

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.

Petitioner

v.

BT AMERICAS INC.

Patent Owner.

Case IPR2023-00888

Patent 7,159,237

PATENT OWNER'S SUR-REPLY

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PAN's Reply improperly casts its discussion of prior art as claim construction arguments. Tellingly, the Reply never even proposes a concrete claim construction. It thus should not be given any weight, as it does not comply with the Board's authorization for additional briefing. In any event, the Board should deny institution for the reasons set forth in the POPR, and in view of the following.

I. Any Proper Construction of "Post-Filtering Residue" Requires the Claimed Filtering to Be Distinct from the Claimed Analysis that Follows.

PAN argues that "PO suggests that the claimed 'analysis of post-filtering residue' must occur after *all* possible filtering operations." Reply, 1. But PO never suggests a construction where filtering could not be used in the first-stage analysis. Notably, PAN focuses on PO's discussion of Duvall and never responds to PO's actual claim construction arguments.

As discussed in the POPR, Schneier's claims require positive and negative filtering to be distinct from the post-filtering residue analysis that follows. *See* POPR, 28-32; *see also* EX1001, Claim 1 ("filtering followed by an analysis of post-filtering residue" (emphasis added)). This is consistent with the District Court's construction. *See* EX1013, 4 ("status data that undergoes negative and positive filtering, but is neither discarded by such negative filtering nor selected by such positive filtering"). And the specification supports PO's position in that the anomaly engine, which performs the further analysis, is distinct from the positive and negative filtering subsystems that produce the "post-filtering residue." *See*

EX1001, 8:50-57. PO's construction does not preclude any filtering in the residue analysis but does preclude breaking up a single filtering process arbitrarily just to read on Schneier's claims. Neither the claims nor the art permit this reading.

Rather than contest PO's claim construction, PAN falsely contends that "PO does not challenge that Duvall's initial ALLOW and BLOCK filters are forms of 'negative and positive filtering' under the district court's previous construction." *See Reply*, 1. *Cf.* POPR, 34-38 (explaining how Duvall does not satisfy the district court's claim construction). PO clearly argued that Duvall's single filtering system cannot supply all of the positive filtering, negative filtering, and distinct analysis that Schneier requires. Rather than "deferred action *analysis*," Duvall only discloses "deferred-action *filters*," which are part of the same filtering subsystem as the immediate-action filters. PO agrees that "mid-filtering" is not used in Schneier because it is not relevant to Schneier. It is only relevant to Duvall. As explained in the POPR, and never addressed by PAN, it is improper to read "post-," "residue," and "followed by" out of the claims. *See POPR*, 30-31.

II. PAN's Arguments About "Identify[ing] Potentially Security-Related Events" Are Technically Inaccurate—And Unrelated to Claim Construction.

First, PO never construes "potentially security-related events" as "previously unknown threats."¹ *See Reply*, 3. Instead, PO highlights a major flaw

¹ In fact, the Petition uses the term "unknown." *See, e.g.*, Petition, 2, 21, 53.

in PAN’s proposed ground of unpatentability. Schneier detects previously unknown threats, *see, e.g.*, EX2001, ¶21, but neither Duvall nor Chu can. And where the analysis of residue in Schneier is focused on the unknown, the filtering of Chu and Duvall focuses only on what is known and predetermined. This explains PAN’s difficulty in mapping Duvall and Chu to Schneier.

Regardless, Schneier is clear: “potential security-related events” relate to threats that could not previously be identified by positive and negative filtering and are also determined to rise to the level of being worthy of further analysis. *See* EX1001, 8:50-57; *see also, e.g.*, Claim 1 (“analyzing status data to identify potentially security-related events represented in the status data, wherein the analysis includes filtering followed by an analysis of post-filtering residue”). PAN suggests that “potential security-related events” are just inconclusive data. Reply, 3. But that cannot be correct—it must also be “worthy of additional analysis.” *See* EX1001, 8:54. While residue is inconclusive data, affirmative analysis “identif[ies] potential security-related events” from it. *See, e.g.*, EX1001, Claim 1. Under any proper construction, Duvall never “identif[ies] potentially security-related events.” *Cf.* EX1001, 8:53-57. Nor does Duvall identify “unknown threats.” *See* Reply, 3. Indeed, Duvall’s deferred-action filter’s pattern-matching is a quintessential example of identifying *known* threats. *See, e.g.*, EX2001, ¶¶20, 40, 71, 100.

Second, PAN’s suggestion that “potentially security-related events” do not need to be determined through objective analysis makes no technical sense. Whether something is a network security threat is an objective question relevant to network security and a POSA would therefore expect an objective analysis. *See* EX2001, ¶141; *see also* EX2001, ¶178. Schneier’s silence regarding subjective analysis, and the explicit claiming of “empirically-derived information,” would suggest that subjectivity is inappropriate. Likewise, PAN’s suggestion that Duvall does not filter based on subjective preferences is wrong. *See* EX1004, 2:12-16. A corporation’s belief about what is objectionable is still subjective—including whether it considers certain illegal material to be objectionable.

Third, PAN seeks to construe the words of Schneier so broadly as to be meaningless—and effectively argues that “security-related” can mean anything. That cannot be correct. “[O]bjectionable material” is different from “security-related” material. Even if Schneier’s invention could be adapted for other purposes, the words of the claims still require identifying “security-related” events and recite “[a] system for operating a probe as part of a security monitoring system for a computer network.” EX1001, Claim 1. Dr. Jeffay’s explanation that objectionable material may contain viruses is of no moment. Non-objectionable material may also have viruses or malware. *See* EX2001, ¶¶143-144. But that does not mean that any subjective analysis of “objectionable/non-objectionable

material” whatsoever is “security-related.”

III. PAN’s New Obviousness Argument Is Unsupported and Inappropriate.

PO never suggested that “dynamic” modification refers to a novel technical operation nor that it would exclude basic database operations well known in the art as PAN impugns. PO only argues that Duvall lacks “dynamic” modification under the proper construction. PAN does not actually dispute PO’s construction and appears to concede that Duvall never discloses this limitation. But PAN now argues that it would have been obvious, nonetheless.² Of course, PAN’s expert, never explains why or how a POSA would implement “dynamic” modification (*see* EX1003, ¶¶149-151)—especially when Duvall’s disclosed methodology for its server-based system is clearly inconsistent with dynamic modification and actually teaches against it (*see* EX2001, ¶¶171-172). PAN offers only conclusory statements from its expert that it could be done.³ PAN’s new arguments are unrelated to claim construction; they are not even technically correct.

In sum, PAN’s Reply does not raise any new bona fide claim construction considerations. The Board should deny institution.

² The Petition at page 42-43 raises an inherency argument rather than obviousness.

³ Moreover, the claims require that the *probe* is not taken offline—not the database. *See, e.g.*, Claim 1 (“modifying an analysis capability *of the probe during operation thereof*” (emphasis added)).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Patent Owner's Sur-Reply, was served on Petitioner on September 28, 2023, by emailing a copy to counsel at the email addresses listed below:

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