

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.
Petitioner,

v.

CORRIGENT CORPORATION,
Patent Owner.

IPR2023-00839
Patent 9,118,602 B2

Record of Oral Hearing
Held: September 4, 2024

Before: KRISTEN L. DROESCH, CHARLES J. BOUDREAU, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on September 4, 2024, commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE BOUDREAU: Good morning or afternoon, depending on where you located. We are here for oral arguments in IPR2023-00839, Arista Networks Incorporated versus Corrigent Corporation concerning the patentability of claims 1 through 26 of U.S. Patent Number 9,118,602 B2, which we'll refer to today simply as the '602 patent. I'm Judge Boudreau, and we're joined today by Judges Droesch and Ogden. Before we begin, we'll get started with appearances for those who will be arguing today for the parties. And if anyone else is attending remotely with you today, but won't be speaking, please identify them as well. For instance, please state if your client will be attending. Following the hearing, we'd like to keep everyone on the line to confer with the court reporter to ensure that there aren't any questions regarding spelling of any names or terms alike.

So, with that, let's get started now with appearances from Petitioner Arista.

MR. WILLIAMS: Okay. Good afternoon, Your Honor. This is Eliot Williams of Baker Botts for the Petitioner. Backup counsel, Katherine Burgess is public line, listening in, as is, I believe, a representative from my client.

JUDGE BOUDREAU: Thank you, Mr. Williams. And you'll be presenting arguments today on behalf of the Petitioner?

MR. WILLIAMS: That's correct.

JUDGE BOUDREAU: Thank you. And now for Patent Owner

1 Corrigent. We don't seem to have any audio. Mr. Suarez, it looks like as
2 though you're on mute.

3 SPEAKER: I believe we're having a little bit about audio issue. I
4 will check right back with Mr. Suarez.

5 JUDGE BOUDREAU: Thank you.

6 MR. SUAREZ: Yeah, so I can hear the tech when he speaks. I
7 just can't hear the Judges.

8 JUDGE BOUDREAU: Are you able to hear us now?

9 MR. SUAREZ: Now I can. Yeah, I don't know what that was all
10 about. I apologize. I was trying to dial in, but I think can hear it now, so.

11 JUDGE BOUDREAU: All right, well, perhaps I can briefly repeat
12 what I said. We're here for the oral arguments in IPR2023-00839. I'm Judge
13 Boudreau, and I'm joined by Judges Droesch and Ogden. Mr. Williams
14 introduced himself as counsel for Petitioner and mentioned that Katherine
15 Burgess and a client representative of Petitioner are on the line with him.
16 And so, if you can, if counsel for Patent Owner could now introduce
17 themselves.

18 MR. SUAREZ: Yes. So, this is Christopher Suarez on behalf of
19 Corrigent. With me on the line is Jane Nuttall, Kate Cappaert, and
20 Matthew Simms.

21 JUDGE BOUDREAU: Thank you, Mr. Suarez. And you'll be
22 presenting today on behalf of Patent Owner?

23 MR. SUAREZ: Correct.

24 JUDGE BOUDREAU: Okay. Thank you. Sorry for the technical
25 difficulties there. All right. Well, before we hear from the parties, I'll just

1 go over a few prefatory matters. First, just a reminder that recording of any
2 PTAB hearing is prohibited. The court reporter will provide a transcript of
3 the hearing that will become part of the record and proceeding on a later
4 date. To ensure that the transcript of this hearing is clear, we ask that you
5 identify yourself before speaking, speak directly into the microphone and
6 identify specific slide numbers, numbering in figures, and any other
7 pertinent identifying information when referring to any of your
8 demonstratives. And also, just a reminder to mute yourself when you're not
9 speaking. If you encounter any additional technical difficulties, please let
10 us know immediately.

11 To prepare for the oral argument today, we've familiarized
12 ourselves with the record and the issues in the case. And so, we have copies
13 of all the demonstratives and the record in the case, the trial record in the
14 case. As stated in the hearing order, which is Paper 30 in this proceeding,
15 each party has 60 minutes total time today to argue its case. Petitioner will
16 open the argument and may reserve rebuttal time, which may not exceed half
17 of its total argument time. Patent Owner will then respond to Petitioner's
18 arguments and may also reserve no more than half of its total argument time
19 for sur-rebuttal. I have a clock here. We don't have any kind of online
20 timer, but I have a clock, and I'll endeavor to give each party time warnings
21 as you near the end of your allotted opening argument time and near the end
22 of any reserved rebuttal time.

23 With that, I think we're ready to begin. Mr. Williams, do you wish
24 to reserve any rebuttal time?

25 MR. WILLIAMS: Yes, Your Honor. I'd like to reserve 20

1 minutes if I could.

2 JUDGE BOUDREAU: Okay. Thank you. It looks as though it's
3 10:09 Pacific Time, 1:09 Eastern Time, now.

4 MR. WILLIAMS: Okay. Shall I begin?

5 JUDGE BOUDREAU: Thank you. Yes.

6 MR. WILLIAMS: Okay. Thank you, Your Honor, and may it
7 please the Board. I think it makes sense here. I don't always do this, but it
8 makes some sense in this case to just start with a little bit of background
9 about what the claim is actually covering.

10 The arguments in this case, I think, become more complicated than
11 they really need to be given actually what the subject matter is here. So, let's
12 just start with that if we could. So, and here I can just turn to, in fact, Your
13 Honor, would it be all right if I just shared my demonstratives to the screen
14 here?

15 JUDGE BOUDREAU: Yes, if you are able to do that, that would
16 be fine. We have copies of them, but it would be fine if you'd like to share
17 yours as well.

18 MR. WILLIAMS: Sure. I know, I understand. Just make sure
19 this is looking. Okay. Can you see my slide 2 now, Your Honor?

20 JUDGE BOUDREAU: Yes.

21 MR. WILLIAMS: Okay, perfect. Bear with me. I'm just
22 reorganizing my screen real estate. Okay. So, this patent is really directed
23 to a system where we have a first label switching router, which I'll call LSR.
24 It's shown here in Figure 1A as Switch A. The claims, I think, call this the
25 first switch. And what happens is, I mean, obviously, other switches could

1 also be the first switch, but we'll just start with that premise that the green
2 one here is the first switch. The idea here is that there is --

3 JUDGE BOUDREAU: Mr. Williams?

4 MR. WILLIAMS: Yes.

5 JUDGE BOUDREAU: It's a little small and hard to see. I wonder
6 if you could maximize that window.

7 MR. WILLIAMS: Does it help when I do that? Or does that make
8 (INDISCERNIBLE)?

9 JUDGE BOUDREAU: That's better.

10 MR. WILLIAMS: Sorry. Hang on. I'm moving around on my
11 screen now. This is better?

12 JUDGE BOUDREAU: Yeah. It looks as though you're showing
13 your entire screen rather than just the window.

14 MR. WILLIAMS: Interesting. Try it again then. I should just be
15 sharing this PDF reader application. Is that what you're seeing?

16 JUDGE BOUDREAU: No, I see multiple windows.

17 MR. WILLIAMS: You're seeing more than PDF.

18 JUDGE BOUDREAU: Yeah, it looks like it may be another PDF
19 behind it.

20 MR. WILLIAMS: Oh, I see. Interesting. Maybe make that go
21 away and it's helped. There we go.

22 JUDGE BOUDREAU: That's better.

23 MR. WILLIAMS: Okay. Yeah. All right. Interesting WebEx
24 technology. I guess I have to get used to that. Okay. Is it legible now?

25 JUDGE BOUDREAU: Again, it's small, but we do have copies.

1 MR. WILLIAMS: Okay. Yeah. Well, if you want to refer to your
2 own copy, that's fine as well. So, as shown in slide 2 here, we've got this
3 first one. And what happens during this process is there's going to be a
4 tunnel that's created for traffic associated with a particular label. That label
5 will be created. And it's communicated to an upstream node. So, here
6 upstream is nodes to the left. And so, this label may be, for instance, created
7 and sent to this preceding node in red. Then as when the preceding node
8 wants to send a packet over the network, it will attach that label to the
9 packet, send it in to switch A, and then switch A will use the information in
10 the label to decide where -- how to send the message out of the LSR. So,
11 how will it be sending that packet downstream to the right. And in general,
12 what I've just described is prior art. That is a label signaling protocol that
13 was standardized in RFC 3031, which is our Exhibit 1008, which I'll talk
14 about in a few minutes. It creates a binding between a label and some
15 interface to this network (INDISCERNIBLE). That standard was expanded
16 in RFC 3209 to include traffic engineering abilities, so that now you can not
17 only create these labels that are associated with tunnels, but you can ensure
18 that there is a bandwidth requirement associated with them, which
19 effectively will guarantee you the bandwidth you need for traffic using that
20 particular label.

21 So, the only difference then between what's in RFC 3209 and the
22 claims are really two things. First, the RFC 3209 doesn't say that the bound
23 port that's associated with the label is part of a link aggregation group. And
24 the second thing is it doesn't say that the label content itself is required to
25 include information about the bound port, both of which are features of

1 Claim 1. So, I'm going to get into how we argue those two modifications to
2 the RFC are obvious. They come from several references, including Raz,
3 but others as well. And that is essentially the combination that we're
4 proposing in the Petition.

5 As far as Raz goes, what Raz teaches you in a relevant part is, as
6 we say, two things. So, we argue that Raz first does teach the use of a LAG.
7 The parties dispute that, but I'll get into that question in a minute. The
8 second thing that we point to for Raz is the encoding, the way these labels
9 are actually created, Raz teaches that, you know, the label itself can include
10 information about the bound port. And as we'll talk about, it would have
11 been obvious to take that feature from Raz, that technique in Raz, and apply
12 it to the RFC 3209 process so that the labels themselves provide information
13 about the outgoing interface port to use when sending traffic downstream.

14 I think I'll get into the particular motivations to combine in just a
15 moment. The other thing I'll point out is that a lot of the arguments that we
16 see from Patent Owner in this case seem to be directed largely to the
17 grounds from Cisco's prior IPR, which was based on Raz, but it did not start
18 with 3209 as the primary reference and take Raz's, you know, techniques as
19 modifications to 3209. Instead, it argued that Raz itself largely contained all
20 of these features. So, it is a very different ground that we're asserting here.
21 And for that reason, I think many of the arguments in the Cisco IPR just
22 would not be applicable here to this case.

23 So, with that, let me first turn to some more details about RFC
24 3209 that may be helpful. And I'll start here with our slide number 7. So,
25 RFC 3209 is shown on slide number 7 does create this label mapping

1 technique that is largely recited in the claims. And as you'll see here, what
2 happens is at the beginning of this tunnel setup process, the request is going
3 to come from the preceding nodes or earlier LSRs in that chain we just
4 looked at requesting to set up a tunnel. And in response, the label will be
5 created and sent back upstream by the means of this, what they call RSVP
6 reservation message. And again, in 3209, that message can include
7 information about the bandwidth requirement. So, that is an element of the
8 claims and that piece of it is coming in our combinations coming from RFC
9 3209 because 3209, as I said, builds in this, what they call traffic
10 engineering extension of the RSVP protocol for label exchange.

11 Okay. Turning to now slide 13. This goes into a little more detail
12 about what actually happens during this routing process inside the LSR once
13 the label has been set up and a message is received with a label. What
14 happens is that the LSR needs to then decide based on the label it's getting in
15 the path, what is the next hop for this message. In other words, where is it
16 going to go out of the LSR? In the diagram we looked at a moment ago,
17 things were flowing from left to right. So, the LSR needs to decide, okay
18 where -- which of the possible ways I can send this packet out to the right
19 should I pick? And that's what these RFCs are all about. It's about assigning
20 a label to the next hop using, you know, a technique. In particular RFC
21 3209, again, it doesn't say that that label itself tells you the output. It just
22 says that it becomes associated with that next hop. They describe a couple
23 of ways to do that. And as we'll talk about, Raz has an improvement to this,
24 which is to, in fact, encode in the label itself the outgoing port to data so that
25 the switch, when it's trying to decide where to send this message out, doesn't

1 have to do any kind of work. It doesn't have to do a lookup table. It can just
2 take the label itself to figure out where to send it. That's the improvement
3 that comes from Raz that will be applicable to this combination.

4 JUDGE BOUDREAU: Mr. Williams, I think you said a few
5 minutes ago that Petitioner doesn't dispute that RFC 3209 doesn't teach a
6 LAG and that the teaching of a LAG is coming from Raz. Is that, did I
7 understand you correctly?

8 MR. WILLIAMS: So, RFC 3209 does not teach a LAG. We
9 agree with that. It's agnostic, I mean it's agnostic to the particular layer by
10 which the data is exchanged out of the LSR. It's more about, as I said,
11 creating the labels and associating a particular path through a network. In
12 terms of where the LAG comes from, Your Honor, we have to get to that in
13 a moment. We think Raz itself teaches it, even if it doesn't, as we point out
14 in the Petition, Ferguson does. That's our Ground 2. And in addition, we
15 say in Ground 1 that, you know, the knowledge of LAGs to connect LSRs
16 was within the level of skill in the art. We have a citation for that. You
17 know, our expert says that, obviously, it's corroborated by a citation to
18 Rabie. I'll talk about that in a few moments. But, you know, the idea of a
19 LAG, we think, comes from at least those three places, either Raz itself, the
20 knowledge of a person of skill in the art, or Ferguson. Was that the question
21 you were asking?

22 JUDGE BOUDREAU: Yeah, I assume that you're going to get to
23 that. But my next question is going to be where the LAG is disclosed in
24 Raz.

25 MR. WILLIAMS: Okay. We'll get there. Just give me one

1 second to see if there's anything else I want to say about 3209 first to help
2 set that up. I don't think so. So, we can move on to Raz then. Okay. I
3 guess one thing to say about LAG, even before we get to that question that
4 you're asking, Your Honor, is to just start looking at the claim itself because
5 I do think it's worth pointing out at least one important piece from the claim
6 that we point out in our papers, which is, you know, this Claim 1, which is
7 on slide 4. You know, it talks about a single physical tunnel port of a LAG
8 in what we call element 1.1, and again, in element 1.5, you'll see a callback
9 said single physical tunnel port. What it doesn't say is that a LAG requires
10 multiple physical links. That's going to be important because, in our view,
11 what Raz teaches is a LAG because it does have multiple physical ports that
12 satisfy the definition of a LAG.

13 And so, you know, in one place we can see that is, even in
14 Corrigent's demonstrative slide 42 of Corrigent or Corrigent's. I think I've
15 been saying it wrong, this whole case. (INDISCERNIBLE) here shows Raz
16 Figure 3. We do talk about Figure 3 in the Petition, but I didn't happen to
17 have it in my slides. What you'll see here in slide 42, which is from Figure 3
18 of Raz, is that this link between LSR A and LSR B, which are in LSR A is
19 yellow and LSR B looks like it's red. You know, that link 60 is in Raz
20 described as a single physical connection. It's, I think, a 10 gigabit ethernet
21 connection. But in our view, this still teaches a LAG because the ports that
22 are on either side of that connection satisfy the definition of a LAG, which I
23 can -- happy to talk about why that is. But first we can just look at the
24 standard for what a LAG is. This is on our slide 21. Okay. This slide 21
25 has some excerpts from the standard 802.3ad, which is in the record, I

1 believe it's Exhibit 1033, that that is the definition for, you know, it's kind of
2 the standard that explains how these LAGs work and defines the various
3 terms. And the important thing is that when you read through that standard,
4 what you walk away with an understanding of is that it's entirely defined in
5 terms of these ports. It's the ports that matter, not the particular physical link
6 that connects them that defines the LAG.

7 So, in Raz, it may not be the most traditional implementation of a
8 LAG. So, you certainly could have a LAG that has multiple physical links
9 that connects each of those ports together. And maybe that's the more
10 common approach. Arguably, it's the approach taught most directly in the
11 '602 patent. I agree with you, but in no way is a LAG limited to the situation
12 where you have multiple physical links connecting, you know, the two sides
13 of that LAG together. Don't argue what in Raz has satisfies these
14 definitions, because it does have the ports. They are bound together in
15 exactly the way that the definition requires. Now, I'll come back to this in a
16 minute. But, you know, again, one of the combinations we have includes
17 maybe the easiest of examples. Just look at Ferguson. Ferguson does teach
18 multiple physical links. And if you implement Raz, well, if you implement
19 the RFC 3209 technique using those multiple physical links as in Ferguson,
20 you know, applying Raz's technique becomes arguably much easier, because
21 now you'll have actual physical links associated with each of those physical
22 ports. And so, the only thing that the router is going to need to do when it
23 gets a packet that comes in is decide which of those physical links to send
24 things out on, or in other words, which of those physical ports to send things
25 out on. And that's the only information it will need. And so, it becomes

1 easy to just use the port label to make that switching decision without having
2 to do any kind of lookup. I'll come back to that in a minute, but I didn't want
3 to flag that so you know where we're going here with this argument about
4 Raz and how it applies in this combination.

5 JUDGE BOUDREAU: Mr. Williams, I expect that Patent Owner's
6 counsel will get to this during their presentation, but one of the arguments
7 that Patent Owner makes in its briefing is that Raz references a LAG
8 separately from its subports and that Raz actually distinguishes between the
9 two. And in making that argument, they cite to column 9, lines 9 through 15
10 of Raz. I wonder if you could address that.

11 MR. WILLIAMS: I mean, I can say some things about it now. It
12 may be helpful to hear what Patent Owner has to say about it. Slide 12 has, I
13 think, that relevant citation that you're referring to, Your Honor. And, you
14 know, the point here is no one -- neither expert really disagrees with what I
15 said a moment ago about that figure from Raz, that there's one physical
16 connection between the LSRs. And, you know, the only dispute is whether
17 that is a LAG under the definition or not. I don't think Raz says one way or
18 another. All this, you know, we rely on this citation because it's teaching
19 you that Raz is using LAG, right? So, I think both parties agree that there's
20 at least a LAG within the switch, within the LSR of Raz. So, it's not
21 distinguishing LAG in the sense it's not saying, never use a LAG, not at all.
22 I think everyone agrees there is at least a LAG within each of the LSRs. The
23 only dispute is whether there's a LAG between the LSRs. And this citation
24 certainly doesn't say that there isn't. It's not really distinguishing between
25 that. It's just saying, hey, there are these available layer 2 switches that do

1 LAGs, and we could use them in our invention. And I think Corrigent's
2 expert in his deposition in the Cisco case, conceded that these Raz routers
3 were LAG capable and were being used for his technique.

4 JUDGE BOUDREAU: So is Petitioner relying on the disclosure
5 of subports as being -- as corresponding to the LAG that's recited in the
6 claim?

7 MR. WILLIAMS: Well, I mean, keep in mind, I mean, I think our
8 combination is built off of, you know, RFC 3209. So, we begin with that,
9 then the question is, would you add a LAG to that? And we say, you know,
10 yes, for again, in Ground 1, two reasons, because Raz itself tells you the
11 flags can be used for this labeling approach. And, you know, when you do
12 that, when you create a LAG between LSRs, assuming that Raz doesn't have
13 one, which again, let's just assume that the connection between LSRs is not a
14 LAG, we say it would be obvious to make that a LAG, because that is a
15 known way to connect LSRs as shown by Rabie. When you do that, you
16 know, when there's a LAG, there are by definition going to be multiple
17 ports. You know, Raz shows you an example of multiple ports. And the
18 only question is, how do you label those ports when you're creating the
19 tunnels? And Raz gives you a technique for labeling the ports, and then
20 Raz's technique is to label them, create the labels with, you know, the port
21 serial number essentially encoded into at least part of the label. So, is that an
22 obvious technique? Yes. Raz teaches you that that approach to labeling
23 works and provides efficiencies and makes it easier to switch because you
24 don't have to make -- you don't have to go to a lookup table to figure out
25 what output port, you know, which port to pick. You know, when you get a

1 label packet, you don't have to go to a like a table to figure out where to send
2 it, right? You can just look label itself, it tells you where to send it. That's a
3 technique that would be applicable within an LSR and between LSRs. It
4 would work the same way when you're routing a labeled message. So, you
5 know, that technique is taught in Raz and has applicability to RFC 3209.
6 That's essentially the basis for our argument in the Petition. Okay. Let me
7 see if there's anything else I wanted to say about that before I turn to the next
8 point I wanted to make. I don't think so. I think you get the gist of that
9 argument.

10 So, now what I wanted to turn to, well, I guess I could say a few
11 things about Rabie. I mentioned that already. So, if you go to slide 18. So,
12 what I was just saying is the knowledge of the person of skill in the art when
13 looking at 3209 would be, you know, when you're connecting LSRs
14 together, a known way to do that was this LAG approach. And that comes
15 straight out of, you know, Rabie I think corroborates that clearly. For
16 instance, it says, as is typical each router include a processor memory and a
17 number of ports for connecting the links that allow communication between
18 the routers. In this case, I've had five parallel links. But I think Rabie -- I
19 think Rabie's (INDISCERNIBLE) attempt, but the idea is still the same.
20 This was a known way to connect LSRs together in the context. And Rabie,
21 of course, also in the context of, you know, labeled packets. So, it was a
22 known way to connect things together. A person of ordinary skill in the art
23 would have been motivated to use that LAG approach to the LSRs in RFC
24 3209. But even if you were to conclude somehow that what's going on in
25 Raz is not technically a LAG, which, again, I think we disagree with, but

1 even if we're true, it wouldn't change the fact it would still be obvious to
2 connect them using a LAG.

3 JUDGE BOUDREAU: Does Rabie itself teach the use of LAGs?

4 MR. WILLIAMS: Yes.

5 JUDGE BOUDREAU: And have you cited to that portion of
6 Rabie in the Petition?

7 MR. WILLIAMS: I believe so. I also have here on slide 19 some
8 of the -- some more aspects from the Reply that summarize those again.
9 Yeah, we have in this--this sort of second excerpt from our Reply, which is
10 also citing Dr. Min's testimony that a POSITA would have been aware as
11 supported by Rabie that the aggregation of bundling of ports refers to a LAG
12 and this aggregation can be reformed between two LSRs. So, yeah, we think
13 Rabie itself is very clearly discussing a LAG between two label switch
14 routers.

15 JUDGE BOUDREAU: So, just to be clear, that reference was in
16 the Reply brief but not in the Petition. Is that correct?

17 MR. WILLIAMS: I mean what I have on the screen is from the
18 Reply brief. Let me just see what -- let me just check the Petition again
19 quickly. I'm just looking at our Petition page 28 which I don't have on the
20 screen, unfortunately. What we say a Petition page 28 is that at the time of
21 the '602 patent's priority date, a POSITA would have understood that
22 bundled links may connect LSRs together, and the LSP path to be
23 provisioned might involve the choice of one of the component links in the
24 bundle. And then we quote from Rabie at column 6, line 58 to 63 there,
25 which is as is typical, each router includes a number of ports, et cetera. So,

1 essentially, it's the same thing as in the Petition as I was just pointing you to
2 in the prior slide.

3 JUDGE BOUDREAU: And the Petitioner isn't arguing that Rabie
4 is part of the obviousness combination, correct?

5 MR. WILLIAMS: No. No.

6 JUDGE BOUDREAU: (INDISCERNIBLE) evidence of
7 motivation to combine. Is that correct?

8 MR. WILLIAMS: It is. And it's being provided as evidence of the
9 knowledge of a person of ordinary skill in the art that LSRs can easily be
10 connected by a LAG. It's just a very simple implementation choice when
11 you're connecting LSRs together. And Rabie (INDISCERNIBLE) that. But
12 again, we do have this whole separate Ground 2 where we explicitly
13 introduce a new reference, Ferguson, that basically does the same thing. So,
14 I think you can get there either way.

15 Okay. I think really then the next issue I want to address has to do
16 with then in this combination now where we're putting a LAG between the
17 LSRs. Again, assuming that Raz doesn't have one, which I think it's clear
18 now I disagree that it doesn't. We say it does. But let's assume again that
19 for some reason the Board were to conclude that a LAG requires multiple
20 physical links connecting the two ports and that Raz doesn't have that.
21 Again, we would point to Rabie as making that obvious. We also point at
22 Ground 2 to Ferguson as making that obvious. Then the question becomes
23 when you're going to implement RFC 3209 in view of that teaching.
24 Because we're going to now definitively have a LAG that connects the two
25 LSRs. The only question becomes then does Raz's labeling technique help

1 you in some way with labeling, you know, these outgoing interfaces, right,
2 of the LSRs. So, again, just back to Corrigent's slide 42, where you'll, you
3 know, this again, this is a picture from Raz, but it would play equally well to
4 RFC 3209. The point is you've got, you know, at least two LSRs being
5 connected together. Packets are coming in to the left of these LSRs. The
6 decision the LSR needs to be making then is, okay, I've got a packet that's
7 coming in. Where should I send it out? Right. And in the case of a LAG,
8 under sort of Patent Owner's narrow construction, there would need to be
9 multiple physical links then between these two LSRs. In this case, like
10 connecting port 0 to port 0, 1 and 1, et cetera. The only question that the
11 LSR has to make then is which one of those outputs do I have to pick based
12 on the label I just got? And as we point out in the Petition and the Reply,
13 Raz has this teaching of applying labels to ports that allow you a more
14 efficient mechanism of making that switching determination because you
15 can just look at the label itself to pick the output rather than having to do
16 additional overhead of going to a lookup table and looking something up.
17 That is a technique that, you know, as we point out in the Petition, a
18 POSITA would understand this would benefit this combination. And once
19 you have that, that's all the elements of the claim.

20 JUDGE BOUDREAU: And in that mechanism, which component
21 is it that assigns the port in which the second LSR will receive the data
22 packet?

23 MR. WILLIAMS: So, the way RFC 3209 works is it's the
24 upstream LSR that does that. So, what would happen here is LSR A would
25 send to LSR B a label reservation request. And LSR B would come back

1 and say, okay, you want to send data using some particular label. What I'm
2 going to tell you is you need to send it to my port zero. And here's the actual
3 label that you need to send to my port zero.

4 JUDGE BOUDREAU: Would it be the same in Raz?

5 MR. WILLIAMS: Well, again, the whole reason we have a
6 different combination than Cisco is largely to avoid this problem, because
7 Raz does it slightly differently. What makes Raz different is that at the front
8 of this switch, Raz needs to make a decision about which input port should
9 be processing the data. So here, for instance, in LSR B, when this packet
10 comes in, the first thing Raz needs to do is figure out, okay, where is this
11 packet that I'm getting? Which of these ports we need to send it to? And so,
12 in the case of Raz, it's first using the label to route it to zero, and then it
13 subsequently makes a change to switch it to one as it goes forward. That's
14 not the aspect of Raz that we're using in our combination. We're saying is
15 do it the RFC 3209 way, and the RFC 3209 way works just like I said, is
16 that this downstream LSR B would send to LSR A this information that I
17 need. I need this data on my port zero, so that's going to be part of the label
18 that you're going to use. Then when LSR A gets the packet, getting those to
19 send it to LSR -- to this port zero.

20 So, let's see if it can turn to our slide 39. We have an excerpt from
21 the Petition where this is explained, I think. Yeah, so here, as previously
22 explained, RFC 3209 discloses that each intermediate node assigns the next
23 hop of an LSP tunnel during LSP setup, and a POSITA would have found it
24 obvious that this assignment necessarily includes the assignment of the
25 LSR's outgoing interface, i.e., the physical tunnel port which connects to the

1 next LSR. So, this technique comes already out of 3209. That's just the way
2 it works. The only question is then, do you actually encode the port label
3 into the port number into the label or not. And that's a technique that the
4 Raz teaches. Now, so, you know, perhaps the criticism as well, okay Raz
5 teaches that, but it only teaches this when encoding the incoming port, not
6 the outgoing port. And our point isn't that they're relevant because it's the
7 technique itself of encoding the relevant port into the label that matters. Raz
8 teaches you the technique. It works very well in our RFC 3209 and it takes
9 you directly to the claim.

10 JUDGE BOUDREAU: Just to let you know, you're about a half
11 hour into your opening presentation. So, if you still want to reserve 20
12 minutes for rebuttal, you have about 10 minutes left in your opening.
13 Perhaps we can move on to Ground 2.

14 MR. WILLIAMS: Yep. So, Ground 2, again, the, you know, I
15 don't have a lot more to say about Ground 2 than I've already said. I'm just
16 trying to select 58 of our demonstratives where we introduce Ground 2.
17 This is Figure 2 of Ferguson. Here the packets are going from right to left
18 rather than right, but I think you get the point. You know, what Ferguson
19 adds is just this explicit notion that there is this link aggregation group
20 connecting the routers in this label switch network. And, you know, again,
21 as we point out in the Petition, the use of, you know, what Ferguson then
22 brings to the table is just sort of the express teaching that when you're
23 developing one of these networks, as is taught in 3209, connecting the LSR
24 as using a LAG is a known implementation choice. It has some advantages
25 that are described in Ferguson, most obviously, which is just scalability. It's

1 sort of easier to add new links if you need to increase your bandwidth
2 available. And that's sort of limited by the single physical link that you may
3 have had in Raz. You can sort of scale it that way. But I'm sure there are
4 many other reasons that we point to in the Petition. I don't remember them
5 all now, but it is a very straightforward implementation choice to then, you
6 know, put a LAG connecting the LSRs. And that really is the entire point of
7 this second ground. It's not changing much in terms of how the combination
8 gets mapped to the claims. It's giving you further motivation for putting the
9 LAG there to begin with.

10 JUDGE BOUDREAU: I believe that Ferguson was also cited in
11 the Cisco IPR. And when we refer to the Cisco IPR, we're referring to
12 IPR2023-00447. And in that case, the final written decision in that case, of
13 course, isn't binding on us, but the decision determined that Ferguson didn't
14 remedy the deficiencies of Raz. Could you address that?

15 MR. WILLIAMS: Well, I mean, I think it was just, you know, we
16 have it on record. We have different arguments and the grounds are
17 different. So, I think that analysis, whatever to merits to the Cisco petition
18 wouldn't have applicability. But, you know, again because here we're
19 starting with RC 3209. One of the problems we think that the Board had
20 with Cisco's petition is this labeling, label signaling protocol. It worked just
21 significantly differently in Raz because of what Raz was really focusing on
22 was things happening on the input side of that LAG. And our point is that
23 all that signaling protocol, that's already in RFC 3209. All that's done. The
24 only question then becomes is, should you connect these things, these LSRs
25 using a LAG or not? And I do think that's a much easier argument to make

1 than what Cisco was trying to argue because LAGs were clearly well-known
2 ways to connect LSRs, both Rabie and Ferguson teach you that. So, you
3 know, I think it was just that Ferguson was being used in a different way to -
4 - in the Cisco petition, it didn't really correct what the Board found to be the
5 deficiencies in that mapping.

6 JUDGE BOUDREAU: Can you drill down on that a little bit?
7 How are you using Ferguson differently in this case?

8 MR. WILLIAMS: I think we're just using Ferguson for the notion
9 that you can connect to LSRs using a LAG, and that there's benefits to doing
10 that. I don't know if Cisco is using it in quite that way, but even if they
11 were, it wouldn't have, I think, fixed the problems with what was being
12 presented as the argument in that petition, which had to do with starting
13 from Raz, how would you then modify it to get to this claim? And you're
14 going to start with Raz and modify it. You're going to have to make a lot of
15 changes to, you know, the particular label signaling protocol, and I think
16 that's what the Board was reacting to, and it's not a written decision there.
17 We don't do that. We start with the labeling signaling protocol of the claims,
18 which comes out of 3209, and just out of the LAG. I mean, I going to have
19 to go back to look at the Cisco's petition, but, you know, I can't recall if they
20 had quite the same explanation of how the use of Ferguson got them to the
21 claims as we do in our Petition. So, presumably that is an additional reason
22 that would distinguish this case from Cisco's. And I don't know if they
23 argued that the LAG was just a known -- something that was known to skill
24 in the art taught, as, you know, for instance, it was taught in Rabie either.
25 I'm not sure if they made that argument. They might have. I honestly just

1 can't recall.

2 JUDGE BOUDREAU: All right. Thank you.

3 MR. WILLIAMS: Okay. The only other thing I was going to
4 mention, and I know I only have a few minutes left, is just there were a
5 couple of arguments made about Claim 15. I'll just kind of mention them
6 quickly. I mean, Claim 15 is largely just sort of more of a systemized
7 version of what Claim 1 is. It introduces a processor and a mapper in fairly
8 functional language. And as we point out in the Petition, we believe that
9 that processor would be part of this implemented system. I mean, RFC
10 3209 itself, to do those things would require some kind of processor. It talks
11 about processing throughout. And so, our view is that that would be an
12 obvious way to implement the functionality in RFC 3209. That's what our
13 expert said in the Petition, and we continue to argue that here. And then the
14 same is true of the mapper, which in this claim, the mapper's function is to
15 take the input packet and then route it along to the outgoing interface. And
16 again, that's something that comes directly from the functionality in RFC
17 3209 and would have been performed in some structure as we point out in
18 the Petition.

19 So, unless the Board had any other questions, that's all I was really
20 going to cover.

21 JUDGE BOUDREAU: I have 23 minutes left for your rebuttal
22 (INDISCERNIBLE).

23 Mr. Suarez, before you begin, just let me know, would you like to
24 reserve any time for sur-rebuttal?

25 MR. SUAREZ: Uh, yeah, I'll reserve 15 minutes, please. All

1 right.

2 And I'm going to go ahead and share. Can we see my
3 demonstratives?

4 JUDGE BOUDREAU: Yes.

5 MR. SUAREZ: Excellent. Okay. Well, thank you for Your
6 Honors, and may it please the Board. Chris Suarez, on behalf of Corrigent.
7 Before I start going through the slide, just want to make a couple high-level
8 points, which is that although Petitioner tries to distinguish this case based
9 on the primary reference RFC 3209, he made two key concessions, which is
10 that he's relying on the Raz reference for both the LAG component and for
11 the port assignment. And at the point that admission is made, this case fails
12 for the similar reasons that the Cisco case fails. Now, I will address some of
13 the differences counsel points to. But at the end of the day, the same
14 problems that were in the Raz grounds that were in the Cisco case apply
15 equally here to the RFC 3209 and Raz grounds that apply here.

16 So, I'm going to start briefly by just going over the '602 patent.
17 Again, it's the tunnel provisioning with link aggregation, as it says in slide 4.
18 In slide 5, just want to make a couple points here. Again, there are three
19 nodes. We've coded those in the yellow, red, and green -- and blue, and
20 there's this LAG. And there's no dispute, or at least we don't think there
21 should be a dispute, that the LAG here constitutes links between nodes.
22 Counsel alluded to the claim language before. It's a single physical tunnel
23 port. So, there's something physical that pertains to these different ports that
24 interconnect to switch A and switch B. And the diagram is wholly
25 consistent with the claim language. And I didn't hear anything from counsel

1 that suggested that there was an inconsistency.

2 Now, Ground 1 is again RFC 3209 and Raz. And RFC 3209, let's
3 be clear, it's a very generic standard. It's a very generic standard that was
4 well known in the art. And if we look at slide 8, you can see the callouts,
5 first from Exhibit 1010 at one, that talk about how it's a very generic
6 standard for the use of RSVP. And importantly, we, also calling out here in
7 slide 8 the '602 patent column 1, which incorporates RFC 3209 by
8 reference. So, the Patentee was well aware of RFC 3209. It's nothing
9 special, it's nothing remarkable, and although counsels, because of the
10 problem that Raz is trying to exalt the importance of RFC 3209, it really is a
11 run-of-the-mill standard and isn't as significant as counsel is making it out to
12 be.

13 So, then that brings us to Raz. Raz is the reference that was
14 subject into the prior proceeding. It's this link multiplexing mechanism
15 utilizing path-oriented forwarding. If we look at slide 10 this is annotated
16 Figure 1. Raz has these internal subports, there's no dispute that they're
17 internal, and that it performs multiplexing to ultimately produce output on a
18 single 10 gigabit PHY link. That's undisputed. And these call outs on slide
19 11 just reinforced the point. It's a single physical link that is the output
20 where multiple subports that are internal and that, in our view, are also
21 processors, converge into that single link. So, what are the problems of
22 Ground 1 on slide 12? First, RFC 3209 and Raz don't disclose or render
23 obvious the LAG and, in fact, teach away from it. Second, the POSA
24 wouldn't have been motivated to combine these references to disclose or
25 render obvious the assignment and the encoding of the single physical tunnel

1 port between the three nodes at issue. Third, there's no reasonable
2 expectation of success. And finally, there is no disclosure obviousness of
3 the mapper as a separate independent point. And so, going to the LAG won't
4 rehash this ad nauseam, but again, it's the LAG is between two nodes and it
5 constitutes multiple links.

6 Slide 15, Figure 1A, it shows that the LAG is multiple links. And
7 there's no dispute, counsel conceded that RFC 3209 says nothing about
8 LAGs. That was also conceded in the briefing papers as well. And Raz's
9 subports, as we've said, are processors, not links that are within LSRs.
10 Significantly, if you look at the disclosure, this link 28 is described as a 10G
11 link. It's just one link. No dispute.

12 Slide 16, here's the call outs that I mentioned from the Petition and
13 the Reply. Petitioner does not rely on RFC 3209 for the claimed LAG.
14 And so, it rises and falls with Raz for the LAG.

15 Slide 17. This was Your Honor's question. The Petition it relies
16 on Raz's subports within an LSR to teach the claimed LAG. And again, the
17 call outs on slide 17 in the underlines confirm that.

18 Slide 18, just again from the Reply another call out that reiterates
19 they're relying solely on Raz for the LAG. Now, Your Honors reference the
20 prior decision in IPR2023-447. And as Your Honor pointed out, it's not
21 binding on this panel, but we know two of the three members of this panel
22 are on the current panel. And we think their reasoning was correct. The
23 Board has already held, Patent Owner argues, and we agree, the cited
24 portions of Raz do not disclose a LAG between two switches. And here
25 there are no different portions of Raz that we're aware of that were cited to

1 support the existence of a LAG. Your Honors also astutely pointed out that
2 a LAG is mentioned in the context of the Figure 2 embodiment as part of the
3 layer two switch which is internal to that setup that's separate from the
4 Figure 1 embodiment, and we argued I think correctly that that discussion of
5 a LAG in Raz confirms that there is no LAG constituting links between
6 switches as planned. And so, again we think that's dispositive.

7 Slide 20. Again, Arista is relying on the same internal subports
8 and the single 10g link that Cisco relied on. The cites to the Petition and the
9 figures from Raz are on slide 20. And also, I cross examined Dr. Min, their
10 expert, and he agreed during depositions, the 10 subports they converge into
11 the single 10 gigabit cable. Yes, that's right.

12 Now, slide 21, again this is just reiterating the point that I made
13 before about the LAG is multiple links between switches. If you look at the
14 highlighted claim language utilizing an ethernet physical data port in an
15 ethernet link aggregation group, you're assigning a single physical tunnel
16 port of a LAG to a network tunnel and you're sending said data packet from
17 said first MPLS LAG switch to a second MPLS LAG switch via said single
18 physical tunnel port. If this was just one link why would you have that
19 language, that wouldn't make any sense. And then we also have callouts
20 from both the '602 patent describing link aggregation as a group of parallel
21 physical links between two endpoints, and we also note that there's N
22 parallel instances from the 802.3ad standards for the purposes of link
23 aggregation.

24 Now, if we go to slide 22, again we have more callouts that
25 confirm that the subports are processors. Your Honors seem to agree with

1 that at least two or three of Your Honors seem to agree with that in the prior
2 decision, and so these callouts I think reinforce the point. Now, this point
3 wasn't addressed at all by counsel and we think it's important.

4 Slide 23, and we have plenty of expert evidence on this from Dr.
5 Rouskas discusses that Raz is elected toward this concept of multiplexing
6 where you take multiple internal subports and then they converge into that
7 single link that goes out. The '602 patent is directed to the exact opposite
8 concept which is called inverse multiplexing where you have a single link
9 report internally and then that expands out to multiple links between the
10 switches. And we think it's telling that, in general, Arista has ignored this
11 argument, ignored this teach-away problem, and the fact that the references
12 actually are the asset of the invention. And, Your Honors, again, found this
13 in the Cisco case.

14 Slide 24, we agree with Patent Owner that Raz is fundamentally
15 different with its teachings of multiplexing the outputs of multiple slow-
16 speed ports/processors into a single stream. We agree, and we think that
17 holding equally applies to this proceeding.

18 Now, slide 25 --

19 JUDGE BOUDREAU: Mr. Suarez, if I could just interrupt you for
20 a second there.

21 MR. SUAREZ: Sure.

22 JUDGE BOUDREAU: What can you point to in Raz that supports
23 that finding?

24 MR. SUAREZ: That supports the finding that Raz is
25 fundamentally different?

1 JUDGE BOUDREAU: Yes.

2 MR. SUAREZ: Yeah, so what I would say is I'd go back to -- you
3 know, so this slide right here shows Figure 1 and the multiple subports that
4 converged at 28 into the single 10G link. And we have on other slides also
5 where it references the quote of a single 10G link. And so, that, and it's
6 undisputed that everything in here with the subports is internal. So, that's
7 where I would recommend pointing to on that particular issue. Does that
8 answer your question?

9 JUDGE BOUDREAU: Yes, thank you. Petitioner's Reply also
10 argued that Dr. Min had testified during his deposition that link aggregation
11 occurs at the MAC layer inside of a switch and not at the physical layer
12 where the links reside. Can you address that point?

13 MR. SUAREZ: Yes, I can. And actually, you're going right into
14 where my slides go right now, which is that, you know, this whole MAC
15 layer argument, you're not going to see it in the petition. First of all, I just
16 want to make sure that's clear for the record. It comes up in the Reply when
17 they start bringing in the details about 802.3ad. So, I do want to, I'm going
18 to address the substance obviously, but I do want to point out that this is new
19 and contradictory when they bring in 802.3ad. But with regard to your
20 MAC layer point, you know, the 802.3ad standard makes clear that the LAG
21 requires multiple links. It says that it establishes multiple DTE to DTE
22 logical links and parallel instances of links. And the link aggregation group
23 definition is a group of links that appear to a MAC client as if they were a
24 single link, and all links in a link aggregation group connect between the
25 pair of aggregation systems. And then the definition of link, which I cross

1 examined Dr. Min on from the same standards, the underlying 802.3
2 standard confirms that a link has to be a path between two interfaces of
3 generic cabling. And when I cross-examined Dr. Min on some of these
4 issues, there's always going to be a MAC in front of a PHY in terms of the
5 way that each of the interfaces is structured, and each of those in a link
6 aggregation group has to have multiple of those. And I think this is really
7 important because during the deposition, I asked him, are link and port the
8 same thing? Because I think their theory is essentially trying to say, oh,
9 well, it's all about ports now. And so, link aggregation group, as long as you
10 have multiple ports, you're good. But the problem is, even their expert
11 concedes, as I show on slide 27, that a link in the port are two different
12 things. He says, yeah, they are two different things. And so, this notion that
13 a MAC maps to ports in a LAG, there may be some degree of truth to that,
14 but that doesn't change their problem, which is that a link aggregation group
15 requires multiple links. And so, that's why they have a big problem and
16 they're hoping to salvage their case, you know, by cherry picking from
17 802.3ad, but at the end of the day, even 802.3ad is wholly consistent with
18 our definition of LAG. And again, our definition of LAG is based on the
19 claim language in the figures of the patent '602, which focuses on the inverse
20 multiplexing concept. Did I answer your question?

21 JUDGE BOUDREAU: Yes, thank you.

22 MR. SUAREZ: Okay. Thank you.

23 JUDGE OGDEN: Mr. Suarez, I have another related question.

24 Does Corrigent concede or agree that the IEEE 802.3ad standard is
25 something that a person of ordinary skill in the art would have -- would have

1 gone to for their understanding of what a LAG is?

2 MR. SUAREZ: I think it is. Yes so, what I would say I think that
3 the 802.3ad is certainly relevant to the general understanding of what a LAG
4 is, but that understanding also needs to be written in the claim language in
5 the specification. And so, you can't just go to 802.3ad and say, oh I think
6 and say that that's you have to analyze it in the content of the claim language
7 and the specification which unequivocally make clear here that a LAG
8 requires multiple things between (INDISCERNIBLE). And I'm happy to
9 dive deeper into 802.3ad. It would probably make sense for me to reserve
10 time on that until we hear next rebuttal and then I get to the end to go over
11 that. But hopefully for present purposes I answered your question.

12 JUDGE OGDEN: Yes, thank you Mr. Suarez.

13 MR. SUAREZ: All right. Thank you. And so, slide 28 just makes
14 clear that the late argument on 802.3ad should be disregarded even if, you
15 know, they're considered on the merits though we think we're still correct on
16 this issue.

17 Slide 29, I just want to point it out Petitioner, you know, and
18 Petitioner again argued it during the hearing, relies on this Rabie reference,
19 and we just think that shows the Petitioner, you know, is really straining here
20 on this LAG limitation and deep down Petitioner knows that it's not taught.
21 And so, I'm trying to rope in Rabie, and as one of Your Honors pointed out,
22 that's not a ground of obviousness that was raised in the Petition. It is just
23 something that was thrown in there as an additional reference. I also do
24 want to point out, and I think this applies to the Ferguson issue as well to
25 some extent, but Your Honors, two of the three Your Honors in the Cisco

1 Decision also acknowledged that the general concept of a LAG is well
2 known, that was in the opinion. And so, that doesn't matter. What matters is
3 what's the claimed LAG and is the claimed LAG taught, and that's not -- not
4 the case. And so, generic references to something being known whether it's
5 in Rabie, or just based on some other information, that doesn't move the goal
6 post or move the needle for them.

7 JUDGE BOUDREAU: I think that Petitioner was arguing that
8 that's -- that Rabie is providing evidence of what a person of ordinary skill in
9 the art would have known about LAGs and that that contributes to the
10 motivation to combine Raz --

11 MR. SUAREZ: Yeah. No, I certainly think they're entitled to
12 argue what the person of ordinary skill in the art would have understood,
13 and, you know, but it at the end of the day too, you know, obviously, we
14 have to look at what the legal opinion and what the references teach as a
15 whole. And at the point they're relying on, you know, something they call a
16 LAG in the Raz reference that's completely diametrically opposed to what's
17 in the claims and what's pertinent to the '602 patent. At that point, I think
18 their argument also falls flat. But I hear you that simply bringing in Rabie
19 isn't necessarily a problem, but we do think it shows the weakness of their
20 argument.

21 So --

22 JUDGE BOUDREAU: You argue in both the Patent Owner
23 Response and in the Sur-reply that there wouldn't be motivation to combine
24 Raz with RFC 3209. Can you drill on that a little bit as well?

25 MR. SUAREZ: Yeah. So, we think that the, you know, the

1 biggest piece of that is that the references are, you know, it's diametrically
2 opposed to each other. But the other thing, it does go to this other issue
3 about the assignment in the encoding. I think Your Honor asked another
4 astute question about the fact that the Raz reference does the port assignment
5 from the receiving node and that the primary reference, you know, does
6 more of a forward-looking approach. And those are disparate teachings that
7 the Patent Owner, I'm sorry, that the Petitioner never really reconciles. And
8 so, you again have sort of, just as you have kind of a conflicting issue with
9 the LAG with respect to the primary and secondary references here, you
10 have a conflicting issue with regard to the subport assignment. And they
11 argue that they're relying on Raz, you know, for the subport assignment.
12 And they're arguing with respect to both references that there's some ideal of
13 optimizing bandwidth. But again, if the two references are teaching to do
14 that in different ways, it's not clear how to combine them at all, let alone
15 how you combine them to get to the specific implementation that is claimed.
16 And so, at a high level, I think that that is our fundamental concern. They're
17 also, I believe this is a recognized regard to at least the Ferguson and Raz
18 references that, you know, the label subport and provisioning techniques are
19 different in those two and there's no dispute on that. So, that creates other
20 issues of combined ability between the various references. So, those are two
21 of the main points I would make there.

22 JUDGE BOUDREAU: Well, just to follow up on that point, I
23 understand that there are differences between the references -- and that's
24 why both references are necessary, both the RFC and Raz. But is there
25 anything in Raz that would teach away from having the assignment of the

1 port made by the -- by switch A in this case, as opposed to it just being --.

2 MR. SUAREZ: Yeah. Well, so, and I'm forgetting the exact
3 column of this, but, you know, in that diagram in Raz that has support or that
4 has LSRs A, B, and C, maybe I can just go to that. So, in this diagram here,
5 that shows LSR A, B, and C, the teaching is that between A and B, you
6 would have the subport be zero, and in between B and C, you'd have it be
7 one. And that's because in Raz, you independently look at each individual
8 hop, and you assess from the perspective of the receiving node, what's going
9 to optimize bandwidth. And so, at the point you're, you know, and so, Raz is
10 touting that as that's the way to sort of optimize the ideal path. But that
11 conflicts with the claim language and also, you know, isn't consistent with
12 the RFC 3209, which again, has that more forward-looking type of
13 approach. I mean, you know, taking a step back here, Your Honor, you
14 know, one of the things I thought was striking about this case from the
15 Petitioner is you never see any sort of diagram or affirmative explanation of
16 here's how the combination works, and that's because if you try to do that, it
17 becomes a mess and you're not able to do that. And so, you know, I think
18 that all sort of reinforces the lack of combinability and the challenge with
19 being able to, you know, combine, but combine these references. In these
20 slides here, like if you start at slide 34, I do have additional points on this
21 about how RFC 3209 are directed to different problems and solutions. And
22 so, you know, and we put this in our POR that Raz is really more about this
23 internal processing capacity concept and optimizing for that. And so, it's
24 looking for something different than the RFC 3209. And so, that's another
25 argument. And, again, you know, looking at page 35 of the slides, we have

1 these arguments about how going back to the internal, you know, the
2 internal nature of Raz, you know, if you were to implement that same
3 concept into RFC 3209, it would lead to something that's essentially not
4 interoperable with other things. So, hopefully that answers most of your
5 question. I mean at 36, you know, we also have a call from Raz that says
6 that Raz is explicit. You want this to be in devices, not something that's
7 between nodes. So, I think that kind of reinforces the lack of motivation.
8 You know, they say, oh, which is simple. You just, you know, apply it to
9 3209, but you've got to look at the reference as a whole. I mean, that's a
10 fundamental issue with motivation to combine. And so, we think that's very
11 important.

12 While I'm actually on this point, I do want to reference something
13 on their slides too that I think is important here and relevant to your
14 question. So, on slide 12, you know, they want to sort of say it's easy to put
15 Raz within RFC 3209. And so, they say, you know, they have this quote
16 that says, in addition to the disclosures and suggestions of RFC 3209, Raz
17 discloses that the particular interface assigned to the network tunnel may be
18 a port of a LAG. All right. And I want to disabuse this notion that an
19 interface is the same as a port because they're not the same. Here with Raz,
20 the subport is a processor. The subport is not even a port as they're trying to,
21 you know, kind of use a slight of hand here to suggest. I'd point you to page
22 six of our Sur-reply, where we point out that at column 7, 14 to 16 of the
23 Raz reference, Raz refers to the 10G interface. So, that 10G link, that whole
24 thing, that's an interface. But the subports aren't these interfaces onto which
25 you can connect RFC 3209. There's no disclosure in Raz that says that.

1 And so, what they want -- what they're hoping you latch onto is this notion
2 that interface, port, that's all interchangeable, but that's not the case. And so,
3 and that argument was never even, you know, addressed because, you know,
4 again, they're hoping that you just kind of think interface, port, and all these
5 terms are interchangeable when things like links and ports and interfaces,
6 they're different things. So, I just wanted, that was a bit of an aside, but it
7 was a slide that I wanted to point out. And then similarly, if we look at their
8 slide 17, they highlight, they say it would have been obvious to a POSITA
9 for the outgoing interface of the LSR as rendered obvious by RFC 3209 to
10 be a subport of a LAG as taught by Raz. So again, they're really hoping that
11 you equate the subports to the interface. But again, the only interface in Raz
12 is the 10G link as a whole. So, I just think that that's an important point that
13 I want to make clear for the record.

14 JUDGE BOUDREAU: I believe that Petitioner's counsel also
15 pointed to link 60 in Figure 3 of Raz, which is illustrated on your slide -- on
16 Patent Owner's slide 42, and argued that that was effectively a concession
17 here. Can you address that point?

18 MR. SUAREZ: Yeah, no, it's not a concession at all. So, the point
19 this slide, you know, we're unequivocal consistent with the Board's prior
20 decision that Raz does not teach a LAG or render the claimed LAG obvious.
21 The point we were simply making here was a point that the Board also
22 agreed with in the prior proceeding, which is that Raz's subport provisioning
23 mechanism is inconsistent with the claimed invention. And so, this is an
24 additional argument. There is no concession here that because link 60, you
25 know, is a single link between nodes that we agree that this link 60 is a

1 LAG. We're not conceding that at all. We never have conceded that. We're
2 just, you know, arguing here in the world where the Board, for whatever
3 reason, were to disagree with us on the LAG issue, this is a second, in our
4 view, independent argument.

5 JUDGE BOUDREAU: What if we were to understand 56, which
6 is the set of subports, if we were to consider that to be a LAG within the
7 meaning of (INDISCERNIBLE). How would that affect the analysis?

8 MR. SUAREZ: Well, what I think, if that finding were to be had,
9 obviously that, you know, there's not multiple physical links between nodes,
10 so we would disagree with that. But if the Board were to find that, you
11 know, again, it goes back to the motivation to combine because of the
12 conflicting teachings. This slide is making the point that in the claims, there
13 are three nodes, a first switch, a preceding node, and the second node. And
14 that assignment needs to be passed to the preceding node, and then the first
15 MPLS switch gets that and sends it to the second node. And so, this slide is
16 showing that if you use Raz for the subport provisioning, then you're going -
17 - it's going to encourage the POSA to do it in a way that is inconsistent with
18 the invention, where if I wanted to assign port zero in the context of the '602
19 patent, I would do that, send it to the preceding node and then it would also
20 apply between the first node and the second node. And that was a discussion
21 we had at the last hearing, and so, it's just yet another reason why using the
22 Raz implementation would be inconsistent with the claims and would, you
23 know, in our view lead to a finding that these claims are not obvious and due
24 to the combination. Did I answer your question?

25 JUDGE BOUDREAU: Yeah, I think so. Of course, I understand

1 your argument that 56 wouldn't be a LAG.

2 MR. SUAREZ: Of course. No, no, no, and I appreciate the
3 hypothetical. And so, you know, in our point, and as Dr. Min admitted this,
4 it's in our briefing, is that, you know, 3209 is about making these
5 independent forwarding decisions. And so, if you're making these
6 independent forwarding decisions, you're going to kind of accede to what
7 Raz is doing if you were to combine it. And this point's already been made,
8 so I won't repeat it. The downstream node makes a selection. Slide 43, we
9 think that caused them problems. The motivation to modify, you know,
10 again, these are general points, but I think they're worth reiterating on slide
11 45 here. You know, there's really never a clear explanation of why or how
12 RFC 3209 would be modified to use the LAG or apply to communications
13 between two MPLS LAG switches. It's not clear how the multiplexing
14 would be multiplexed within RFC 3209, you know, or how you would take
15 Raz's multiplexing and do the exact opposite, which is what the Patent's
16 directed to. Not clear how the label allocations would work together or how
17 they would work together. So, we just think that's a general deficiency.
18 And here, again, slide 47 just talks about like the references are consistent in
19 doing the independent assignments. The Reply acknowledges that there are
20 these contradictory teachings. If you look at slide 48, citations are there.
21 And here, the Reply, I think, makes a key concession. They say that both
22 upstream and downstream LSRs would be capable of making subport
23 selections in the claim matter. But that doesn't get you far enough. And,
24 you know, the Board, again, in the last case, they rejected a similar
25 argument. Petitioner asserted that Raz teachings could just as easily been

1 implemented in the manner claimed as improper hindsight and inconsistent
2 with the fundamental differences between Raz's multiplexing within an LSR
3 and the claim link aggregation at port assignment. You know, it's not about
4 whether it could have been done or capable of being done. It's whether the
5 POSA would have done it. And they don't meet that standard either.

6 I just want to point out in slide 50 that Dr. Min's reply slipped in an
7 argument that, oh well, it would have been an obvious design choice for the
8 transmitting LSR to make the support selection. Again, these new design
9 choice arguments were rejected in the Cisco matter as being late. Similar
10 problem here, both with regard to this argument and more generally with
11 regard to the late 802.3ad LAG arguments.

12 Finally, on Ground 1, there is no reasonable expectation of
13 success. You have to establish a reasonable expectation of success even if
14 there is some type of motivation. And in page 53 of the deck, we make it
15 clear the Petition maintains no arguments for reasonable expectation of
16 success. No mention of it in the declaration or the Petition.

17 Slide 54, the Reply doesn't remedy the Petition's deficiency. You
18 know, and they repeat this a lot through the proceeding, which I think is key
19 to why the Board should, you know, again, hold that '602 is patentable here.
20 They say that the components of RFC 3209 and Raz would be operating as
21 described in their respective documents. So, they're telling you Raz is going
22 to operate as Raz operates. So, then think to yourself, how is this
23 combination possibly going to work? And how is this combination going to
24 be, you know, implemented with a reasonable expectation of success? They
25 never explained that. They try to rehabilitate in the Reply with this quote

1 here, but we think it's conclusory and doesn't do the job.

2 This is some evidence we have in the record on slide 55 from Dr.
3 Rouskas. He rebutted this with the POR declaration. Indeed, in my opinion,
4 a POSA would not have had a reasonable expectation of success and Raz's
5 mechanisms involve several teachings that are incompatible and would
6 render Raz inoperable and the combination inoperable.

7 One other point that I want to make before I get to mapper, which I
8 just want to make is clear for the record. I'm sure counsel will address IEEE
9 802.3ad again in the next argument. And we'll address whatever arguments
10 he makes in the final rebuttal. But I do want to point out that in response to
11 those new arguments, because we're the Petitioner or Patent Owner, we
12 obviously couldn't put any expert testimony in response to that. We're able
13 to cross-examine and get some points, but we think that's really critical here
14 because there are about 12 paragraphs of material put in on that, that
15 procedurally we're not allowed to respond to with our expert and obviously
16 our expert would have had something to say about that. So, I just want to
17 make that point as well.

18 But regarding mapper, you know, we just think this is an
19 independent reason why we prevail here. This mapper is a component that
20 is in, you know, an actual physical thing that has to be in the system claim
21 and counsel acknowledges this is a system claim. And they don't identify
22 what that component is. If you look at slide 58, you just kind of say it's a
23 mystery component. That's why the question marks are there. And in the
24 Reply, they try to go to the port forwarding module, which was an improper
25 lay argument, but even if you consider the port forwarding module, you

1 know, this port forwarding module, both, it goes, it applies to outbound
2 packets and it applies to inbound packets. And so, it's not -- it wouldn't be
3 doing the precise things that are recited in the claims as we put in our
4 briefing. And so, we just think that deficiency on the mapper is yet another
5 issue, and there's new arguments on that.

6 So, finally, with regard to Ground 2, this is the RFC 3209 Raz
7 and Ferguson ground, you know, roadmap here is, you know, Ground 2, if
8 you, this goes to actually some of the questioning that Your Honor asked. If
9 you read their Petition, Ground 2 relates to Raz and Ferguson, not RFC
10 3209. And in fact, I believe it's on a slide that I'll get to, but they essentially
11 copied the Ground 2 from the Cisco case word for word into Ground 2 here.
12 And you can do a compare and check for yourself, but we're confident that
13 that's what was done here. And then second, a POSA would not modify
14 RFC 3209 based on Raz and Ferguson. There's no motivation to modify
15 RFC 3209 with Raz and Ferguson. There's no reasonable expectation of
16 success. And Ground 2 doesn't cure the problems with Ground 1.

17 So, Ferguson is a reference that's about distribution of label
18 switch packets. They really only rely on Ferguson for this teaching here in
19 Figure 2A, showing the aggregated interface. I think counsel acknowledged
20 they're just relying it for the LAG between switches. But at the end of the
21 day, this ground's deficient for the same reasons that it was deficient in the
22 Cisco case. We have several points on that. If you look at page 150 of our
23 expert's declaration, you know, he points out that Ground 2 had no
24 discussion regarding the primary reference 3209 or any modification thereof
25 to meet the claims. And what we have here is a showing of the petition in

1 IPR2023-447 and the IPR2023-839 Petition. And if you look at that
2 language starting with Ferguson builds, you can see that the information is
3 copied word for word between the petition in Cisco for Ground 2 and the
4 Petition here. And so, you know, while we think that the prior proceeding
5 largely controls, it controls for the whole case, we think it controls even
6 more for Ground 2, given that they made the identical arguments. And if
7 you look, it's really about modifying Raz based on Ferguson. So, but --

8 JUDGE BOUDREAU: Could you just explain a little bit more
9 this argument that this ground is really just based on Raz and Ferguson, that
10 it doesn't involve RFC 3209? Because I'm looking at the Petition, and I see,
11 you know, on page 53 of the Petition, that "[a] POSITA would have been
12 motivated to apply the teachings of Ferguson to the combination of RFC
13 3209 with Raz," and on that same page, a little bit higher on the page, "[t]he
14 analysis of the obviousness of Claims 1-26 set forth in Ground 1 are
15 incorporated by reference." So, my understanding of Ground 2 is that the
16 Petitioner is supplementing the combination of RFC 3209 and Raz with the
17 teachings Ferguson, specifically for the limitations that Raz is being relied
18 upon. I want to make sure that I understand your argument that RFC 3209
19 isn't part of that combination because (INDISCERNIBLE) here it appears to
20 be.

21 MR. SUAREZ: Yeah and let me be clear. I'm not saying that
22 RFC 3209 isn't part of the combination. The words appear as you stated
23 them correctly in the Petition. But the point is in terms of the explanation of
24 how these references would be combined or what the combination would
25 look like, there is none of that. There's no independent discussion of RFC

1 3209 in the ground. Now, Your Honor pointed out that they mention
2 incorporation by reference. Now, I know the Board has a lot of decisions
3 admonishing parties for trying to do that to circumvent the page limitations,
4 you know, we as the Patent Owner have a procedural right to know precisely
5 what their articulated ground is for Ground 2, and that's not provided. We
6 don't know how the combination works. Our expert reviewed it, said he
7 doesn't know what they're talking about. He doesn't know what they're
8 doing. And then we don't get another bite at the apple with our expert.
9 Frankly, I still don't understand exactly what the combination is. And so, I
10 want to be clear I'm not trying to argue that, you know, they haven't
11 identified a second ground that has RFC 3209 in it. I'm just explaining that
12 there's no explanation. And, you know, at the point that the explanation was
13 insufficient in the Cisco case that was copied almost verbatim, I would
14 submit to this panel that the explanation here is also deficient. I don't see
15 any discussion of RFC 3209 or anything incorporated by reference that
16 somehow crosses the threshold to make this Ground 2 somehow better.
17 And, you know, again, you have a three reference ground. You have RFC
18 3209, you have Raz, and you have Ferguson. And they're saying that all
19 three of them would somehow be combined. But what does that look like?
20 And what does that look like in the context of all of these different
21 contradictory teachings we've been talking about for the last 40 minutes or
22 so? So, I think that is the thrust of my argument. Does that answer your
23 question?

24 JUDGE BOUDREAU: So, is the argument really that it isn't
25 clear what aspects of RFC 3209 are being used in that combination in

1 Ground 2, is that (INDISCERNIBLE)?

2 MR. SUAREZ: Well, I think what the argument is there are
3 many deficiencies that are in the first ground. And they don't address how
4 putting RFC 3209, Raz and Ferguson somehow, you know, clears up all of
5 those issues or solves those problems or what the combination would even
6 look like. I mean, really at the end of the day, our position is that all that
7 reference gets them is that a LAG between switches was known, which is no
8 more than was known in the prior proceeding. And it was no more than
9 what was known in the prior Board decision where the Board opinion again
10 recognizes that a LAG as a general concept is well known. And so, we just
11 don't think it moves the needle for them in any way whatsoever. If they had,
12 you know, cogently explained, here's how we're going to combine RFC
13 3209, Raz and the other reference, you know, there might be a more of an
14 argument to understand that, but on this record, on this Petition, we think it
15 fails the matter of law.

16 JUDGE BOUDREAU: To the extent that the combination of RFC
17 3209 and Raz doesn't teach a LAG between switches, why doesn't Ferguson
18 rectify that deficiency?

19 MR. SUAREZ: Well, it doesn't rectify the deficiency. I mean, I
20 can go through, I think this is a, if Your Honor would indulge, I think going
21 through some of the slides, I think would be helpful. You know, again, first
22 of all, you have all three references, so you can't ignore the middle reference.
23 You have to consider the teachings of all the references. I'd say that would
24 be my first response. The second response is, you know, to the extent there's
25 a generic teaching of LAGs in the Ferguson reference, we still don't know

1 how that would be incorporated into the combination of RFC 3209 and Raz.
2 There's no explanation of what that looks like. You know, they're just
3 hoping that we can take the claims at a very simple level and say, well,
4 there's a LAG somewhere, so we're good. But they don't explain what that
5 looks like, what that combination looks like.

6 And, you know, so going to slide 68 here, you still have the teach
7 away problem with Raz. So, how do you reconcile Raz does with the other
8 reference, the Ferguson reference, and there is no specific motivation. So,
9 they rely on a disclosure about, you know, being able to apply things that are
10 within the Ferguson reference internally. But that teaching, as we argued in
11 the last case, again in this one, it does not teach you that you could go from
12 internal to external. Doesn't furnish a specific motivation to do that. And
13 then to the extent that they've actually done anything about motivation, all
14 they've done is they've hand-waved bandwidth. They're just like, whole
15 bandwidth, that's sufficient. But again, how does bandwidth give you
16 specific motivation to get there? So, that's the other problem.

17 And then on slide 71, you know, we point out Petitioner's Reply
18 ignores that Raz's mechanism and responds by saying concludes the repair
19 graphs. It's still, even in the Reply, they're not clarifying why or how the
20 mechanism would work. So, even in the Reply, which we can't respond to,
21 they haven't articulated that. And we pointed out, too, slide 72, these
22 address different problems. Raz is about the subports of slowspeed
23 processors and the internal processing. Ferguson is about load balancing.
24 They're about different things. So again, how does the POSA reconcile that?
25 They don't explain it. And they use different techniques. Again, I pointed

1 this out before. There's no dispute that they use different techniques.
2 They're not reconciled anywhere in the briefing. And just kind of going too
3 mindful, I only have a couple of minutes left for this argument.

4 Again, slide 76, we just don't have an explanation of why or how
5 those three references would be combined. And there's no specific analysis
6 to the claim limitations, limitation by limitation. Again, we think that broad
7 incorporation by reference is improper. Again, that would have probably
8 doubled the length of their Petition. And so, they knew they had a problem
9 there. And so, they tried to do that. But then they didn't explain themselves.
10 And that's procedurally deficient and also substantively deficient, as you all
11 pointed out in the prior decision, or two or three of you pointed out in the
12 prior decision.

13 And then slide 77, we just think there's no explanation. You're
14 welcome to look at those callouts. And this is, again, you're finding page 78
15 of the slides. A picture doesn't adequately explain why or how a POSA
16 would have combined the references to include the claim port assignment
17 and packet labeling, print transmission of a packet from a proceeding node,
18 and then between a first and second MPLS switch. And so, we think all of
19 that is dispositive here again, and we think that their Petition was deficient.
20 So, I realize I'm pretty much at time.

21 JUDGE BOUDREAU: Yeah, it looks like you're about a minute
22 into your sur-rebuttal time.

23 MR. SUAREZ: Yeah, so I'll just made this final point about the
24 bandwidth being too generic of a motivation as well. And we have that on
25 slides 80, 81, and also no reasonable expectation of success. Again, it was

1 conclusory on that front too, slides 83 to 86, and we have that. And so, you
2 know, at the end of the day, we think that both the grounds are very
3 deficient, not for the same reasons in the past case, but we think that is very
4 probative here, and we feel that Your Honor should reach the same result as
5 in the prior IPR.

6 So, with that, I yield the balance of my time.

7 JUDGE BOUDREAU: All right. Let's hear from Mr. Williams
8 again. As I said before, you have 23 minutes of rebuttal time.

9 MR. WILLIAMS: Thank you, Your Honor. I'm just trying to
10 share my window again. Let me know if you see that.

11 JUDGE BOUDREAU: Yes, we see slide 78.

12 MR. WILLIAMS: Yeah, slide 78 from Corrigent's demonstratives.
13 So, the reason I put this slide up, kind of where my friend ended and what I
14 would say about this, which has to do with the Cisco petition is that it just
15 proves my point. What the problem with Cisco was is explaining why you
16 would have done this labeling assignment protocol. The reason we don't
17 have this problem is because the labeling assignment protocol in our ground
18 comes from RFC 3209, and that is our primary reference. So, we're starting
19 from a reference that already does the one thing that this Board found was
20 missing in the last petition. So, then the only thing that we need is then to
21 show that the connection between the LSRs is a LAG and that in those labels
22 you would have encoded the port that would be used during the switching in
23 the LSR. Okay? So, as to the LAG, as we talked about, where there are
24 multiple reasons, there's multiple motivations to have that connection be a
25 LAG. And, you know, one comes from Raz itself. I'll come to that in a

1 second. The second comes from just the knowledge of a person of ordinary
2 skill in the art as evidenced by Rabie. And third is from Ferguson, which is
3 the, you know, second ground in and of itself.

4 Now, the motivation to use a LAG does have to do with
5 bandwidth, but the motivation to use Raz's switching labels that encode the
6 particular subport is not a bandwidth related reason. And Patent Owner just
7 seems to ignore that motivation that we give in the Petition, which I'll put on
8 the screen now. This is the Petition, slide 11, in the highlighted portion,
9 which we put here is the motivation, and it explains the combination. It
10 says, Raz teaches a beneficial implementation of MPLS labels such that
11 labels have dedicated a subset of bits to encode a serial number of the
12 assigned subports of the LAG into the label, ensuring that when the LSR
13 reads the label and incoming data packets, it knows which subport to send it
14 to. That is really, the Petition could have ended there. I mean, that sentence
15 in itself explains the combination and it gives you the motivation because
16 this use of labels to actually do the switching is itself efficient. I mean, Raz
17 teaches that. It saves the need to look up in the lookup table where this thing
18 is going. You just read the label itself, it tells you how to route it. That in
19 and of itself is the teaching from Raz. So, Raz gives you this nice teaching
20 that you can basically use label identifiers to encode the port itself. And
21 that's the knowledge that you can then apply to RFC 3209 to improve its
22 switching efficiency. The LAG (INDISCERNIBLE) just comes from the
23 knowledge of a person of ordinary skill in the art. It also comes from the
24 other two places we just mentioned. So, I just want to make sure that's
25 clear. I think the Board understood it from my prior conversation, but that it

1 is important enough to mention again.

2 And then in terms of, you know, how does this, you know, I'm
3 getting, apparently their position is that we don't explain in the Petition how
4 this works. And I think the section has pointed you to explain perfectly well
5 how it works. But again, this slide 42 from Patent Owner's demonstratives,
6 which shows Figure 3 of Raz is a good example of what's being described
7 here, because this is -- this is how the combination would work.

8 Recognizing our primary references 3209, 3209 doesn't have a picture like
9 this, but what it's describing is exactly what we just talked about, which is
10 you've got, you know, here we've got LSR B receives a request from LSR A
11 saying we're going to set up a path through you going somewhere else. And
12 LSR B then says, okay, I'm going to route that traffic out of my output path
13 one. So, here's the label I'm going to give you. It's going to have some
14 information that I need you to give me. If you apply Raz's teaching to that
15 idea, what comes out of it is, hey, you know what? Why don't I just tell you
16 that I'm going to use LSR, I'm going to use port one when I send this data
17 out so that that can be in the label. Therefore, when this LSR B actually gets
18 the packet with the label, it doesn't have to do any more work. It says, oh,
19 that's going to output one. That's going to my output port one. Great, I'll
20 send it there. That's it. I mean, that's what the claimed invention is here.
21 And the only technique that you really need to get there is this idea from Raz
22 that you can just include this notion into the labels itself.

23 JUDGE BOUDREAU: And Mr. Williams, where would the LAG
24 be in that figure?

25 MR. WILLIAMS: So, in that case, there would be a LAG, for

1 instance, on both sides of this connection, I think. But most importantly, I
2 would say, you know, the LAG would be the output side of LSR B, going
3 from LSR B to LSR C. You would have a LAG connecting those two
4 components.

5 JUDGE BOUDREAU: And where is the evidence of that?

6 MR. WILLIAMS: Where is the evidence of what? That a LAG
7 between the LSRs in RFC 3209 would be a good idea?

8 JUDGE BOUDREAU: Exactly.

9 MR. WILLIAMS: Yeah. Okay. So, in one case from Raz itself,
10 so again, we would say this is a LAG. I'll come back to that in a second,
11 because it is important we addressed it kind of at the outset. But, you know,
12 this connection between the two LSRs is a LAG, even though there's only
13 one physical connection. Okay. Because it clearly describes what is going
14 on here as being a LAG at the MAC layer, which is all you need to do. All
15 right. But if that weren't enough again, if the Board were to find that
16 somehow, no, actually, you need multiple physical paths to be a LAG.
17 Okay, that's fine. There would be a modification made here. And again, we
18 can see that RFC 3209 doesn't say that this is a LAG. So, where do we find
19 that? We find that from the knowledge of a person of skill in the art, for
20 instance, as evidenced by Rabie, which gives you a very similar label
21 switched network with two LSRs connected via a LAG. Rabie tells you this
22 was a known way to implement such a connection, gives you some benefits
23 of that, which have to do with bandwidth and scalability. So, that's one
24 place you would find that evidence. And then again, the last place you
25 would find that evidence is in Ferguson, which teaches you essentially the

1 exact same thing, connecting two label switch routers, using a LAG, and the
2 benefits of doing so.

3 So, it was a known implementation of LSRs, and it didn't have
4 known benefits. That technique then applies perfectly well in context of
5 RFC 3209. That's the point that we make in the Petition and the Reply.

6 JUDGE BOUDREAU: Well, where are you pointing to in the
7 Petition to for those arguments?

8 MR. WILLIAMS: Okay. So, page 29 is the first place. Sorry,
9 maybe it's 28. Yep. So, here on page 28, we say, a POSITA, sorry, my
10 screen is frozen, trying to fix that. There we go. Okay. A POSITA would
11 have motivated to employ the same concept between nodes and an MPLS
12 network as taught by RFC 3209 in order to improve the ability to
13 communicate high-speed packet streams that require increased bandwidth.
14 At the time of the '602 patent's (INDISCERNIBLE), a POSITA would have
15 understood that bundled links may connect LSRs together and an LSP path
16 might be provisioned, involved the choice of one of the component links in
17 the bundle. So again, here we're talking about links of a LAG and how do
18 you pick which one you're going to use. That was a known problem that you
19 needed to solve and had been solved already. And Rabie is an example of
20 that, where he used a LAG between LSRs, you know, labeled switch routers.
21 And therefore, it would have been obvious to do that in this combination
22 with 3209. So, that's where we do it for Ground 1. And then I don't, I don't
23 have the Ground 2 section handy, but I'm sure we can go to the table of
24 contents and see where we argue Ground 2. Page 53. So, 53, page 53,
25 where we're setting up Ground 2, and we're just saying, okay, look, we're

1 taking that same ground we already had, RFC 3209 and Raz, and sort of
2 proceeding on the premise that maybe you conclude that that's not a LAG
3 for whatever reason, then, you know, Ferguson also has this notion
4 extensively discusses the use of LAGs in this MPLS network to
5 communicate to data packets. And we go on to talk about, you know, how
6 that has beneficial bandwidth benefits. Is that what you're looking for, Your
7 Honor, or is there something more specific you wanted to see?

8 JUDGE BOUDREAU: No, I just wanted to make sure the
9 citations there. (INDISCERNIBLE).

10 MR. WILLIAMS: Okay. All right. How much time did I have?
11 Sorry, I didn't write that down when we started.

12 JUDGE BOUDREAU: You have about 13 minutes left.

13 MR. WILLIAMS: Okay. Great. So, I don't have a lot more to
14 say, honestly. That was the main thing. But let me just tick through this,
15 kind of repeat it, maybe, a few of the things we talked about earlier, which is
16 when you actually look at the claim language of the Patent, Claim 1 is on
17 our slide 4. You know, again, we talked about this. We noticed there is a
18 specific reference to a physical port, but nothing about a physical link. So
19 again, it's not part of the claims. There need to be multiple physical links
20 here to be a LAG. And, moreover, you know, the standard, the IEEE
21 standard for LAGs, which is it starts at our slide 21, also doesn't say
22 anything about multiple physical links. So, you know, all of the Patent
23 Owner's arguments are premised on the notion there must be multiple
24 physical links. But that is simply just not a requirement of a LAG. You
25 know, the single physical link in Raz certainly is sufficient. Now, you can

1 ask, well does Raz have multiple links in any sense? And the answer is yes.
2 If you just look at the slide 20, you'll see some of the excerpts that we cite
3 too from Raz, including this one at column 8, line 22. Each one of the one
4 giga, the ethernet links make up the subports of the aggregate 10 gigabit
5 ethernet link. So, you know, it's clear there are multiple links going on in
6 Raz. And when you then look at that, you know, multiple port interface we
7 just looked at in Figure 3, it's clear there's multiple links there as well that
8 connect each of those corresponding subports. So, in our view, what's in
9 Raz already between those LSRs is a LAG and nothing more is required.
10 Now --

11 JUDGE BOUDREAU: So, just to make sure that I'm clear on
12 what you're arguing here, are you saying that the claim doesn't require that
13 there be multiple physical ports on the LAG?

14 MR. WILLIAMS: I'm saying, no. I'm saying there are going to be
15 multiple physical links. So, you don't need multiple physical wires
16 connecting the ports. That's what the argument is. Remember, we know
17 already, you know, Raz in Figure 3 has these multiple ports, kind of, he
18 discloses 10 of them in Figure 3. And that's true on both LSRs. So, there's
19 an output, you know, the output of LSR, A has 10, and the input L, or B has
20 10. And in our view, what's going on here is definitely a LAG between
21 these two ports. And the same is true on the between LSR B, and LSR C.

22 JUDGE BOUDREAU: So, a single physical link would be
23 sufficient?

24 MR. WILLIAMS: Well, I think the physical link is just irrelevant.
25 That's kind of the point. It could be single. It could be multiple. It doesn't

1 matter. It's a LAG if there's multiple ports that are being aggregated. And
2 clearly, there are multiple ports being aggregated in Raz. So, when you
3 actually look at the definition that aggregation of the link is in the standard,
4 this is shown on slide 22. It's just an instance of a MAC that is a layer
5 medium, physical layer MAC between a pair of aggregation systems. And
6 that we've shown is present in Raz. There are multiple of these MAC ports.
7 They're connected through a physical layer. And then on the other side,
8 there's multiple of these ports, and they're aggregated. That's a MAC. I'm
9 sorry, that's a LAG.

10 JUDGE BOUDREAU: How do you reconcile that with the
11 language of element 1.1, which you have on the screen right now, that says
12 assigning a single physical tunnel port of a LAG?

13 MR. WILLIAMS: Because here, the focus is on the port, not the
14 link, right? So, there would certainly be multiple physical tunnel ports in
15 Raz. That's the thing that we see, for instance, shown in the Patent Owner's
16 demonstrative slide 42. And these are described -- I mean, there's a
17 discussion about how these things operate in Raz, and, you know, there's
18 some hardware associated with each of these that does stuff. Those are the
19 physical ports. He calls them subnets, I believe, but in the claim mapping,
20 those are the physical ports. These are real things that exist inside this
21 (INDISCERNIBLE). And it would be true of any LSR, and then have real
22 ports inside the switch, you're going to have also some physical medium
23 connecting the two together. The point we're making is that a LAG, in the
24 case of a LAG, physicality of the link itself is just irrelevant. I mean there
25 obviously has to be a physical link of some sort, right? You have to have

1 word to communicate bits from A to B. But what that is, is not part of what
2 a LAG is. It's just orthogonal to the definition of a LAG, which has to do
3 with the logical aggregation of these physical ports.

4 Okay. I'm not going to die on that hill again, because as we've
5 talked about before, there's lots of good reasons why you would implement
6 this as multiple, a LAG with multiple physical connections. You know,
7 Ferguson shows you that.

8 Okay. Just in terms of, you know, multiplexing, I'll say a few
9 words about it. I don't think it's terribly important because for the reasons I
10 just said. But I just want to be clear, there's nothing incompatible between
11 Raz's multiplexing and a LAG, as we talk about in the Reply. By the way, I
12 mean, you know, I heard some complaints that they think there's some new
13 arguments in the Reply. I mean, yes, there's always going to be new
14 arguments in the Reply. We have to respond to the arguments Patent Owner
15 made, and we think these are all fairly responsive arguments. I also don't
16 recall Patent Owner ever requesting leave to submit supplemental evidence
17 in their Sur-reply, I'm sorry, new evidence in their Sur-reply, which of
18 course they could have done if they felt that was necessary. But, you know,
19 frankly, I don't think any of these issues are really that big of a deal. The
20 point is, there is nothing in the definition of LAG that excludes multiplexing.
21 In fact, the definition of LAG in the IEEE standard requires multiplexing.
22 That's what goes on at the logical layer. As shown in slide 27 and in slide
23 28, you'll see Dr. Min's testimony explaining how none of this is
24 inconsistent with Raz.

25 JUDGE BOUDREAU: Well, (INDISCERNIBLE) might be about

1 that element, about Patent Owner's argument that Petitioner hasn't provided
2 any arguments with respect to expectation of success in the combination.
3 Could you address those arguments?

4 MR. WILLIAMS: Yeah, well, I mean, I think if we go back to
5 look at the actual Petition and, start at, or I think I started at page 11. I mean
6 we -- I think this itself, the highlighted section I pointed to, does address the
7 expectation of success and the motivation, right, at the same time. It's really
8 just a technique of labeling here. You know, in the case of Raz's, you know,
9 associating a label with a port, that is an idea that is disclosed to work in Raz
10 for a multi-protocol label switch router. And therefore, it would work in
11 RFC 3209's multi-protocol label switch router. Really, nothing more is
12 necessary to show expectation of success. There's no reason that wouldn't
13 work. It's not even clear what we would necessarily be responding to there.
14 You know, the only thing that Patent Owner seems to be objecting to is that
15 in the case of Raz, that label technique is applied to the input ports rather
16 than the output ports of the LSR, more or less, that's the objection. But our
17 point is that, yeah, okay, Raz does that. But we're not starting with Raz for
18 this point. We're starting with what RFC 3209 does, which RFC 3209
19 would essentially be having a label that tells the LSR switch where to send
20 that packet to its output. And so, it's obvious to take Raz's technique of, you
21 know, tying the label to the port and applying that to the output port, which
22 is what's being taught in 3209. So, yeah, it just sort of, you know, the prior
23 art itself gives you that expectation of success. But I mean, I think our
24 expert did explain how this combination works, how he's taking these ideas.
25 They're working in exactly the same way they were working in each of those

1 individual references when you combine them. So, there's nothing hard to
2 address here. There's no teaching away. There's no problem the POSITA
3 has to solve. He literally just takes this idea of, you know, encoding a label
4 with a port number and using that in RFC 3209.

5 JUDGE BOUDREAU: Well, I think the Patent Owner's argument
6 was that, because you're arguing that these would be operating according to
7 the operating principles that are stated within them, basically -- I'm looking
8 at page 14 of the Petition -- "Each of the components described by RFC 3209
9 in Raz would be operating as described in their respective references." If
10 there's a difference between the ways the references assign the ports, how
11 can they both be operating according to the operations described?

12 MR. WILLIAMS: Yeah, because they think, you know, because
13 they change they're making to RFC 3209 is the format of the label. I mean,
14 RFC 3209 doesn't tell you what is the content of this label. Raz tells you
15 one thing you can put in the label is the port identifier, and that will help you
16 switch. So, taking that idea and putting it into RFC 3209 requires no
17 problem. There's no problem to be overcome. You just take literally that
18 teaching and apply it in the context of 3209. Our expert explains that was
19 within the level of skill in the art. So, in our view, that's all that's necessary
20 to show a reasonable expectation of success.

21 JUDGE BOUDREAU: (INDISCERNIBLE). But you're just
22 arguing that a person of ordinary skill in the art would understand how to
23 make those modifications.

24 MR. WILLIAMS: Yeah, I mean, right. That is the argument. I
25 mean, the only modification, first you have to make the modification to

1 include this labeling technique from Raz, that you're going to label the port,
2 that the label itself will contain the port information. And then when you get
3 that label, you're going to use it to actually direct the packet. And those two
4 things (INDISCERNIBLE). Raz taught you how to do that on the input
5 side. So, doing it on the output side works the same way, which is what
6 RFC 3209 tells you to do. Do this on the output side. So, using that
7 technique from Raz in RFC 3209, it would work the same way as in Raz.
8 It's just working within the framework of RFC 3209, where, you know,
9 you're labeling the output port instead of the input port.

10 JUDGE BOUDREAU: It looks like you have about two minutes
11 left.

12 MR. WILLIAMS: Okay. I'm trying to see if I had anything else I
13 wanted to cover. I don't really, unless the Board had some sort of questions
14 about Patent Owner's presentation, I don't really think I have anything else.
15 Well, that -- well then I will yield back the remainder of my time, Your
16 Honor.

17 JUDGE BOUDREAU: Thank you.

18 Mr. Suarez, I believe that have 13 minutes left in your sur-rebuttal.

19 MR. SUAREZ: Okay. Thank you, Your Honor. So, I'll make a
20 few responsive points. So, first of all, regarding their slides, I want to just
21 make a couple of responsive points. Okay. So, if we go to slide -- so
22 starting with the LAG issue. If we go to slide 20 of their slides, and I can
23 share that real quick here. Counsel pointed to this second call out each of
24 the one GE links make up the subports of the aggregate 10 GE link. I just
25 want to make very clear that that disclosure is from the second embodiment

1 of the invention, not the first embodiment that they're relying on of Raz, and
2 that that is referring to the internal links that are in here in Figure 2 in the
3 context of that switch that replaces the port forwarding module. And so, it
4 doesn't change the fact that there's only one 10G link that goes out here. So,
5 I just want to make sure it's clear because one criticism we had of them was
6 that they mix and match embodiments and I think we heard that again from
7 counsel.

8 The second point is on slide 21 they talk about this again trying to
9 equate ports to the link aggregation, and on slide 21, I think I pointed this
10 out before, but they only refer to this definition of aggregation system
11 because they want the Board to buy this notion that the LAG is all about
12 ports and nothing else. But again, if we look at the actual standard, link
13 aggregation group, it's a group of links that appear to a MAC client as if they
14 were a single link. And I also cited the definition of link, which is about
15 generic cabling. They didn't dispute that definition that that's in the
16 underlying standard. Further, and I pointed out in the beginning, in the first
17 presentation, that column 2, lines 1 to 3 of the '602, says link aggregation is
18 a technique by which a group of parallel physical links between two
19 endpoints and a dead network can be joined together in a single logical link.
20 So, that's what the specifications talking about, and that's consistent with the
21 claim language Your Honor pointed to about a single physical tunnel port.
22 There's multiple physical tunnel ports, which we submit and our expert
23 agrees, are those links consistent with both the specification and 802.3ad. I
24 also would ask you to look at Exhibit 2016, my cross of Min, page 9, lines
25 14 to 10, line 8, and it talks about how he admits that this is a description,

1 that description I just said at column 2, is a description of what this link
2 aggregation does. And he says that description is correct and this is a
3 technique to do so. And again, so going back to what the claims actually
4 claim here and what the link aggregation here is, it is consistent with our
5 arguments and with the Board's prior decisions. I want to make that very
6 clear.

7 I also want to briefly address, they pointed to slide 27, I believe,
8 which has this figure here and it says multiplexing. So, they argue, oh, it
9 says multiplexing. So, you should agree that Raz's multiplexing is correct.
10 But this, first of all, they cut off this Figure is 43-2. If you look at the
11 entirety of the figure, and I have to find it here, but if we go to 43-2, okay,
12 it's here, you'll see that they cut off the top and bottom of it. And I asked Dr.
13 Min in his deposition about this figure, and he basically talked about how
14 this is a bi-directional figure. So, one direction is the transmit and one is the
15 receive. And what they don't want to show you is that if you do inverse
16 multiplexing, which is claimed, that's what's actually claimed, then you start
17 at a single link and you go to multiple max in the physical layer. That's
18 what's actually claimed. What Raz does is you start with multiple internal
19 links and you go this way to a single MAC, right. And so, they cut that off
20 in the figure because if you look at the whole figure and you focus on what
21 the claims require and what this Patent's about, then their argument loses
22 muster. So, don't be fooled by the fact that it says multiplex in that figure.
23 Now, again, that's another thing our expert would have explained in more
24 detail had we been able to put it in additional declaration.

25 And then, you know, I do want to reiterate that because of those

1 opposite teachings, the references are incompatible with one another. Your
2 Honor pointed out that they consistently admit and agree that the inventions
3 would be operating as in their, you know, disclosures, and so they never
4 reconcile that, as I think that was what Your Honor's question was going to.
5 And we think that that's absolutely correct. And is a reason why, you know,
6 we should prevail in this proceeding.

7 And I do want to address their arguments about the Petition and
8 where they pointed to different things and stuff like that. So first, first they
9 say that Raz contains the LAG. That's their first argument. Again, I think
10 we have shown why that's not the case, and why their arguments are wrong,
11 too late. And even if you consider them, the merits, again, incorrect because
12 the claim LAG is about inverse multiplexing. But then they say, but well
13 look at page 28 of the Petition and that says in the alternative, it would have
14 been, you know, obvious. But page 28 is that page that cites Rabie and they
15 just, you know, say, oh, Rabie teaches some generic stuff about links
16 between nodes and so therefore you should give it to us based on that. The
17 problem is, A, Raz is still part of the combination and it teaches away. So,
18 how do you deal with that? Does then their argument become some sort of
19 design choice argument? If the argument becomes a design choice
20 argument, that's the same argument the panel rejected in the last proceeding,
21 you know, and it's not even clear that it is a design choice argument. Right?
22 And so, that's yet another reason, you know, that that argument doesn't hold
23 water. And, you know, there is no Rabie ground, and it's not clear how that
24 combination would even work, you know, if they were to even do that.

25 And then they also cited to Ferguson, they cited to page, I believe

1 54, but other than generically referring to bandwidth, they don't explain how
2 that combination would work either. How, you know, again, the
3 combination is not RFC 3209 and Ferguson. The combination is RFC 3209,
4 Raz, and Ferguson. And so, how would they reconcile those three
5 references, even if you had some sort of general notion of, oh, you might
6 want to do a LAG there. And I also want to take a step back and just make a
7 broader point. RFC 3209 is a standard, right? Standards are a standard for a
8 reason. And you have to ask yourself, why would the POSA be making all
9 these changes to the standard in light of these references? But again, the
10 more important point is that there's all of these teach aways with regard to
11 Raz and the various other teachings.

12 The second point I want to make, besides the LAG, is that you
13 don't really hear any explanation from Petitioner about how the invention
14 would work between the three claimed nodes. Again, there's a first MPLS
15 LAG switch, there's a preceding node, and there's a second MPLS switch.
16 And that goes back to the reason, you know, we put up that figure and that
17 keeps coming up in slide 42.

18 JUDGE BOUDREAU: Forty-two of (INDISCERNIBLE).

19 MR. WILLIAMS: Yeah. The reason we keep putting this figure
20 up is because, you know, he says this is the figure that tells you how the
21 combination is going to operate. But the problem is it only addresses what
22 happens between the two nodes. And again, it teaches an opposite way of
23 assigning, which is another problem. But it's not clear how in the
24 combination you would use Raz to assign yet assign zero to the preceding
25 node that gets also assigned by the first node and transmitted to the second.

1 Here you have, you know, the different subparts between A and B and B and
2 C. And that was a subject of an extensive colloquy at the last hearing
3 because that's a problem with Raz. And so, at the point he admits that this
4 figure controls, I think he's admitting that they lose their case, because that is
5 a problem with Raz. And so, yet another reason why we think the Board
6 should reject the Petition's arguments.

7 And so, and again, they acknowledge that these references are
8 going to be operating as they're described, and they can see that the LAG in
9 the port assignment are the two things missing from RFC 3209. So, at the
10 end of the day, while I think, you know, Petitioner makes a valiant effort to,
11 you know, cast this as being all about this new ground or new -- new
12 reference RFC 3209, you know, at the end of the day, you know, they rely
13 on Raz in both grounds. They don't efficiently explain their grounds, the
14 problems with Raz that infected the prior proceeding that remain. And
15 therefore, you know, the Board should, consistent with its prior decision,
16 find that all of the claims are patentable.

17 Unless the Board has additional questions, I think I would stop
18 there.

19 JUDGE BOUDREAU: Thank you, Mr. Suarez, and thank you as
20 well, Mr. Williams. We'd like to thank both parties for your presentations
21 and for answering all of our questions today. We will take the case under
22 advisement and issue a decision in due course. The case is submitted, and
23 we're adjourned.

24 (Whereupon the above-entitled matter went off the record at 3:09
25 p.m.)

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