

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IRIUSRISK, INC.,
Petitioner,

v.

THREATMODELER SOFTWARE, INC.,
Patent Owner.

Case IPR2023-00821
Patent 10,699,008

PATENT OWNER SUR-REPLY

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	CLAIM CONSTRUCTION	1
A.	“Redefine the First Threat Model by Including In It a Second Threat Model Associated with the Component Group”	1
III.	THE CHALLENGED CLAIMS ARE NOT UNPATENTABLE	2
A.	Ground 1: Jones Does Not Anticipate Claims 1 and 3	2
1.	Jones Does Not Disclose Adding a Component Group to a First Threat Model as Required by Element 1[f]	2
2.	Jones Does Not Disclose “Display[ing] a Relational Diagram ... Using ... Visual Representations of One or More of the Compensating Controls” as Required by Element 1[e]	5
3.	Jones Does Not Disclose Claim 3	6
B.	Ground 2: Alleged Obviousness of Claims 1-20 Over Jones, Zheng, and Keenan	8
1.	Dependent Claim 2	8
2.	Independent Claim 4	10
3.	Dependent Claims 6 and 7	10
4.	Dependent Claim 8	11
5.	Dependent Claim 9	12
6.	Dependent Claim 10	12
7.	Dependent Claim 11	13
8.	Independent Claim 12	13
9.	Dependent Claim 13	13

10.	Dependent Claim 14.....	14
11.	Dependent Claim 15.....	14
12.	Dependent Claim 16.....	14
13.	Dependent Claim 17.....	14
14.	Dependent Claim 19.....	14
15.	Dependent Claim 20.....	16
C.	Ground 3: Alleged Obviousness of Claims 1-20 Based on Jones, Zheng, Keenan, and Yu	16
D.	Ground 4: Alleged Obviousness of Claims 1-20 Based on Jones, Zheng, Keenan, Yu, and Reith	18
E.	Ground 5: Alleged Obviousness of Claims 5-8 and 13-15 Based on the References of Ground 4 and the Knowledge of a POSITA	20
F.	Mr. Hurlbut is Biased	21
IV.	CONCLUSION.....	23

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>ActiveVideo Networks, Inc. v. Verizon Comm’s, Inc.</i> , 694 F.3d 1312 (Fed. Cir. 2012)	18, 19, 21
<i>Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.</i> , 776 F.2d 281 (Fed. Cir. 1985)	20
<i>Cephalon, Inc. v. Watson Pharms, Inc.</i> , 707 F.3d 1330 (Fed. Cir. 2013)	20
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	18, 19, 21
Other Authorities	
Black’s Law Dictionary	21

Case IPR2023-00821
Patent 10,699,008
Patent Owner Sur-Reply

EXHIBITS

Exhibit No.	Description
EX-2001	Patent Owner's December 4, 2023 Power of Attorney
EX-2002	Transcript of Robert Hurlbut Deposition taken February 5, 2024
EX-2003	Declaration of Seth James Nielson, Ph.D.

I. INTRODUCTION

The Board should determine that IriusRisk Inc.’s (“IriusRisk” or “Petitioner”)¹ Petition has not shown that any of the Challenged Claims of the ‘008 Patent (*i.e.*, claims 1-20) are unpatentable. There is nothing in the Reply that properly rebuts the defects identified in the Patent Owner Response (“POR” or “Response”).

II. CLAIM CONSTRUCTION

A. “Redefine the First Threat Model by Including In It a Second Threat Model Associated with the Component Group”

Essentially, Petitioner argues that PO’s proposed construction is wrong because the claims must include the situation where a component group is added to a threat model where the added component group is a duplicate of a component group already in the threat model. But Petitioner’s criticisms ignore the language of the claims themselves. Claim 1 of the ‘008 patent states, in part, configuring to:

add a component group to the first threat model and
thereby redefine the first threat model by including in it a
second threat model associated with the component
group

¹ Petitioner and Patent Owner are direct competitors in the threat modeling business.

EX-1001, 35:56-63. Contrary to Petitioner’s argument, PO’s proposed construction is exactly consistent with the claims. Adding a duplicative component group to the first threat model “thereby redefine[s]” the first threat model because the duplicative component group itself was not previously part of the threat model. That is why PO’s proposed construction includes the phrase “where the added component group was not a part of the first threat model before being added.” Whether there is an identical component group already included in the threat model, adding a component group that was not previously part of the threat model must redefine the first threat model in order to satisfy the claims.

III. THE CHALLENGED CLAIMS ARE NOT UNPATENTABLE

A. Ground 1: Jones Does Not Anticipate Claims 1 and 3

1. Jones Does Not Disclose Adding a Component Group to a First Threat Model as Required by Element 1[f]

Petitioner argues that PO “conflates Jones’ information system and threat model DFD.” Reply, 6. But Petitioner is ignoring the fact that Jones is a threat modeling system and the DFD creator 106 merely creates one part of the threat model by identifying the threat model components in the information system. EX-1004, Title (“Threat Modeling and Analysis”), 4:6-9 (“a modeling and analysis system 100 for modeling and analysis of cybersecurity threats in a complex-system platform is illustrated according to example implementations of the present

disclosure.”). Indeed, the function of the DFD creator 106 is to “compose a DFD for the information system from those elements and in accordance with the threat-model level identified by the DFD level establishment system 104.” EX-1004, 5:45-49. Jones also states that “the information system may be describable in terms of a hierarchical breakdown ... of its components ... at different levels.” EX-1004, 5:10-14.

Thus, the “components” obviously are not the information system components themselves. Instead, the “components” are the threat model components that represent real-world components of the real-world information system. Once identified, those threat model components are further analyzed in the threat indicator 108 which adds secondary nodes to complete the threat model. EX-1004, 5:64-6:3. Essentially, Petitioner is now trying to separate the threat model components from Jones’ threat model. But that is directly contrary to Jones and to the specification of the ‘008 patent which teaches that the threat model components are an integral part of the overall threat model. *See, e.g.*, EX-1001, 35:50-55 (“configuring ... to display a relational diagram ... using visual representations of one or more of the threat model components ..., the relational diagram defining a first threat model.”).

Petitioner’s apparent concession that Jones’ system already includes all of

the components and subcomponents that may be depicted in the threat model completely undermines Petitioner's argument that Jones discloses "adding" a threat model components group to the threat model to redefine the first threat model. *See* Reply, 6-7 (*e.g.*, "the nested components are predefined in the information system"). The $n+1$ level subcomponents are already part of the n -level components identified by the DFD creator 106. Thus, when the decomposer 110 decomposes the components into their nested subcomponents, the decomposer is not adding any component group to the threat model. EX-1004, 5:10-19. The subcomponents are already present, although not shown visibly.

Petitioner's Reply argument (which was not presented in the Petition) is based on the faulty premise that Jones' threat model only includes the threat model DFD and does not include the information system's threat model components identified by the DFD creator 106. EX-1004, 5:45-49, 7:19-23, 7:23-11:57, Fig. 2. But Jones' threat indicator 108 analyzes the DFD created by the DFD creator 106 to identify threats presented by the threat model components in the DFD and adds those threats to the DFD created by the DFD creator. EX-1004, 5:64-6:3, 11:59-12:21, Figs. 3 and 9. The output of the DFD creator and the output of the threat indicator are not two separate things. The threat indicator adds to the DFD created by the DFD creator. The threat model components identified by the DFD creator

are part and parcel of Jones' threat model. Petitioner's attempts to separate the DFD from the DFD creator from the threat model are inconsistent with the express teachings of Jones. That understanding also is consistent with the '008 patent itself which explains that threat model components are part of the overall threat model.

EX-1001, 9:28-30, 35:50-55.

2. Jones Does Not Disclose “Display[ing] a Relational Diagram ... Using ... Visual Representations of One or More of the Compensating Controls” as Required by Element 1[e]

In the Reply, Petitioner cites to Jones' the pop-up window 814 as allegedly disclosing the “visual representations of one or more of the compensating controls.” Reply, 9-11.² But the claims require that the visual representations of the compensating controls be part of a “relational diagram” in which the relational diagram defines a threat model. EX-1001, 35:50-55. Jones' pop-up window 814 is not part of a relational diagram. As the '008 patent explains, a relational diagram is a diagram that shows the relationships between and among the component included in the diagram. EX-1001, 16:48-52. While workspace 702 in Jones includes aspects of a relational diagram, pop-up window 814 is not part of that diagram. Moreover, pop-up window 814 contains textual information about a

² Jones describes this window as a “window 814 that may be recalled for each of the shapes,” in which data may be entered and recalled. EX-1004, 19:18-24.

shape – not a visual representation of a compensating control. EX-1004, 19:18-23.

Finally, window 814 cannot be considered part of a relational diagram because window 814 does not depict any information about relationships between or among any of the shapes in workspace 702.

3. Jones Does Not Disclose Claim 3

Rather than dealing with the actual language of claim 3 and its additional requirements on claim 1, Petitioner simply waives its hands and argues that since Jones discloses a system having multiple threats, multiple threat model components, and allegedly multiple compensating controls, that is enough to satisfy claim 3. Petitioner is wrong.

Claim 1 is a method claim that requires the display of a relational diagram that defines a first threat model, and the addition of a component group to the first threat model that thereby redefines the first threat model by including in it the second threat model associated with the added component group. Claim 3 requires the storage of one or more “additional threat model components in the one or more databases,” the storage of “one or more additional threats” where each additional threat is associated with “at least one of the additional threat model components” and the storage of “one or more additional compensating controls” where each additional compensating controls is associated with “at least one of the additional

threats,” all of the associations being made through the one or more databases.

Petitioner has not identified any teachings in Jones that align with claim 3 because no such teachings exist. At most, Jones teaches the generation of a threat model. Jones does not teach adding a components group to the threat model to “thereby redefine the first threat model,” as required by claim 1. Further, Jones does not teach or suggest adding “additional” threat model components, “additional” threats, or “additional” compensating controls to the one or more databases recited in claim 1.

Petitioner has improperly broadened claim 3 by attempting to read that claim on a system generating a threat model having multiple components, threats, and (alleged) compensating controls. Indeed, Petition’s error is highlighted by its characterization of claim 3 when it argues that “claim 3 merely requires these steps [of claim 1] be performed an ‘additional’ time.” Reply, 11-12. Petitioner points to nothing other than the multiple components that make up Jones’ threat model as shown in Jones’ Figure 9.

But claim 3 is a dependent claim that adds additional method steps to claim 1. Claim 1 already required the storage of multiple threat model components, multiple threats, and multiple compensating controls. EX-1001, 35:39-45. Petitioner’s flawed reading of claim 3 renders the additional method steps of claim

3 nullities. That is obviously an incorrect reading of claim 3, and thus, an incorrect application of the claims to Jones. Jones does not anticipate claim 3.

B. Ground 2: Alleged Obviousness of Claims 1-20 Over Jones, Zheng, and Keenan

1. Dependent Claim 2

Paraphrasing, dependent claim 2 requires the selection of one threat model component and, in response, displaying the attack paths of all threats associated with the selected threat model component. Try as it might, Petitioner cannot identify any analogous teaching in Zheng (or Jones, for that matter).

The Reply (improperly) cites to Zheng’s teachings related to the toggling of “sub-categories” within a layer. Reply, 14 (citing EX-1005, 11:45-46).³ The only example related to Zheng’s threat modeling layer 204 is the enabling or disabling of “a particular type of threats in the threat modeling layer.” EX-1005, 11:46-47. This teaching fails on two fronts. First, claim 2 requires the selection of “one of the diagrammed threat model components.” The cited portion of Zheng toggles an entire type or sub-category of threats – not an individual threat. Second, claim 2 requires the selection of a threat model component. The cited portion of Zheng

³ This Reply citation is improper because Petitioner did not rely on this teaching in the Petition. Petition, 42. Thus, Petitioner is changing the theory of invalidity for claim 2.

toggles a sub-category of *threats* – not a threat model component.

The Reply also argues that Jones’ Figure 9 shows that threats can be “viewed all at once, or individually in detail, such as in the rectangular box in the bottom right hand corner of Fig. 9.” Reply, 14-15. That argument also fails for at least two reasons. First, claim 2 requires the selection of one threat model *component* – not a threat.

Second, Jones only teaches displaying all threats at once. The text box in the lower right-hand corner of Figure 9 merely provides “data” for a shape on Figure 9. Jones does not teach displaying either all secondary nodes 904 or only text box 814 for a single shape. Instead, Jones teaches displaying all secondary nodes 904 and, if recalled, text box 814 for a single shape. EX-1004, 19:19-23.

Moreover, Petitioner is improperly changing the invalidity theory by relying on teachings from Zheng *not* relied upon in the Petition. In the Reply, the only Zheng citations are to column 11:41-55. Reply, 14. Those citations relate to the process 800 shown in Figure 7. The petition never relies on Figure 7 as teaching or suggesting claim 2. Petition, 42.

Petitioner criticizes PO’s analysis of the alleged Jones/Zheng combination as “conclusory.” Reply, 15. But Petitioner ignores the paragraphs of analysis by PO and by Dr. Nielson as to why a POSITA would not have combined Jones and

Zheng. Response, 36-38; EX-2003, ¶¶119-121.

2. Independent Claim 4

Other than admitting to omitting an element of claim 4 from the Petition, Petitioner's Reply adds nothing of substance to its analysis of claim 4. Petitioner has not shown claim 4 to be unpatentable for at least the reasons provided in PO's Response.

3. Dependent Claims 6 and 7

Petitioner argues that the PO Response ignores the Petition's combination of Keenan, Zheng, and Jones. That is not correct.⁴ The Response explains that Jones does not teach or suggest the display of "compensating controls" on a relational diagram; that none of the references teach or suggest "security controls" or "mitigations" that can be set to an on state and thus cause the system to "toggle all attack path mitigatable by the first control to a mitigated display state" as required by claim 6. Thus, the opposite arrangement recited in claim 7 is not taught or suggested by the Keenan/Zheng/Jones combination.⁵ Moreover, PO explained in

⁴ In its criticisms of Petitioner's analysis of claims 6 and 7, and specifically criticisms of Petitioner's analysis of the alleged "compensating controls," PO and its expert mistakenly cited to Petitioner's analysis of Elements 1[c] and 1[c]" when the reference should have been to Elements 1[c] and 1[d]. Reply, 41. With that correction, PO's criticisms remain correct.

⁵ Keenan is only relied upon for the idea of toggling a feature on or off. The deficiencies identified in the Response are more substantive than just the concept

detail why a POSITA would not have combined Zheng with Jones to begin with. That argument remains unrebutted.

4. Dependent Claim 8

For claim 8, Petitioner simply waives its hands and argues that, effectively, removing a compensating control (claim 8) is the same as toggling off a compensating control (claim 7). But, as a matter of law and as a practical matter, that is wrong. PO cited cases supporting the proposition that different words are presumed to have different meanings. Reply, 43. Petitioner did not respond to those cases.

As a practical matter, removing is different than toggling off a feature. Removing entails deleting the control from the threat model such that it is no longer part of the threat model. Toggling a compensating control off leaves the control in place so that it can be easily toggled on without having to be added back to the threat model.

Applicant chose different words to claim different scopes of subject matter. Petitioner cannot simply wish those differences away because it suits Petitioner's present purposes.

of toggling.

5. Dependent Claim 9

Contrary to the Reply's argument, PO did not misunderstand the Petition's arguments. Neither the Petitioner nor its expert attempted to show that the cited art combination teaches or suggests displaying attack paths of threats associated with a "subset" of the diagrammed threat model components. Zheng teaches the display of all potential paths from a threat to all potential targets or the display of no paths whatsoever. EX-2003, ¶118. Zheng teaches the display of an entire layer or the absence of the layer entirely. There is no teaching of an in between arrangement. Accordingly, Zheng does not teach or suggest the display of attack paths of threats associated with a "subset" of threat model components.

The Reply argues that the Petition (at 47) alleges the toggling off "'all features except for the attack paths' of specific components" Reply, 17 (emphasis added). That is not true. The Petition stated that "all features except for the attack paths" could be toggled off. This allegation had nothing to do with "specific components" or, in other words, a "subset" of threat model components. The Reply is improperly attempting to backfill a hole in the Petition. That attempt should be rejected.

6. Dependent Claim 10

The Reply argues that Zheng discloses the display of selected components of

the threat model. Reply, 17. This is wrong. The cited portion of Zheng toggles an entire type or sub-category of threats – not an individual threat. Thus, Zheng does not teach or suggest the selection of individual threat model components, much less the ability to alter visually displayed attack paths of a selected component.

In addition, neither the Reply nor the Petition provides any evidence-based rationale for why a POSITA allegedly would have combined the editing teachings of Keenan with Zheng’s disclosure of displaying entire layers and subcategories of layers. Petition, 48. The Petition is entirely conclusory.

7. Dependent Claim 11

Petitioner’s Reply adds nothing of substance to its analysis of claim 11. Petitioner has not shown claim 11 to be unpatentable for at least the reasons provided in PO’s Response.

8. Independent Claim 12

Petitioner’s Reply adds nothing of substance to its analysis of claim 12. Petitioner has not shown claim 12 to be unpatentable for at least the reasons provided in PO’s Response.

9. Dependent Claim 13

Petitioner’s Reply adds nothing of substance to its analysis of claim 13. Petitioner has not shown claim 13 to be unpatentable for at least the reasons provided in PO’s Response.

10. Dependent Claim 14

Petitioner's Reply adds nothing of substance to its analysis of claim 14. Petitioner has not shown claim 14 to be unpatentable for at least the reasons provided in PO's Response.

11. Dependent Claim 15

Petitioner's Reply adds nothing of substance to its analysis of claim 15. Petitioner has not shown claim 15 to be unpatentable for at least the reasons provided in PO's Response.

12. Dependent Claim 16

Petitioner's Reply adds nothing of substance to its analysis of claim 16. Petitioner has not shown claim 16 to be unpatentable for at least the reasons provided in PO's Response.

13. Dependent Claim 17

Petitioner's Reply adds nothing of substance to its analysis of claim 17. Petitioner has not shown claim 17 to be unpatentable for at least the reasons provided in PO's Response.

14. Dependent Claim 19

Petitioner argues that its expert, Mr. Hurlbut, did not contradict his declaration testimony when he gave his deposition. That is wrong and the record speaks for itself. Mr. Hurlbut's declaration states:

For example, the communication protocol between the end user 810 and the computing device 804 is “User Input/Responses.”

Further, communication protocols between the computing device 804 and the example server(s) 806 include “Auth N token” and “ITAR file request” labels. Thus, Jones discloses this limitation.

EX-1003, ¶116. Mr. Hurlbut did not say that the user input/responses, the Auth N token, or the ITAR file requests were data transmitted using a communication protocol. Instead, he swore under oath that those were themselves communication protocols. Mr. Hurlbut had to say that because Jones does not actually disclose any communication protocols and yet Petitioner (and Mr. Hurlbut) used the Jones reference as allegedly teaching or suggesting diagraming of a communication protocol between two threat model components where the communication protocol includes an alphanumeric indicator, as recited in claim 19.

At his deposition, Mr. Hurlbut did an about face and admitted that information like a user name and password are not communication protocols. EX-2002, 108:13-16. The Reply tries to salvage Petitioner’s invalidity challenge to claim 19 by changing its invalidity theory to argue that it would have been obvious to a POSITA that data such as the user name and password were transmitted using a communication protocol. But that was not the theory in the Petition (at 54) and that was not what Mr. Hurlbut said under oath in his declaration (EX-1003, ¶116).

Jones does not teach or suggest the features of claim 19 as alleged in the Petition.

15. Dependent Claim 20

The PO Response inadvertently omitted the analysis of claim 20 in the discussion of Ground 2. But claim 20 is substantively the same as claim 11 and claim 11 is substantively the same as claim 1[f]. PO provided its in-depth analyses why claim 1[f] is not disclosed by Jones, as alleged in the Petition. POR, 23-29. At his deposition, Dr. Nielson explained that his analysis of claim 20 was the same as that provided for claim 11. EX-1016, 7:12-21.

Indeed, the Petition analyzes claim 20 in Ground 2 by referring back to its analysis of claim 11. Petition, 54. Further, the Petition analyzes claim 11 in Ground 2 by referring back to its analysis of claim 1[f]. Petition, 48.

C. Ground 3: Alleged Obviousness of Claims 1-20 Based on Jones, Zheng, Keenan, and Yu

Petitioner criticizes PO's Response for attacking the alleged reasons to combine Yu with the other references of Ground 3. Reply, 20. The thrust of Petitioner's argument is that Yu discloses compensating controls, and so, it would have been obvious to combine Yu with the other references to disclose the missing claim elements. Reply, 19-20. Thus, Petitioner provided no real analysis of the combination of Yu with the other references as to how that combination would

disclose the missing claim elements.

For example, neither the Petition nor the Reply analyze whether Yu discloses, or whether Yu in combination with the other references teaches or suggests, “compensating controls stored therein [*i.e.*, in one or more databases], each compensating control associated with at least one of the threats through the one or more databases,” as recited in claims 1 and 4, and substantively recited in claim 12.

Similarly, neither the Petition nor the Reply explain why POSITA would have modified the combination of Ground 2 with Yu such that the resulting combination would have included “visual representations of one or more of the compensating controls” in the threat model itself, as recited in claims 1 and 4, instead of including the compensating control in the pop-up window 814, as alleged in Ground 1.

Neither the Petition nor the Reply explain why a POSITA would have modified the Ground 2 combination with Yu such that the resulting combination would have taught or suggested “the diagram including ... one or more of the compensating controls” to define the first threat model, as recited in claim 12, instead of including the compensating control in the pop-up window 814, as alleged in Ground 1.

It is not enough for a patent challenger to simply say that it would have been obvious to combine the teachings of two or more references and then pick and choose pieces from those references to come up with the claimed invention. *See ActiveVideo Networks, Inc. v. Verizon Comm's, Inc.*, 694 F.3d 1312, 1328 (Fed. Cir. 2012) (“It [*i.e.*, the motivation to combine evidence] also fails to explain why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does.*”) (emphasis in original); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419-20 (2007), (“[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does ... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.”).

D. Ground 4: Alleged Obviousness of Claims 1-20 Based on Jones, Zheng, Keenan, Yu, and Reith

The Reply argues that Reith teaches that, “instead of being interconnected multiple threat models can be combined into a single threat model that ‘stand[s] on its own.’” Reply, 22.

But Reith never says that multiple threat models can be combined into a single threat model. Reith states that its “Recombinant Threat Models” may be

“combined into a series of overlapping ‘threat landscapes’. The threat landscapes may be combined into a final ‘threat matrix’ for an installation.” EX-1008, 3:66-4:2. Reith goes on to say that a threat landscape may have a threat model that stands on its own or it may have threat models that are interconnected together. EX-1008, 4:30-35. Reith never says that one threat model can be incorporated into another threat model. Petitioner is engaging in fiction.

Neither the Petition nor the Reply identify a proper motivation to combine Reith with the other references. First, the motivation to “save time” by using “threat model chaining” only comes from the ‘008 Patent. EX-1001, 20:26-36. The cited portion of Reith mentions “time intensive” activities only in the context of developing “an attack tree from internal data alone.” EX-1008, 3:50-59.

Moreover, it is not enough for a patent challenger to simply say that it would have been obvious to combine the teachings of two or more references and then pick and choose pieces from those references to come up with the claimed invention. *See ActiveVideo*, 694 F.3d at 1328 (“It [*i.e.*, the motivation to combine evidence] also fails to explain why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does.*”) (emphasis in original); *KSR*, 550 U.S. at 419-20. The alleged motivation to “save time” is not enough to lead a POSITA to combine the references in the way

the claimed invention does. The same is true for the litany of other alleged reasons to combine set out in the Petition. Petition, 61-62.

E. Ground 5: Alleged Obviousness of Claims 5-8 and 13-15 Based on the References of Ground 4 and the Knowledge of a POSITA

The Reply argues that Mr. Hurlbut's background and experience are all that is needed to support his expert opinions regarding Ground 5. Reply, 23.

Ironically, the Reply goes on to criticize PO for not rebutting Mr. Hurlbut's assertions. *Id.* But PO cannot rebut assertions based on undisclosed facts and evidence. That is the reason why the Board's Consolidated Trial Practice Guide require the disclosure of the facts and data supporting an expert's opinion. CTPG, 35. Similarly, the caselaw has long recognized that an expert must provide the underlying facts and evidence otherwise the expert's opinions can be (and should be) disregarded. *See Cephalon, Inc. v. Watson Pharms, Inc.*, 707 F.3d 1330, 1338 (Fed. Cir. 2013) ("Dr. Mumper's *ipse dixit* statements that co-administration would be 'difficult' and 'complicated,' however, cannot be enough to constitute clear and convincing evidence" of invalidity.); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281 (Fed. Cir. 1985) ("Lack of factual support for expert opinion going to factual determinations, however, may render the testimony of little probative value in a validity determination."). In *Cephalon* and *Ashland*, witnesses having sufficient background and experience to be expert witnesses had

their testimony deemed insufficient to support invalidity contentions because their testimony was conclusory *ipse dixit* testimony. Mr. Hurlbut's testimony suffers from the same defect and it too is insufficient to establish invalidity.

Moreover, the recitation of *KSR* categories is not sufficient to establish a proper motivation to combine references. *See ActiveVideo*, 694 F.3d at 1328 ("It [*i.e.*, the motivation to combine evidence] also fails to explain why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does.*") (emphasis in original); *KSR*, 550 U.S. at 419-20.

F. Mr. Hurlbut is Biased

Black's Law Dictionary defines "bias" in part as "[i]nclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. To incline to one side." Black's Law Dictionary, abridged 6th ed. (1991), p. 111. Mr. Hurlbut fits this definition.

As explained in the PO Response, Mr. Hurlbut personally knows many of the leaders of IriusRisk including its CEO, COO, VP of Product Development, and one of its technical advisors. EX-2002, 10:10-16; 11:5-11; 11:16-12:9; 12:20-22. IriusRisk's CEO personally asked Mr. Hurlbut to serve as an expert in this IPR and

related IPR2023-00656 and he told his bosses he was interested in taking on this work. EX-2002, 17:21-25. One of the reasons why Mr. Hurlbut wanted to work on these IPRs was to see “how I could contribute” and “[h]ow I could help” EX-2002, 18:8-22. Mr. Hurlbut works for another company that is in the threat modeling business named Aquia where he is head of their threat modeling business. EX-2002, 13:5-11; 14:5-8; 7:25-8:11. Mr. Hurlbut has stock options in his employer. EX-2002, 8:4-11.⁶

Mr. Hurlbut has personal connections to executives at IriusRisk. He testified he “wanted to help” IriusRisk when asked to serve as an expert. Mr. Hurlbut’s current employer is in the threat modeling business, and thus, Mr. Hurlbut has a financial interest in these proceedings given that his income is derived in part from Aquia’s threat modeling business and his stock options in Aquia. There is no other way to put it. Mr. Hurlbut is biased and cannot be relied upon to provide objective testimony.

⁶ During Mr. Hurlbut’s deposition, Petitioner lodged an objection based on an alleged lack of foundation. Reply, 25 n.5. PO elicited testimony from Mr. Hurlbut that he was “interested in doing this” IPR work and Mr. Hurlbut’s declaration is solely directed to the alleged invalidity of the ‘008 Patent claims. PO established sufficient foundation for asking why Mr. Hurlbut wanted to take the invalidity positions he took in his declaration.

IV. CONCLUSION

For the reasons discussed above, the challenged claims are not anticipated and/or rendered obvious over the references relied upon in the Petition.

Dated: June 12, 2024

Respectfully submitted,

/s/ Donald L. Jackson
Donald L. Jackson

CERTIFICATION OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(b), (c) and (d), Patent Owner certifies that the word count of Patent Owner's Sur-Reply (exclusive of any table of contents, table of authorities, mandatory notices under § 42.8, certificates of service and word count, and list of exhibits or claim listing) as measured by Microsoft Word is 4,835 words.

By: /s/ Donald L. Jackson
Donald L. Jackson

Case IPR2023-00821
Patent 10,699,008
Patent Owner Sur-Reply

CERTIFICATE OF SERVICE ON PETITION UNDER 37 C.F.R. § 42.105

Pursuant to 37 C.F.R. § 42.6(e) and 42.105(b), the undersigned certifies that, on February 14, 2024, a complete and entire copy of this Patent Owner Sur-Reply, together with all supporting exhibits, were served on Petitioner electronically, by agreement, by emailing a copy of the same to the following attorneys for

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