO: I think Patent Owner's understanding is that that is
22 a pretty complicated picture, and it sort of corresponds to what is
23 incorporated in each thing. For example, they have MPLS clouds. They say
24 that the admission managers at the edge of the network, indeed, in the

1 picture. They are at the edge of those clouds. The admission managers, as
2 far as I can see, are outside of what the dash lines are the Petitioner notes are
3 at least one intradomain (IDB), and that's the embodiment that we have from
4 Gibson. If that's all we have to rely on and that's just the software
5 description from which we can garner no knowledge of what an intradomain
6 broker is, then I suppose the obviousness combination must fail because
7 there's no disclosure of where they are in relation to each other. And that's
8 important because the claim limitation is an intradomain broker, so we have
9 to know about that location, and that's simply not disclosed otherwise in
10 Gibson and the obviousness combination would fail.

11 JUDGE WHITE: But, counsel, let me make sure I have this straight.
12 You're taking two issues here, if I'm hearing you right. One is there's some
13 confusion as far as AM versus CM as far as what are they actually pointing
14 to, so that's one issue. And the second one is you're looking at the
15 administrative server and you're saying that that's a centralized service and
16 not distributed amongst the individual network domains that are in this
17 network broadly. So you're taking two issues, if I'm understanding you
18 correctly.

19 MR. PYMENTO: You're understanding absolutely correctly, Your
20 Honor. Those are the two issues that Patent Owner has.

21 JUDGE WHITE: Okay. Thank you.

22 MR. PYMENTO: I'd like to turn briefly to Claim 6. I note that
23 Petitioner's counsel and Petitioner in general does not have any arguments
24 related to challenged Claim 6 in its demonstratives, but It think it's worth

1 going over anyway.

2 So Claim 6, if you turn to page 33 of our demonstratives, is the
3 method according to Claim 4. It's characterizing that the bandwidth broker
4 comprises a data structure which keeps resource usage information over time
5 for each link in the topology, which enables ability to plan ahead of time.

6 If we turn to page 34 of NetSocket's demonstratives, there is no claim
7 construction. Neither party proposed one because the plain and ordinary
8 meanings of the words are pretty simple to understand. A bandwidth broker
9 has to comprise a database. Normally, that's a data structure, and it keeps
10 historical resource usage information for each link in the topology, and the
11 whole point of storing the resource usage information is so that you can
12 predict in the future the availability or the bandwidth of certain topology link
13 so that you can plan ahead of time. That much is clear from the claim
14 language. I don't think Petitioner disputes that. I note that Dr. Houh
15 explains that, as we see on page 35 of our demonstratives, that the resource
16 usage information could be understood to include information about
17 reservations, current reservations, future reservations, but that's not what
18 usage information is. And as we can see from page 36 of our
19 demonstratives, Dr. Houh actually admits that when you make a reservation
20 at a restaurant, you might not show up for that reservation. So merely
21 creating a reservation does not correspond to usage.

22 JUDGE LEBOVITZ: I'm going to interrupt here because -- and I
23 understand your argument. You want us to read resource usage information
24 over time as usage that has already happened, right, the historical. And

1 you're doing that because that gives you some information about the network
2 and maybe what paths you want to use later on.

3 But I think it was clear from Dr. Houh's declaration that -- well, he
4 pointed to Schelen-2, and if you look in the paragraph that Schelen-2 is
5 talking about, he talks about reserving time slots in the future that would be
6 used for passing resources along the virtual lease line. So in other words,
7 you line up these time slots and say, okay, today is what? Monday? No,
8 what day is it? Tuesday. So it's Tuesday, so tomorrow at 8:00 I'm reserving
9 this bandwidth and at 9:00 I'm reserving bandwidth X, so aren't I reserving
10 resource usage information over time? It doesn't say future time or historical
11 time. And research usage information is not really defined, so it could be
12 usage that's going to be performed in the future, Wednesday at 8:00 and 9:00
13 like all the time slots.

14 I think that you agree that Schelen-2 is talking about, you know,
15 future reservations, and I think the discussion that you point to in the Houh
16 deposition, I mean, I know what he was talking about, but I don't think that
17 has any bearing on the fact that what MPLS is disclosing. I'm asking, I
18 guess, specifically why should we read resource usage information over time
19 as historical time, rather than future time?

20 MR. PYMENTO: Thank you, Your Honor. It's for the simple reason
21 that we can use historical information in order to plan ahead of time. In the
22 example that you gave, for example, where Schelen-2 may be discussing
23 future reservation time, first of all, there's no usage, right. There hasn't
24 actually been usage, so that's not resource usage information. Furthermore, I

1 can't actually use that to plan ahead of time because I don't actually have the
2 statistics or a database that's carrying it because it's a data structure. The
3 whole point of a data structure is to store information, and I can't actually
4 use future reservation time to determine certain topology links bandwidth in
5 the future. The claim language says which enables ability to plan ahead of
6 time, and that's based on stored information. I think, just based on the plain
7 language of the claim, that is not a scenario that is contemplated and it
8 would not yield the benefit of being able to plan ahead of time.

9 JUDGE WHITE: It would be really useful to me if you could point to
10 some things in the specification that help you come to this sort of conclusion
11 because, for me, I grapple with this over time issue, as well, because, if you
12 tell me what's coming, I can use that to plan, just as much, if you tell me
13 what happened in the past, I can use that to plan. And both are imperfect
14 measures. I mean, any time you pull up a prospectus for any sort of
15 investment, they have that disclaimer, you know, past performance doesn't
16 guarantee future performance. And it's the same thing here. Whatever
17 happened in the past, it could have been a busy week last week and, thus, we
18 had a lot of things going on in the past that would make it look a certain way
19 in the future, which may not be what it looks like. And we could have a lot
20 of reservations for things coming up that will make it look a certain way
21 that's different from the past. Neither one is going to be a perfect predictor,
22 so is there anything in the specification that ties me to a particular predictor
23 being used for the planning, whether it be past performance or future
24 information about what's coming up in the future? What's in the spec?

1 MR. PYMENTO: Thank you, Your Honor. I'll address the particular
2 points, parts of the specification that discuss this claim in my surrebuttal.
3 But for the moment, I'll just say that reservation information, as you
4 rightfully point out, may be used to determine whether a topology link
5 would be available in the future. However, the claim language talks about
6 usage information. A reservation doesn't necessarily mean that anything
7 will be used. I understand that both --

8 JUDGE WHITE: Usage information defined. Usage information,
9 that could be broad enough to talk about what the future usage is going to
10 be, couldn't it? I mean, I think that this is an area where the spec can be very
11 enlightening.

12 MR. PYMENTO: Okay. On surreply, I will find some portions of the
13 spec that will support this.

14 JUDGE WHITE: Thank you.

15 MR. PYMENTO: I'll just briefly point out we had in our
16 demonstratives several slides explaining how Petitioner's new expert
17 declaration basically includes new arguments and tries to correct deposition
18 them, including the deposition testimony that we referred to with respect to
19 Claim 6. I think those slides speak for themselves, and we believe that those
20 new arguments should be rejected by the Board.

21 I will yield the rest of my time unless the Board has further questions.

22 JUDGE LEOVITZ: I think you can go ahead. I don't have any.
23 Judge White, do you have any?

24 JUDGE BAER: I'm sorry. I was on mute. You have 24 minutes left

1 for surrebuttal time, so I'll put those 24 minutes in reserve. Petitioner, you
2 have actually 12 minutes remaining. I said 15. You have 12 minutes
3 remaining in your rebuttal time, and you can begin whenever you're ready.

4 MR. HUH: Very good. Just briefly, to touch on this Claim 6 issue,
5 you know, if we relied on Schelen's teaching of Figure 5, which is also
6 reproduced on our Petitioner's reply, pages 27 through 28, where we
7 explained Schelen actually has not just future usage information, it actually
8 has present and past usage information illustrated on its figure. So the usage
9 information in Schelen, in fact, to the extent they require past usage, that's
10 actually taught in the reference. And I would also like to read into the
11 record disclosure of Schelen to which teaches an equation, and it states as
12 follows: Determine if the bandwidth usage after adding the new load RN
13 will exceed the available bandwidth during look-ahead time. So this is
14 talking about the bandwidth usage, and this contemplates the currently-used
15 bandwidth as illustrated in Figure 5 of Schelen. So to the extent the present
16 or past usage information was a requirement, that's in the prior art. Nothing
17 novel about that.

18 I want to note, briefly turning to Claim 1 again, the MPLS domain
19 implementations we provided, Your Honors, was fully supported by
20 evidentiary references. We did not conjure up those figures. Those were
21 supported by evidentiary references showing that knowledge of that was in
22 the art. We, for example, cited the evidence of parallel ISPs in the school
23 example, and I would also, with respect to the series example, if I could
24 draw the Board's attention, cited in our petition in Dr. Houh's testimony,

1 Exhibit 1017 shows a series implementation of MPLS and DiffServ. This is
2 Exhibit 1017, page 18, Figure 7. And this figure shows prior art knowledge
3 of series MPLS and DiffServ and each one of those has a bandwidth broker
4 within it. So this assertion that somehow it wasn't known to utilize series,
5 MPLS and DiffServ domains together, or that it was not known to utilize
6 bandwidth brokers at the same time, that's simply not true. The prior art
7 demonstrates this, and we relied on this in our petition supporting the
8 background knowledge in the art. And you can see in this in the example.
9 There's a figure -- go ahead, Your Honors.

10 JUDGE LEBOVITZ: Yes. I'm sorry. Where was 1017 referenced?
11 Can you point to that, please?

12 MR. HUH: In our petition?

13 JUDGE LEBOVITZ: Yes. Or in Houh 103 declaration. Either spot
14 is fine.

15 MR. HUH: Right. So, for example, on page 23 in our petition, when
16 we identified the series example, we cite to 1017.

17 JUDGE LEBOVITZ: Okay.

18 MR. HUH: And this is just supporting the knowledge in the art that it
19 was known to put these things in series. There's nothing novel about that.
20 And throughout, you know, we identify this. And, in fact, 1017 states that
21 this is a practical real world implementation, so, you know, this assertion
22 that it was not known to put these in series or, in fact, you know, to utilize
23 bandwidth brokers is simply incorrect.

24 So, for example, on page 24 of our petition, at the bottom of page 24,

1 citing Dr. Houh's testimony at Exhibit 1003, 143 to 144 paragraphs, we
2 stated as follows: It was also recognized in the art that DiffServ and MPLS
3 are similar and are not mutually exclusive. On the contrary, they
4 complement each other nicely. This is 1017, and this is the one that talked
5 about the figure that I just referred to, Figure 7 in 1017, just demonstrating
6 knowledge in the art of utilizing bandwidth brokers.

7 I would note for your Board's reference that we also, in our petition,
8 explained that it would have been obvious, if I could turn the Board's
9 attention to slide 12 where Xio teaches at page 11 cited in our petition 28
10 through 29 that it is technically better to have a bandwidth broker to allocate
11 resources. Further, Xio teaches at page 12, at the ISP side, admission
12 control decisions can be made in a distributed manner by the boundary
13 routers or centrally by a bandwidth broker. So Xio contemplates two
14 implementations for admission control, either on the boundary routers or you
15 would have a central bandwidth broker. And we explained in our petition
16 that it would have been obvious to have a bandwidth broker at the MPLS
17 domain because Xio itself teaches that it's technically better to do that.

18 JUDGE LEBOVITZ: Can I interrupt here? Because we understand
19 that point. Can you please show me in Exhibit 1007, Schelen-2, where he
20 talks about historical usage over time. And I think the only spot you pointed
21 to was the equation. Can you please point to that? I see it under Section 3.4
22 of Exhibit 1007, Schelen-2. Can you show me where he shows historical
23 usage? I see look-ahead, I see immediately reserved, I see now in Figure 5.

24 MR. HUH: Right. So if you look at Figure 5, for example, right, the

1 immediately reserve is currently reserved, right, and that's currently being
2 used. But to the left of that, C, B, and A have been used, are currently in use
3 and were used prior to the present time frame. So the Y axis corresponds to
4 the time zero, and the items to the left of the Y axis correspond to previous
5 usage. So if the time zero is currently on the Y axis, which is now, anything
6 prior to now has been previously used, which is historical data.

7 JUDGE LEBOVITZ: And where is that used over time? I mean, I
8 see it in a figure, but where is it used to plan ahead or whatever the
9 additional limitation of the claim is? Can you point to where that
10 information of A, B, and C is being used?

11 MR. HUH: Well, the immediately-reserved bandwidth, which is part
12 of historical data and present data, is utilized because that knowledge
13 informs you whether or not you can utilize -- so you can see that the
14 bandwidth A, B, and C at the bottom is not allocated for future reservations
15 because it's currently being used. For example, the next utilized bandwidth
16 is D above C, and then you have E and F and G. So the way that it allocates
17 bandwidth over time is it doesn't put it at the lower bandwidth area but it
18 stacks it in order to not encumber the currently-used bandwidth, which was
19 also previously used earlier.

20 JUDGE LEBOVITZ: Right. But it's current. It's not historical over
21 time. That's what's being used immediately, correct? Is that what you're
22 saying?

23 MR. HUH: What I'm saying is that A, B, and C to the left is historical
24 data.

1 JUDGE LEBOVITZ: It's labeled immediately reserved. A, B, and C
2 are immediate reservations.

3 MR. HUH: That's correct, Your Honor. It's immediate, but the
4 vertical axis is now. To the left of that was, if I immediately reserve it and
5 then I'm still using it for ten minutes, you know that the previous ten minutes
6 is when I reserved it, so that's historical data as of now.

7 JUDGE LEBOVITZ: Okay. I just wanted to make sure I understood
8 the argument.

9 MR. HUH: Okay. But, again, the bandwidth usage is clearly part of
10 the, you know, of Schelen-1's teachings, which is bandwidth usage, which is
11 resource information.

12 So the prior art, going back to Claim 1, Your Honors, the MPLS
13 domain utilized in various implementations as presented in the petition was
14 disclosed in numerous references and was known to utilize bandwidth
15 brokers in the MPLS domain. And I would note regarding Dr. Houh's
16 second declaration, it's completely responsive to counsel's, to the Patent
17 Owner's counsel's arguments in its Patent Owner response.

18 And I'll stop here and answer any questions the Board may have on
19 any issue that have been addressed today. If there are no questions -- go
20 ahead, Your Honor.

21 JUDGE WHITE: I was going to ask you to address the admission
22 manager, connection manager point that we were discussing with Patent
23 Owner's counsel.

24 MR. HUH: Sure.

1 JUDGE WHITE: What you're actually relying on and where -- let's
2 start with what are you actually relying on?

3 MR. HUH: Our petition is what we're relying upon. Our petition is
4 clear that we rely on the admission manager as corresponding to a
5 bandwidth broker. We never recharacterize it as anything else but that. We
6 explained that the bandwidth broker admission manager cooperates with the
7 administrative server by sending a request to set up a new LSP.

8 So Patent Owner has focused on the word that it cooperates and
9 saying that we're recharacterizing that entity as something other than a
10 bandwidth broker, which is not true. If I could direct the Board's attention to
11 really what the claim is requiring, and the claim says what it says, but then
12 we have Dr. Congdon's deposition testimony which is Patent Owner's expert
13 presented on our slide 28. I'm sorry. Yes, 28. And when Dr. Congdon was
14 asked regarding LSP setup, he was asked do you have an understanding in
15 the context of the claim which entities that are forming the LSP setup, and
16 then his answer was a request from a bandwidth broker to at least one
17 intradomain, one DB, is sent. And then at line 23 and 24, he testifies that the
18 intradomain broker is ultimately performing the LSP setup.

19 So we explained in our reply, as well as in our petition, that the
20 admission manager sends a request to the administrative server in the
21 context of Gibson. And this is on our slide 26, and I'll just refer back to that
22 one briefly to remove any doubt. We rely on the admission manager 30 to
23 the left as a bandwidth broker. That provides admission control into the
24 MPLS network domain. That's the admission manager. It manages the

1 admissions. And a request for a new LSP as shown to the left top is sent to
2 the admission manager 30 to the server 35, which cooperates with CM-32,
3 which is connection manager 32, in order to set up an LSP at the bottom
4 cloud, which is a local area. So the admission manager, which is what the
5 claim requires, is the bandwidth broker sends a request and the admin server,
6 just like the RATES server of the 698 patent, sets up the LSP.

7 And, you know, so we've explained this throughout, and what I would
8 note is, just going back to the admission manager that we identified in our
9 petition, going to slide 13, and I want to make it clear, you know, what
10 Gibson teaches --

11 JUDGE BAER: Mr. Huh, I don't want to interrupt, but you are over
12 your time, so if you would please wrap up.

13 MR. HUH: Sure, Your Honor. Just briefly, on slide 13, have Gibson
14 at column 7, 26 through 48, teaching that the admission manager effectively
15 provides admission control to the communication network, which is the
16 MPLS network. And this is part of the management layer of the MPLS
17 communication network.

18 JUDGE BAER: Thank you, Mr. Huh. We'll have to leave it at that.

19 MR. HUH: Thank you.

20 JUDGE BAER: Okay. Mr. Pymonto, as I said, you have 24 minutes.
21 You may begin when you're ready.

22 MR. PYMENTO: Thank you, Your Honor. Julian Pymonto for
23 Patent Owner. Since this is --

24 JUDGE LEBOVITZ: Can I interrupt right away? I just want to ask a

1 question. Let me look at the claim again. What is a resource? Yes, what's a
2 resource? Because that's throughout all of this prior art references in the
3 patent. How would you define a resource request or a resource and a
4 resource request?

5 MR. PYMENTO: A resource can correspond to time. A resource can
6 correspond to bandwidth for transmission, so that would be my
7 understanding of what a resource is.

8 JUDGE LEOVITZ: Okay. So it could be bandwidth. All right.
9 That's what I thought, too. Thank you. Sorry to interrupt.

10 MR. PYMENTO: No problem. So since it's all fresh in our minds
11 from the previous line of questioning, I just want to go back to the
12 intradomain broker claim limitation. I think we might have some clarity as
13 to whether the admission manager, it seems, is the bandwidth broker. But
14 the intradomain broker is a separate claim limitation, and it corresponds to
15 something different than the bandwidth broker, according to the claim
16 language. And I think we still don't really have clarity on what Petitioner is
17 saying the intradomain broker is, at least in Gibson. As I mentioned before,
18 the petition says it's connection managers combined with administrative
19 servers and the reply says it's the admission manager combined with the
20 administrative server.

21 I'll note from slide 29 of our demonstratives that the claim limitation
22 says that it's the intradomain broker is responsible for admission control the
23 label switch path, LSP, setup. But, you know, Your Honors, we just heard
24 that the admission manager, which is allegedly the bandwidth broker, which

1 is a separate entity from the intradomain broker, that performs these tasks. I
2 think, just based on that alone, you know, the obviousness combination fails.

3 JUDGE LEBOVITZ: I don't understand that. It's clear, like in
4 Gibson, column 7, line 42, he defines what an admission manager monitors
5 the bandwidth of connection to the edge abstract nodes and the abstract
6 nodes, as I understand it, are routers, right. So in this way, an admission
7 manager effectively provides admission control. So I don't see any
8 ambiguity there that that's doing the same thing that a bandwidth broker
9 does.

10 But then what happens, and it's discussed subsequently in the patent,
11 that the admission manager communicates with the administrative server and
12 connection manager to set up these LSP pathways, and that's what the claim
13 requires. The claim requires in the last characterized clause that the
14 intradomain broker has that function, so it's the same function.

15 MR. PYMENTO: I still think there isn't really a clarity on what the
16 intradomain broker is in Gibson. But I take it Your Honor is implying that
17 perhaps, because the admission manager is with broker, that it has to be the
18 connection managers and administrative servers that are communicating
19 with the admission manager?

20 JUDGE LEBOVITZ: Okay. Take a look at the claim. There are two
21 functions. I'm not looking at it, so look at the claim 1.71 and 1.72. Those
22 define the function of an intra-bandwidth broker, right? We don't really
23 know what IDB means, but we know from the claim that it has those two
24 functions. So what are they? Can you just look at the claim and tell me?

1 MR. PYMENTO: Sure. It says each intradomain broker is
2 responsible for admission control and the label switch path, LSP, setup.

3 JUDGE LEBOVITZ: Okay. So we know that the admission manager
4 is telling the administrative server and connection manager that you're going
5 to control the resources, the bandwidth, and you're going to do that by
6 setting up these LSP pathways. That's how I read the patent. So what I'm
7 looking at is saying, okay, I don't know what IDB means; it's just a word.
8 But I do know that the claim says it has two properties. And when I look at
9 Gibson, and you can respond to this and tell me if I'm wrong, but if I look at
10 Gibson I see those two properties being performed by the administrative
11 server and connection manager. If you can address that, that would be
12 helpful.

13 MR. PYMENTO: Sure. And I think the convolution of whether the
14 connection manager combines with the admission manager with the
15 administrative server is sort of the aspect that I think the patent simplifies
16 with respect to Claim 1's limitation that there is a bandwidth broker and the
17 bandwidth broker, there is also an intradomain broker that corresponds
18 within, intra, a domain and such that the intradomain broker eventually is the
19 one that's responsible for the admission control and the label switch path,
20 and there seems to be a lot of convolution in Gibson as to which component
21 is actually performing the admission control and label switch path, such that
22 the claim limitation is not met because we don't have one entity. We don't
23 have an intradomain broker.

24 And I think, as Your Honor mentioned, sure, we can see that there is

1 admission control. We can see the two functions, admission control and
2 LSP setup. I don't think we can dispute that. That would be not credible on
3 our behalf. But the claim limitation talks about an intradomain broker, and
4 we just simply don't know what that is because, again, you know, the
5 petition talks about the connection managers and administrative server, as
6 you mentioned, but the reply then says, and I'll point again to slide 29 of our
7 demonstratives, it says Gibson's coordination among the admission manager
8 and the administrative server is consistent with the claimed approach to LSP
9 setup. And that's in relation to the intradomain broker.

10 So I think the level of convolution in Gibson or maybe it's the
11 convolution within the reply itself, it's just not clear where the intradomain
12 broker is and whether Gibson would disclose or obviate that claim
13 limitation. I think that's Patent Owner's point.

14 JUDGE LEBOVITZ: Do you have a problem with the combination
15 of the connection manager and administrative server being the IDB? Is that
16 one of your arguments here?

17 MR. PYMENTO: It is one of our arguments. And for the reasons we
18 mentioned on opening, the administrative server flouts the claim limitation
19 that requires an intradomain broker. It's not clear that that is within a
20 domain. That's for intradomain.

21 JUDGE WHITE: Counsel, I think my question is, we look at the
22 intradomain broker, does that mean that it has to be physically located inside
23 the domain, or does that mean it just has to operate and do these particular
24 functions within the domain? I know you had some issues with some of the

1 things, you know, centralized versus distributed. But if they're performing
2 these specific functions, the admission control the LSP setup for a particular
3 domain, does that matter whether it's physically within the domain? And
4 we're talking about code here. Physically within is kind of amorphous
5 anyway.

6 MR. PYMENTO: Right. And I'm not suggesting that we're talking
7 about physical locations. I think, as Your Honors mentioned earlier, you
8 know, we're talking about software. But, for example, the figure relied upon
9 by the petition on page 58 does correspond to the operation within a certain
10 area. It's not necessarily a physical within, but it does provide the meets and
11 bounds of where a certain component will be operating with relation to
12 every other component. So you can see from that figure that the
13 administrative server is simply not within a network domain, nor is there any
14 suggestion within Gibson that would provide that disclosure.

15 JUDGE WHITE: So if I write a function that does this particular,
16 these two particular things, it does the admission control, it does the LSP
17 setup, and I'm calling that same function over and over again for different
18 domains, that's not going to do it? I mean, if it's performing these things,
19 you're telling me I need to have something separately substantiated
20 somewhere? I mean, does that matter, as long as it's doing what it's
21 supposed to do?

22 MR. PYMENTO: Yes, Your Honor, it does matter, in view of the
23 claim limitation that it's an intradomain broker. It's clear that, even if it does
24 perform those functions, the admission control or the LSP, which, you know,

1 admittedly, for our own credibility, that is disclosed in Gibson, but it's not
2 the intradomain broker that does that. And that's one of the key limitations
3 of Claim 1. It's just simply not disclosed in Gibson.

4 JUDGE LEBOVITZ: Right. But when you say that's not the
5 intradomain broker, why isn't it? And maybe I'm asking you to reiterate
6 what you just responded to, but we don't know what an IDB is, other than
7 the two functions that are defined in Limitations 1.71 and 1.72, admission
8 control and LSP setup. So if those two things do it and we're talking about
9 not anticipation, we're talking about obviousness, so it's just software, so if
10 they're working together, why wouldn't it be obvious to use those two? I
11 mean, they're both doing that function. Maybe you responded, but maybe
12 I'm having trouble understanding the response.

13 MR. PYMENTO: Thank you, Your Honor. I'm happy to clarify.
14 Patent Owner's position is simple. Structures have meaning, and the
15 language that defines those structures have meaning. If something is
16 intradomain, it needs to be within the domain. That's kind of the
17 understanding of what it is. And the fact that there are certain functions that
18 are met does not preclude the fact that you also need to have, you need to
19 meet all the language in the claim limitation. That includes the intradomain
20 broker.

21 JUDGE LEBOVITZ: So how is it not in the domain? How is it inter,
22 because that's what you argued, right? You said -- I'm sorry to ask you to
23 repeat it again, but I know in your responses you said it's inter, not intra.
24 Can you explain that?

1 MR. PYMENTO: I'm trying to find a place where it would be more
2 clear. So turning to page 28 of our demonstratives, we have a segment that
3 talks about what Claim 1 recites. It says it recites a path-based
4 communications network that includes network domains. So, first of all,
5 there are multiple network domains. There's a bandwidth broker associated
6 to each network domains, with each network domain; so, therefore, there are
7 several network domains within a network.

8 Now, these various network domains also have associated
9 intradomain brokers, so there are multiple intradomain brokers. There are
10 several intradomain brokers. From the figure in the petition 58, which is
11 what Petitioner relies upon, that's not disclosed. We don't see the connection
12 managers corresponding to a specific domain. That's simply not disclosed
13 here. The administrative server is also not corresponding to specific domain.
14 None of the components are corresponding to a specific domain, so there
15 cannot be an intradomain broker.

16 JUDGE LEBOVITZ: But those were identified as local, and Dr.
17 Houh was saying local means that they're part of the same domain. But you
18 want us to read MPLS cloud 1 and cloud 2, or I think it's 15 and 16, as
19 different domains; is that your point?

20 MR. PYMENTO: That is partly the point, yes.

21 JUDGE LEBOVITZ: Well, how does it -- where's your evidence that
22 it's not a local area? Because there was some local verbiage in Gibson.

23 MR. PYMENTO: I mean, we can point to it from just the petition.
24 The Petitioner, who has the burden of proof in the first place, as you can see,

1 our slide 28, they draw the red box around the administrative server and
2 three connection managers. Presumably, that corresponds to a domain, but
3 that's the entirety of Gibson's system.

4 I also want to note that, you know, those are not the only two
5 functions. There's a third function to the intradomain broker, and that's its
6 relationship to the bandwidth broker. It receives information from the
7 bandwidth broker. To the extent that, well, A, the intradomain broker is not
8 disclosed, but we need to have clarity in the petition as to what the
9 bandwidth broker is, what the intradomain broker is, what the relationship
10 between the two is, and then how each of those three functions are met, and
11 that's not there. So that's how we know that there aren't, from this figure, we
12 know that there are not several network domains and at least Gibson doesn't
13 show that, according to Petitioner's own understanding of it, because we can
14 see from the dash line, if they're saying that's one domain, then they're really
15 implying that there is only one domain but that doesn't meet the claim
16 language, which requires multiple network domains with a bandwidth broker
17 associated to each network domain and an intradomain broker associated
18 with each network domain.

19 JUDGE WHITE: Well, then help me out here. I think we all agree
20 that the claim requires multiple domains. I think that's clear. But if I look at
21 the portion of the claim that's talking about the intradomain broker, it says at
22 least one, which means you could meet the limitation with only one. So how
23 is that possible if you need it to be set up in the same way that you're saying
24 if at least one intradomain broker would be good enough when you have

1 multiple domains?

2 MR. PYMENTO: It's at least one intradomain broker within a
3 domain, so there could be multiple intradomain brokers within any given
4 domain.

5 JUDGE WHITE: I don't see within a domain. Maybe I'm looking in
6 the wrong place.

7 MR. PYMENTO: Well, within a domain is from intradomain, but
8 they're referring to at least one intradomain with respect to a domain.
9 Otherwise, it wouldn't be intradomain. That's Patent Owner's understanding
10 of it.

11 JUDGE WHITE: I guess I'm looking for that language within a
12 domain. I see at least one intradomain broker, and I see each intradomain
13 broker. But I only see that they're required to have one.

14 MR. PYMENTO: So that claim limitation says characterized, and
15 that's step four, comprises the following step. And if we look at step four, it
16 says each involved bandwidth broker, and we know that there's a bandwidth
17 broker for each domain, that means that each bandwidth broker -- let's go to
18 the claim limitation. It says passing resource requests from the bandwidth
19 broker, referring to a bandwidth broker in a given network domain, to at
20 least one intradomain broker. That necessarily refers to an intradomain, at
21 least one intradomain broker within the network domain. It would not send
22 a request to an intradomain broker, for example, in another domain.

23 JUDGE LEBOVITZ: I think you're looking at Limitation 1.62
24 because it says passing resource requests from the bandwidth broker to at

1 least one intradomain. So every bandwidth broker has to pass it to one
2 intradomain, at least one, and then you read up, I think, and you find out that
3 there's more than one domain and more than one domain, each one has to
4 have a bandwidth broker. Is that how you're reading it?

5 JUDGE WHITE: And I think that's where the disconnect is because,
6 while I agree that a bandwidth broker has to pass to at least one intradomain
7 broker, you can do that with the same intradomain broker with different
8 bandwidth brokers. And I'm not even saying that that's the way the prior art
9 works because the prior art that's before us, if you look at each one of these
10 connection managers, you can say connection manager, administrative
11 server, and intradomain broker, and each one, whether you're dealing with
12 CM-1 and the administrative server, that's one. And CM-2 and
13 administrative, that's a second box. You're drawing the boxes. So I'm not
14 even limiting the prior art saying that there's only one, but I'm saying your
15 claim seems to require only one.

16 MR. PYMENTO: Thank you, Your Honor. I think you hit the crux
17 of what the issue is, and that's really that there's a meaning to the word
18 intradomain. It's within a domain. So in the example that you gave, for
19 example, where you have multiple bandwidth brokers corresponding to a
20 singular intradomain, that would necessarily imply a bandwidth broker from
21 one domain and a bandwidth broker from another domain talking to an
22 intradomain broker within one of those domains, and that defeats the
23 purpose of the word intradomain.

24 JUDGE WHITE: Does it? I mean, the intra, it seems to be describing

1 what it's doing. It is different from the bandwidth broker because the
2 bandwidth broker is kind of global, whereas you've got these intradomain
3 brokers that are working inside of a domain, but I don't know if that
4 specifies where it's working from. I think that's where I need to think about
5 this a little bit more, and I think I have your position now. But I think that's
6 something I need to think on.

7 MR. PYMENTO: Got you. And I also just wanted to respond to your
8 previous question about Claim 6 and where the spec support may be found
9 for historical usage information.

10 JUDGE WHITE: Yes.

11 MR. PYMENTO: It can be found on -- well, first, in Figure 6 of the
12 698 patent, there is a box that shows resource map (over time), and we can
13 find the description of that figure in column 9, lines 28 to 32, where it talks
14 about the resource map. And it says to be able to do admission control for
15 the VLL service, resource information must be coupled to the topology into
16 a resource map. This information may be collected. The fact that it's
17 collected means that the usage has occurred by probing the network or it
18 may be statically configured. So it's specifically talking about actual usage
19 information. A reservation does not necessarily correspond to use, I think,
20 as we've determined.

21 JUDGE WHITE: Thank you.

22 JUDGE BAER: Mr. Pymento, you have two minutes remaining, or
23 you certainly don't need to use all that time.

24 MR. PYMENTO: Sure. Let me see if I have anything else.

1 JUDGE BAER: Sure. Take your time.

2 MR. PYMENTO: But not too much time. One last thing I'll touch
3 with is that, you know, Petitioner's counsel does not address the bandwidth
4 broker, A, establishing the different domains. I think we've heard from both
5 the service-level agreement argument from Xio, as well as the Schelen-1
6 argument that there's a collaborative effort among bandwidth brokers. This
7 just flouts the claim language which requires establishing, as opposed to
8 mere knowledge. That's the result of just communicating with each other.

9 With that, I will finish.

10 JUDGE BAER: Thank you, Mr. Pymonto. Unless there are any
11 further questions from my colleagues, with that, that will conclude our
12 hearing. Thank you to the parties. We appreciate you being here very
13 much. That was helpful. This case is submitted, and we are now off the
14 record.

15 (Whereupon, the above-entitled matter went off the record at 3:03
16 p.m.)

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