

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PALO ALTO NETWORKS, INC.,
Petitioner,

v.

BT AMERICAS INC.,
Patent Owner.

IPR2023-00889
Patent 7,895,641 B2

Record of Oral Hearing
Held: August 21, 2024

Before KARL D. EASTHOM, GEORGIANNA W. BRADEN, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on Wednesday, August 21, 2024, commencing at 1:00 p.m. EST, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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1:00 p.m.

THE CLERK: All rise.

JUDGE EASTHOM: Please be seated. Welcome everyone. This is Judge Easthom and Judges Braden and Raevsky are also appearing via remote video for this case, Palo Alto Networks, Inc., vs. BT Americas Inc., IPR 2023-00889; and that's U.S. Patent No. 7,895,641 B2, which we will refer to as the '641 Patent. Each party has an hour to present their case. Petitioner has the burden of proving unpatentability and will proceed first, followed by Patent Owner and followed by the respective rebuttals by each party if they reserve time. Petitioner, who is appearing today?

MR. TUMINARO: Jonathan Tuminaro on behalf of Petitioner. I have with me Steve Pappas and Michael Specht.

JUDGE EASTHOM: Perfect. Welcome, gentlemen. And will you be presenting most of the time?

MR. TUMINARO: I will be presenting today.

JUDGE EASTHOM: Okay. And how much time do you want to reserve for rebuttal?

MR. TUMINARO: Twenty-five minutes, please.

JUDGE EASTHOM: Okay. And Patent Owner, why don't we get you for the record also, please?

MR. ROBERTS: For the record, Jonathan Roberts for BT Americas, Inc., joined by my colleague Nolan Goldberg in person and we have some client representatives on the audio-only line video.

1 JUDGE EASTHOM: Perfect. Okay. Welcome. Welcome to you,
2 too, Mr. Roberts and Goldberg.

3 MR. TUMINARO: Judge, for the record, 15 minutes please, for
4 surrebuttal.

5 JUDGE EASTHOM: That sounds good. Thanks for --

6 MR. TUMINARO: Thank you.

7 JUDGE EASTHOM: Let me see if I can set this clock. Give me one
8 second. Okay. With that, Mr. Tuminaro, please proceed. Hang on a
9 second, I -- give me one second, is that all right. I set the clock for seconds
10 instead of minutes. That would have been a fast hearing. Okay. Please
11 proceed.

12 MR. TUMINARO: Thank you, Your Honor. Jonathan Tuminaro on
13 behalf of the Petitioner, Palo Alto Networks. I will jump right into it. These
14 are the grounds that we have in the petition. And now I'm Slide 3, this is the
15 agenda that we plan to go through.

16 The position shows that the claims are unpatentable. BT's responsive
17 arguments lack merit, they're not commensurate in scope with the claims,
18 and the arguments attack the references individually.

19 I'll focus on the disputed issues here today, and primarily I will focus
20 my time on three different disputed issues. Number one, that Duvall is
21 directed to security. Number two, the post-filtering residue limitation. At
22 number two, the post-filtering residue limitation, and number three, the
23 dynamically modifying limitation.

24 I will address other issues to the extent there's time or if Your Honors
25 have specific issues that you would like to hear address, I'm happy to do

1 that. With that, I will jump into a background of the '641 Patent itself. I'm
2 on Slide 4 now of Petitioner's Demonstratives.

3 The brief summary of the '641 Patent shows that the '641 Patent is
4 directed to managed security monitoring services. They refer to that as
5 "MSM Services." And on the righthand side of our Slide 4, the '641 Patent
6 itself explains that it has a broad applicability.

7 It says that the patented invention is usable generally for (i)
8 monitoring of any system; and (ii) filtering the data from the monitoring for
9 noteworthy events happening in or affecting any system, and it goes on. So
10 it's a broad invention that is directed to managed security monitoring
11 services.

12 But as shown on our Slide 5, such security monitoring services were
13 already known in the art before the '641 patent. For example, IBM had such
14 a security monitoring service that they tied to their NetRanger product and
15 they provided outsourced 24-hour security monitoring by expert security
16 analysts.

17 So in order to get its patent, BT was narrowly focused on a single
18 limitation. This is shown on Slide 6 from the Prosecution History of the
19 Parent. BT or the patentee at the time, focused the examiner on one
20 limitation, narrowly focused on one limitation.

21 And they said to anticipate or render obvious Claim 1, there at least
22 needs to be some teaching, or suggestion, of three different kinds of data.
23 They said 1) data selected by filtering, 2) data discarded by filtering, or 3)
24 some post-filtering residue that is neither of the first two.

25 And the examiner relied on this statement, this is on our Slide 7 of our
26 slides. The examiner found that the prior art in front of the examiner didn't

1 have those three different types of data, not the positively filtered, the
2 negatively filtered, and the post-filtering residue.

3 But the examiner noted that -- and this is on Slide 7 -- that network
4 security systems existed at the time, intrusion detection systems existed at
5 the time, but the examiner found that those existing systems would block all
6 data and didn't have this post-filtering residue.

7 So patentability of the claims at issue here was narrowly focused on
8 this one limitation. And on Slide 8 we have shown the two independent
9 claims that are at issue here. Each of those independent claims has this post-
10 filtering residue limitation.

11 It's underlined in red in our Slide 8. It says a post-filtering residue is
12 data neither discarded, nor selected by the filtering. This was the limitation
13 that was relied on for patentability.

14 But as the petition shows, our references and specifically Duvall,
15 teaches exactly this: an analysis of post-filtering residue where that post-
16 filtering residue is data neither discarded nor selected by the filtering. And I
17 will get into Duvall right now.

18 So moving on to Slide 10, this is showing what is independent Claim
19 1. And we've highlighted three of the limitations, the post-filtering residue
20 limitation that appears in Element 1B, we'll discuss that in detail, and the
21 Element 1E, their modification system with the dynamically modifying
22 limitation, we'll address that in detail. And time permitting, we'll address
23 this analyst system limitation in Claim 1C.

24 So moving onto, really the primary disputed issue I think that BT
25 raises in its papers, this is on Slide 12, that Duvall is directed to and useful in
26 the context of security. So on the lefthand side of our Slide 12, we have

1 really, the syllogism that we relied on to show how Duvall is directed to
2 security.

3 Duvall filters objectionable materials. And it was known at the time,
4 or before the '641 Patent, that such objectionable material could be used as a
5 lure to download viruses or other security-related content. So a person of
6 ordinary skill in the art would have been motivated to block such
7 transmissions.

8 And that's the connection that we set forth in the petition, about the
9 connection between Duvall's filtering system and security-related events. In
10 particular in the petition, this is at Pages 35 and 36, we explain that Duvall's
11 filters literally fall within the scope of the potentially security-related events
12 that are recited in the claim.

13 At Page 35 of the petition, we explain that Duvall's filters would block
14 data, and the data that is blocked by Duvall's filters, would literally fall
15 within the scope of the potentially security-related event, because the
16 blocked data leads to objectionable material that could be tied to security
17 events.

18 We also argue, in addition to saying that Duvall's filters literally fall
19 within the scope of the security-related events, we also argue that it would
20 have been obvious to apply Duvall's filters to these potentially security-
21 related events, this is on Pages 36 and 37 of our petition. The --

22 JUDGE EASTHOM: Mr. Tuminaro, we -- if we just reached the
23 obviousness question, I'm looking at Slide 12, and I think you said Chu
24 itself, techniques are similar, may block viruses and malware-related events,
25 does your friends push back on that? Or other than pushing back on your
26 reasons for combining the two references?

1 MR. TUMINARO: I think they have not, Your Honor. I think -- I
2 will let them speak for themselves, but I think that they have not made any
3 argument against our argument in the petition that it would have been
4 obvious to use Duvall and Chu's filters for security-related events. We make
5 that argument.

6 We say that it would have been nothing more than using a known
7 technique, Duvall's filters in a known device, intrusion detection systems,
8 making that obvious. We don't think BT has made any argument against our
9 obviousness position. I think all of their arguments are directed to attacking
10 the link between objectionable material and security-related information. I
11 think that's what all of their arguments are directed to. I don't think they've
12 touched on our obviousness point.

13 JUDGE EASTHOM: Okay.

14 MR. TUMINARO: So if there are no more questions about Duvall
15 being directed to security, I'll move on to the post-filtering residue
16 limitation. So now on Slide 13 of our presentation. So the first argument
17 that Duvall -- that BT raises with respect to this limitation, is they say that
18 Duvall and Chu's combination doesn't need this analysis of post-filtering
19 residue, because Duvall's filters are never applied to the same data
20 transmission.

21 Two responses to this point. First, is there's no requirement in the
22 claim language itself that the filters have to be applied to the same data
23 transmission. Just looking at the limitation 1B, just at the top of Slide 13,
24 what it recites is a filtering subsystem. And this filtering subsystem is
25 coupled to analyze status data, and the wherein clause explains what that
26 analysis includes.

1 It includes two things. The wherein clause says that the analysis
2 includes filtering, that's the first thing that the filtering subsystem must do.
3 And following the filtering, there is an "analysis of the post-filtering
4 residue." That's the second thing that needs to be performed by this filtering
5 subsystem, so there needs to be filtering and an analysis of the post-filtering
6 residue.

7 And the limitation states that the post-filtering residue again, is data
8 that is neither discarded nor selected by the filter. Duvall teaches exactly
9 this. And let me explain that, starting on Slide 14. So we've met Duvall's
10 filtering system to the claimed filtering subsystem of Element 1B.

11 And Duvall's filtering system, is shown across Figures 3 and Figures
12 4. So we'll start with Figure 3. What is -- Figure 3 is illustrating the direct
13 action filters. And what happens in the direct action filters, as you start at
14 the top, as it says, you go through Box 100 to determine whether the data
15 stream is open.

16 Then you -- the next box is 102, you get a list of the addresses
17 associated with the open -- the IP -- you get a list of the IP addresses
18 associated with the open port. And then you make a decision. There is a
19 determination in Box 104, is an immediate action required?

20 That immediate action could take on one of two different forms. You
21 could either allow a transmission, which would be like selecting a
22 transmission or you can block a transmission, which would be like the claim
23 discarded.

24 So Duvall teaches that these direct action filters, the direct action filter
25 could allow or block, like the claim select or discard. But in Duvall, at Box

1 104, if there's not a direct action that needs to be taken, then the transmission
2 will go to the deferred action.

3 That is the data that goes to this deferred action is residue, like in the
4 claim, because this data is data that is neither blocked nor allowed. It's
5 neither just selected nor discarded. This residue then goes to the deferred
6 action filters, 116.

7 And if the deferred action filters can be applied, it goes to that Circle
8 A in Figure 3, and following figure -- that A goes to the top of Figure 4.
9 And then, the data transmission would go through the analysis that's in
10 Figure 4 of Duvall, this is on the righthand side of our Slide 14.

11 And two of the types of analysis that Duvall teaches that would be
12 applied to this residue, the data that's neither allowed nor blocked, is you can
13 do key word searching or pattern matching. So this key word searching or
14 pattern matching, that's a type of analysis. So Duvall teaches what's required
15 by Element IB, you need a filtering subsystem that filters and that does an
16 analysis on the post-filtering residue. And Duvall does that. It was --

17 JUDGE EASTHOM: Mr. Tuminaro?

18 MR. TUMINARO: Yes?

19 JUDGE EASTHOM: Let me ask a question. I -- I'm not sure that no
20 one argued this, it seemed to be arguing that post-filtering means something.

21 So the way I understand Duvall, is that there are a group of filters and then
22 when the data stream comes in, whether it's open, let's assume it's open for
23 now, it compares it to either allow filters, block filters, or defer after that,
24 compare it to these filters to see if there's a match and that they line up to
25 one of those three filters, they might line up with all of them, I'm not sure
26 about that right now.

1 But the way I see it, it doesn't really apply any filtering if it's going to
2 go -- this doesn't apply the allow or the block filter, it just checks to see if
3 that filter applies. In other words, it doesn't really filter it, in my mind, it just
4 sees if it should filter it. And then it goes to the residue step, as you pointed
5 out -- excuse me, in Figure 4.

6 But I looked at the patent and it seemed that it operates very similarly.
7 In other words, there is no -- the data doesn't go through an allow filter in
8 the patent, , and then goes to deferred action, in my view, the way I read it.
9 It looks like it either goes to the allowed and then it might go to the negative,
10 but if it doesn't go to either one of those, if neither one of those filter it, it
11 just goes to the deferred action filters. Is that understanding correct, or?

12 MR. TUMINARO: We would agree with that understanding, that the
13 '641 Patent itself does not require sort of three different types of data, data
14 that's positively filtered, negatively filtered, and data that's neither of those
15 filters.

16 JUDGE EASTHOM: That's neither, okay.

17 MR. TUMINARO: And that's precisely what the Patent Owner told
18 the patent office when it was trying to get the patent. This is back at Slide 6,
19 during the prosecution history. What the Patent Owner said to the patent
20 office is, in order to teach or anticipate this claim, there needs to be three
21 different kinds of data.

22 That's what they talked about, three different kinds of data, positively
23 filtered data, negatively filtered data, or data that's neither of those things.
24 So they told the patent office in order to get this patent, that there needed to
25 be three different kinds of data. They're making sort of a different argument
26 here now, and nothing about the claim --

1 JUDGE EASTHOM: I guess my question is, in other words, the term
2 post-filtering, it doesn't mean that the residue went through filtering yet, is
3 that right?

4 MR. TUMINARO: That's the way we interpret it, Your Honor. The
5 post-filtered residue doesn't require that data actually be discarded or
6 actually be selected. It's just neither, it's just the fact that it wasn't --

7 JUDGE EASTHOM: Neither one.

8 MR. TUMINARO: So for example, you can have a first piece of data
9 that's selected. You can have a second piece of data that's discarded, and
10 then a third piece of data that is neither of those two things. That third piece
11 of data would be post-filtered residue under the scope of the claim.

12 JUDGE EASTHOM: Okay.

13 MR. TUMINARO: If there are no more questions on this part, I will
14 move on to the next argument that I understand BT will be making with
15 respect to the post-filtering residue. This is on Slide 16 of our presentation,
16 so I'm jumping to Slide 16 of our presentation.

17 And what BT argues with respect to this post-filtering residue, they
18 also say that a proper construction of this term "post-filtering residue,"
19 requires filtering that creates the post-filtering residue to be distinct from the
20 analysis of the post-filtering residue. And they say that, you can't arbitrarily
21 divide a single filtering subsystem in order to meet this claim limitation.

22 And that's not what we're doing. This is on the lefthand side of Slide
23 16. And I think this is what they're arguing. They say arbitrarily dividing a
24 single filtering substance when that selection discards status data, cannot
25 satisfy the requirements of limitation 1B. So I think that they were saying

1 that we were arbitrarily dividing Duvall's filtering system, and we're not
2 doing that. I will explain that right now.

3 So moving onto our Slide 17 of our presentation, two points on this
4 slide. The first is that element 1B requires a filtering subsystem, just a
5 filtering subsystem. And to satisfy that filtering subsystem in the petition,
6 we're pointing to Duvall's filtering system.

7 And as I explained previously, Duvall's filtering system is illustrated
8 across two different slides, two different figures. Figure 3, this is on the
9 lefthand side of our Slide 17. Figure 3 of Duvall is showing the functions or
10 the filters that are applied for the direct action filters.

11 And we are mapping that Figure 3 primarily as the portion of Duvall
12 that's teaching the filtering that's required by the claim, by the filtering
13 subsystem. So Duvall's Figure 3 is doing the filtering. And as I described
14 earlier, through that filtering, if there's neither allow nor a block, there's a
15 residue, data that's neither allowed nor blocked, will go to the deferred
16 action filters.

17 And then we're primarily relying on Figure 4 for the analysis of that
18 post-filtering residue. And that's shown in sort of the middle figure on our
19 Slide 17. So we're not arbitrarily dividing Duvall up across different filters.
20 That's the way Duvall is described and Duvall's filtering, that the allow or
21 block, satisfies the filtering of Claim 1B. And the analysis on the data that's
22 neither allowed nor blocked, that's shown in Figure 4, that satisfies the
23 analysis of the post-filtering resident as required by Claim Element 1B.

24 JUDGE BRADEN: Now, Counsel a quick follow-up with something
25 that Judge Easthom asked you earlier and maybe I'm not understanding this.
26 Because it seems as though you said previously that the residue, the post-

1 filtering residue, is data that doesn't have to go through any kind of filtering.

2
3 But I've seen it in your petition, or I think I just heard it that it is status
4 data that underwent negative and positive filtering that's neither discarded in
5 the filtering process, either by the positive or negative filters. So is it status
6 data that has gone through filtering or is it not?

7 MR. TUMINARO: What do you mean by "it"? I think the claim does
8 not necessarily require that the data that's the post-filtering residue, it doesn't
9 require the post-filtering residue to be selected data, neither selected data nor
10 discarded data, it doesn't require that. I don't think the claim requires that.
11 But in Duvall, Duvall teaches that either way -- Duvall teaches that there is
12 filtering, the way the filters work in Duvall, is there are two different fields
13 that Duvall will search. It'll --

14 JUDGE BRADEN: It'll block or allow?

15 MR. TUMINARO: Well, this is -- the fields that Duvall searches are
16 the IP address and the port number.

17 JUDGE BRADEN: Okay.

18 MR. TUMINARO: This is at the bottom of page -- Column 3, the top
19 of page -- Column 4 of Duvall that says "both allow and block filters in the
20 database, preferably have fields for port number and IP address".

21 So these port number and IP address, those are the fields of the filters
22 that are searched to determine where those filters are going to be applied. So
23 you could apply either an allow filter or a block filter in Duvall, based on
24 searching those fields. But the data does not necessarily have to be allowed
25 nor blocked in order to satisfy the limitations of Claim 1, Element 1B. And
26 that's what's shown in Duvall's Figure 3, I could walk through that again.

1 JUDGE BRADEN: No, that's okay. I just wanted to make sure I
2 understood your position as relative to the actual challenge claim. So thank
3 you, Counselor.

4 MR. TUMINARO: You're welcome, Your Honor. So any further
5 questions on the post-filtering residue? If not, I will move on to the
6 dynamically modifying limitation.

7 JUDGE EASTHOM: Just a real quick question. Your friends are
8 arguing that Figure 3 only applies to the TCP/IP protocol, and I think that
9 you're arguing that Figure 4 applies to higher protocols like HTTP, so that
10 therefore there would be no post-filtering residue of the same message.

11 And then they bring up an example that one of the preferred ways to
12 block a message is to just not open the TCP/IP connection. And I noticed
13 your response as well, that's just -- that's just one way to do it. But by the
14 time you get into Figure 3 at Step 100 and Step 102, it says, get a list of IP
15 addresses associated with an open port. So you're saying, basically, that
16 Figure 3 applies to data that's going through an open port and Figure 4 also
17 does. Is that basically?

18 MR. TUMINARO: That is basically the point, Your Honor. And I
19 could explain that in a bit more detail with the help of Slide 15. So this is
20 from an annotated figure of Duvall's Figure 3. That if the port -- if the data
21 stream is open, if it's determined in Block 100, that the data stream is
22 opened, then that data, the message, will flow through the remainder of
23 Duvall's Figure 3 and potentially Figure 4, depending on whether -- which
24 filters might apply.

25 So for an open data stream, all of that data will flow into Box 102, it
26 will go into the decision box, 104, whether an immediate action needs to be

1 applied or not and there would be either an allow or block. If there's not
2 allow or block, then there's residue, and that would be analyzed. So for the
3 open condition, that's one embodiment in which sort of shows everything
4 that's required by the claim.

5 JUDGE EASTHOM: And then, so their expert talked about the
6 attached filters. I didn't see any response by you about that. I was
7 wondering what your response to his argument or his testimony for filtering
8 shows that this operates on TCP protocol only and that it would determine
9 whether to open or close only?

10 MR. TUMINARO: So two responses to that. Number one, the notion
11 of the level, the application level data or the past data, that's found nowhere
12 in the claims, that's not required by the claims. All that's required by the
13 claim is an analysis of the status data. It doesn't -- the claim doesn't specify
14 where that status data comes from, whether it comes from an application
15 level or a packet level.

16 So that level of specificity is not required by the claims. And has
17 been shown in our petition, Duvall teaches the status data in the form of IP
18 address, analysis of IP address, analysis of URLs, and other information. So
19 the requirement of application layer patching code, that level of specificity is
20 not required by the claims.

21 And the second response in response to the argument about, I think
22 BT's counsel, they point to the bottom of Column 4 of Duvall, at around line
23 56. And they point to this portion where it says, "when blocking is done on
24 the basis of IP address of an outgoing message, such blocking is preferably
25 accomplished simply by not executing the opened command".

1 And that's the portion that they're pointing to there, that "opened
2 command". So as I mentioned, that's just -- that blocking is just when the
3 blocking is done on the basis of an IP address. Figure 3 is shown in Slide
4 15. There's a scenario in which the data stream is opened at Box 100. And
5 so there would not be blocking based on an IP address.

6 And as I mentioned earlier, Duvall actually teaches that there are two
7 different filters -- two different fields that are searched to determine whether
8 to apply filters. There is the port field and then there's the IP address, that's
9 at the bottom of Column 3 to the top of Column 4.

10 And Duvall goes on to explain that by searching those various fields,
11 that there are six different categories of types of blocking that can be
12 performed, it's at the bottom of Column 6 to the top of Column 7. And it
13 says at the bottom of Column 6, I'm on line 65 of Duvall, the filtering
14 system can 1) block access to a specific IP address regardless of the port, 2)
15 block access to a specific port regardless of the IP address. And then at the
16 top of Column 7, describes four other types of blocking that could be applied
17 based on the filters that are searched.

18 So in the portion of Column 4 that BT is pointing to where it says,
19 "blocking is done on the basis of IP address", that's just one type of
20 blocking, blocking based on IP address. It doesn't address the blocking
21 based on port or some other feature. And as described in Figure 3 of Duvall,
22 there is a scenario in which the data stream is open, and then those filters are
23 applied to all of the data that flows through the open stream. Any additional
24 questions on that?

25 JUDGE EASTHOM: No, thank you. Yeah. I think I would like to
26 hear about the dynamic issue.

1 MR. TUMINARO: All right. So we'll move on to the dynamically
2 modifying limitation that starts at Slide 24 of our presentation. So the
3 argument from BT is that Duvall-Chu, is not reasonably capable of
4 performing this dynamically modifying limitation.

5 And they also say that we are, Palo Alto Networks, inappropriately
6 focused on the wrong element, virtual and dynamically modifying the
7 database and not code. These two arguments misunderstand the mapping
8 that we're making in the petition.

9 And let me describe that mapping. So we move to Slide 25 of our
10 presentation. So on the lefthand side, we have an annotated version of
11 Figure 1 of Duvall. And we are mapping Duvall's Server 30 to the claimed
12 probe. So it's the Server 30 in blue on the lefthand side that we say is the
13 claimed probe. And this is the thing that its capability must be dynamically
14 modified.

15 Duvall teaches that the server will search a database, a filtering
16 database, to figure out which filters to apply. This filtering database is
17 shown in the excerpt of Figure 2 from Duvall. So the analysis capability, the
18 searching capability of that Server 30, which we're pointing to as their
19 claimed probe, the searching capability of that server, is based on the filters
20 that are in that filtering database.

21 And what Duvall explains, is that that filtering database can be
22 updated based on known database editing techniques. That's the text that's
23 in red underline on the righthand side of our Slide 25. Moving on to Slide
24 26 of our presentation --

25 JUDGE BRADEN: Before you move on, I would like to you address
26 the sentence after the one that you have highlighted and underlined, that

1 states, "In addition, during a session over the Internet, a user can copy URLs
2 for later editing"?

3 MR. TUMINARO: Sure. So a user can copy URLs for later editing.
4 That sentence really doesn't take away from the fact that the filtering
5 database can be updated based on known line, database editing techniques.

6 And certainly the fact that a user might decided to copy something for
7 editing later, doesn't impact whether the server or the filtering database can
8 by dynamically modified, whether that filtering database can be modified
9 without going offline.

10 JUDGE BRADEN: Is there something in Duvall, that indicates that
11 the URLs can be edited concurrently?

12 MR. TUMINARO: The user can edit the URLs concurrently with
13 what?

14 JUDGE BRADEN: Well, when you're in the session instead of later
15 editing, editing it (Audio interference.)

16 MR. TUMINARO: Well, Duvall says that the user can edit the
17 database whenever the user wants. And whenever that database is edited --
18 when that database is edited, the server will search that database for the most
19 up-to-date filters that are in that database.

20 The filters that go into that database using known database editing
21 techniques, these updates to that database would happen without taking the
22 database offline. So even if the user is copying the URL for editing later, as
23 soon as that update, if there's an update that's made to the filtering database,
24 the server will search that filtering database for the most up-to-date filter in
25 that filtering database.

1 And the filters that it updated into that database, will occur without
2 the database going offline. That's why we're talking about the filtering
3 database, because the filtering database is the thing that is searched by the
4 server in order for the server to apply the appropriate filters.

5 So the ability of the filtering database to be updated without going
6 offline, shows the ability for the server to be dynamically modified.
7 Because as we explained, one of the known database editing techniques, this
8 is on our Slide 26, was the ability to simultaneously, to have multiple users
9 simultaneously access the same piece of data at the same time. This is on
10 the lefthand side of Slide 26 in Paragraph 20.

11 So it says, "it has been the norm for a database management system to
12 allow simultaneous access to a database by multiple users at the same time,
13 even if the multiple users are trying to read or write the same data item into
14 the database". And we showed in our petitioner reply --

15 JUDGE EASTHOM: Counsel, can I interrupt you for a second? One
16 of our colleagues lost audio. Judge Raevsky might be off. Just lost his --
17 okay. He said he's back now.

18 MR. TUMINARO: Okay.

19 JUDGE RAEVSKY: I can hear you again, thank you.

20 JUDGE EASTHOM: Do you want him to repeat? Do you want
21 Counsel to repeat something?

22 JUDGE RAEVSKY: Last 30 seconds?

23 MR. TUMINARO: I think what I was saying is it was a known
24 database editing technique was the ability to simultaneously access, have
25 multiple users simultaneously access the same piece of data at the same
26 time. And we showed in our petitioner reply, that commercially available

1 databases at the time of the '641 Patent, like Oracle A-I, had this ability to
2 simultaneously allow -- simultaneously access of the same data by many
3 users.

4 This well-known database functionality would allow the filters in the
5 filtering database, Duvall's filtering database, to be updated without the need
6 to shutdown or even to pause Duvall's monitoring software query querying
7 the filtering database.

8 So just going back to Slide 25, the server, which is the claim probe,
9 Server 30, will be querying that filtering database for the most up-to-date
10 data, regardless of whether a user is going to save URLs for later or not, if
11 the database has the most up-to-date filters, the server will search that
12 database and use those up-to-date filters.

13 And the known database editing techniques allow that filtering
14 database to be updated without taking it offline. Because multiple users can
15 access the same piece of data at the same time using these known,
16 commercially available database editing techniques.

17 If there's no more questions on that --

18 JUDGE BRADEN: Thank you, sir.

19 MR. TUMINARO: You're welcome, Your Honor. If there's no more
20 questions on this, maybe I will save the remainder of my time for rebuttal.

21 JUDGE EASTHOM: I just have one quick question --

22 JUDGE RAEVSKY: I just have one question.

23 JUDGE EASTHOM: You go first, Judge Raevsky.

24 JUDGE RAEVSKY: And so, Counsel, I know that you were saving
25 analyst system and you're out of time, so feel free to respond just briefly.
26 But I noticed that the parties discussed at length, mapping analyst system, at

1 Chu. But I'm curious why that is the case, because the word "system" may
2 suggest a computer?

3 MR. TUMINARO: So analyst system, we're relying on the human
4 intervention as disclosed in Chu. And we're saying that the human
5 intervention would take the form of a trained security professional that
6 would use Duvall's filtering system.

7 And we don't -- we agree that that trained professional would be
8 sitting at a computer, which would be an analyst system, and Duvall itself
9 describes that there would be -- it discloses a so-called editing manager, this
10 is at the top of Column 8. So there's an editing manager that Duvall
11 discloses.

12 And we just say that in the combination of Chu and Duvall, applying
13 Chu's human intervention would take the form of a trained specialist, an
14 analyst, who would sit at something like Duvall's editing manager, in order
15 to analyze the information. So the human would be at a computer, so it
16 would be an analyst system. Does that address your question, Your Honor?

17 JUDGE RAEVSKY: Yes. Thank you.

18 MR. TUMINARO: You're welcome. Judge Easthom, I think --

19 JUDGE EASTHOM: I think you just answered my question. I'm
20 going to defer and give you 22 minutes for your rebuttal.

21 MR. TUMINARO: Thank you, Your Honor.

22 JUDGE EASTHOM: Okay.

23 MR. ROBERTS: Thank you, Your Honor.

24 JUDGE EASTHOM: Please proceed. Mr. Goldberg, right?

25 MR. ROBERTS: Mr. Roberts, Mr. Goldberg is my better looking
26 colleague to my left.

1 JUDGE EASTHOM: I'm sorry, can you please -- I didn't hear you,
2 can you --

3 MR. ROBERTS: Roberts.

4 JUDGE EASTHOM: Roberts, thank you. Sorry, okay. Thank you,
5 Mr. Roberts.

6 MR. ROBERTS: We're an all Jonathan panel today.

7 JUDGE EASTHOM: Okay.

8 MR. ROBERTS: Don't have that auspicious so.

9 JUDGE EASTHOM: I see.

10 MR. ROBERTS: Thank you, Your Honor. May it please the Court,
11 Jonathan Roberts on behalf of BT Americas, Inc. We have an ambitious
12 agenda here on Slide 2, including five separate reasons why all counsel's
13 grounds on patentability fail. But there are two main themes that underlie all
14 of these topics.

15 First, all the grounds on patentability list in this IPR depend on
16 improper claim instructions, including positions of PAN's litigation counsel
17 expressed here today, where the lines of PAN's litigation counsel against
18 PAN's IPR counsel, we didn't hear anything about that.

19 Second, there's no credible evidence to support the legal conclusion of
20 obviousness. The actual record shows over and over again that PAN's
21 expert, Dr. Jeffay, admitted that what he said is in the references wasn't.
22 And so the further inferences that he was drawing from those references,
23 simply were not reasonable.

24 Now we started out listening to PAN talk a little bit about security, but
25 we need to get right back to security. And the best way to do that, I think, is

1 to dive right into the first topic where we're aligned with PAN's litigation
2 counsel against PAN's IPR counsel.

3 JUDGE EASTHOM: Maybe we can -- can we short circuit to Chu.
4 You agree that Chu applies to security, right? Because it has malware and
5 virus protection or mentions it?

6 MR. ROBERTS: So yes, and no, Your Honor. Under the agreed
7 construction, it is not at all clear, we're on Slide 4, that Chu discloses a
8 hostile attacker intrusion against the computer network. What Chu is very
9 much interested in, is determining whether something can be trusted,
10 determining a website can be trusted.

11 Chu actually says in its abstract introduction that it's really hard to do
12 this if all you can do, all you can hope to do, is bridge the gap and figure out
13 whether something is trustworthy or not. It's not looking for a possible
14 attack or intrusion against the computer network. Beyond that --

15 JUDGE EASTHOM: I don't understand. If we go to their Slide 12, it
16 says Chu -- I think Chu in several places talks about virus and malware-
17 related risks, right?

18 MR. ROBERTS: It does -- it does.

19 JUDGE EASTHOM: Okay. So if one of the ways to do that is to
20 have a list of bad websites, which both Duvall and Chu does, right?

21 MR. ROBERTS: Right. So we have a couple of issues here.

22 JUDGE EASTHOM: Okay.

23 MR. ROBERTS: Okay. The first issue with reliance is Duvall is,
24 one, it's not even clear that PAN was relying on Duvall. So the institution
25 decision cites to paragraphs 113 to 115 of the expert declaration. That's not

1 in connection with the identifying of potentially security-related event
2 language.

3 Second, If you go back to the decision, and you go straight to the part
4 where they talk about identifying potentially security-related events, you
5 will see only one passing, glancing blow in the direction of Duvall. And
6 that's with respect to its blacklists. Now --

7 JUDGE EASTHOM: Chu, you mean Chu?

8 MR. ROBERTS: Chu, yes, that's right. Thank you. You will see that
9 there's only one passing reference to blacklists in the actual petition. So
10 we're asking to do a lot of work to figure out why we're importing the
11 blacklist and how. And PAN never tells us that.

12 Are you in fact, importing that? And if you are, then you're probably,
13 as we explain again in our Issues 2 and 3, undermining the very operation
14 that Duvall wants to do. Because you can trust those sites to be
15 objectionable but also secure. So we have to look at what is being relied on
16 in the petition. We don't want to go too far outside that, we'll have a In Re:
17 Magnum Oil Tools issue.

18 JUDGE EASTHOM: Excuse me, Counsel. Sorry to interrupt. I
19 understand we may have some people recording in here and recording is not
20 allowed. Please refrain from recording or we'll have to ask not to remain
21 here. That's -- I don't mean to accuse anybody of doing anything, but if you
22 are, please don't record. Thank you.

23 MR. ROBERTS: Thank you, Judge Easthom. So we can't go too far
24 beyond what's in the petition, and the petition only has this one passing
25 reference in identifying potentially security-related events language to a
26 blacklist in Duvall.

1 That passing reference is never disclosed or never discussed in terms
2 of how it would be implemented. And it looks like if you did what the
3 petition says that you should do, it would result in more objectionable
4 content reaching the end user in Duvall, which a person with skill in the art
5 would never do, because it would wreck Duvall.

6 Regardless, we have to look at the motivations. We have to look at
7 what's relied on and we just don't get there, even if we consider Chu in this
8 other way. So moving back --

9 JUDGE BRADEN: So I'm really confused. Because I'm looking at
10 the Petition and I see several citations to Chu where they are talking about
11 viruses, they are talking about the blacklist, they are talking about the
12 whitelist, they are talking about blocking parallels in the blacklist. They're --
13 and things are all -- this is going from the bottom of Page 19 through Page
14 21 of the petition.

15 So I'm not really sure I understand what you mean by glancing blow?
16 Are you saying that their citations and their explanation are insufficient?

17 MR. ROBERTS: I'm saying that, yes, Judge Braden. But I'm also
18 saying that that occurs with respect to the motivations and not with respect
19 to the limitation actually in question, or the actual disputed limitation, which
20 is identifying potentially security-related events.

21 If we limit ourselves to looking at what the petition says about that,
22 we just don't get there. And we extra, extra don't get there if we follow the
23 stone that comes earlier on Page 19 regarding the motivations.

24 So just want to make this plain, the agreed upon construction between
25 BT and between PAN's litigation counsel is possible attacks or intrusions
26 against the computer network. We never heard that interest.

1 It's very, very clear that the main teachings that are being relied on by
2 PAN are these Duvall objectionable material teachings, and that's not a
3 possible attack or intrusion against the computer network. It's just not,
4 there's no way that that works.

5 So PAN does have two implicit instructions in its petition. They both
6 are inconsistent with PAN's litigation position. But the IPR positions of
7 indecent and objectionable material don't get there. And it being non-
8 limiting on the scope, also doesn't work.

9 We'll take that second topic first, because it's much easier to address
10 that topic, being non-limiting on scope of potentially everything is
11 potentially a security-related event. We know that -- this is on Slide 6, all
12 the claim terms must be given meaning and afforded weight.

13 We've cited case law on that, it would be legal error to not do that, to
14 read that out completely. And then we also know that that's wrong and
15 unrealistic from a factual perspective, because both experts agree that there
16 has to be a contextual component to identifying potentially
17 security-related --

18 JUDGE EASTHOM: But if we look at your claim, I don't understand
19 how you're distinguishing the references, because if you walk through your
20 claim, if you just go ahead and filter just like you always filter, like they're
21 filtering, you're going to catch whatever their catching in the art.

22 MR. ROBERTS: I don't necessarily think that's correct. Think about
23 putting eggs in an oven at 400 degrees. You might be making brownies or
24 you might be making a frittata. It probably matters.

1 JUDGE EASTHOM: Why don't we just think about filter that's
2 looking for something from Harvard, yours either filters it, allows it, or
3 discards it, right?

4 MR. ROBERTS: No.

5 JUDGE EASTHOM: Well, I mean in your claim -- your claim, that's
6 all your claim does, right?

7 MR. ROBERTS: So ours would look at the status data, and it would
8 positively filter the status data, negatively filter the status data, and then it
9 would subject what's left, the residue --

10 JUDGE EASTHOM: What if it went right through the allowed filter?

11 MR. ROBERTS: So if it went right through the allowed filter, we'd
12 still have to have -- well, then it would be allowed through. So this is a --
13 this is not a method claim of option terms. This is a system claim or an
14 apparatus claim, where we have to look at all of this language as if it's being
15 performed, that we can't just rely on one possible scenario how this works.

16 We have to look at the claim language as for the combination and we
17 have to look at what the claims would teach, once the -- and what the art
18 teaches. And we just don't get there. We don't have that conceptual
19 component.

20 In fact, Duvall teaches a different context. It teaches the context of
21 security in trust. And that leads to a problem with respect to Duvall. Duvall
22 doesn't mention security within its four corners. And the attempt to link
23 objectionable material to potentially security-related events is incredible.

24 You can't trust Dr. Jeffay on this, because of the reasons summarized
25 Slide 7 and broken down a little bit more on Slide 8. Dr. Jeffay is just the
26 wrong person to opine on this alleged linkage, he testified that the academic

1 world at the time of invention, that they weren't interested in intrusion
2 detection. They thought that this wasn't an interesting problem.

3 He had no familiarity with what was going on the industry where this
4 was something absolutely major, as we'll talk about a little bit later in our
5 secondary considerations discussion, if we get there. There's also a logical
6 problem with relying on Dr. Jeffay. And that logical problem is that he said
7 that he was interested in distinguishing good from bad or anomalous traffic,
8 and if objectionable content truly were bad or objectionable, anomalous, you
9 would expect him to have done some research on that topic, or be familiar
10 with some studies, and he wasn't.

11 He concluded -- he connected no analysis on that specific point. He
12 wasn't aware of the work of anyone else. So we can't just rely on his say so.
13 And then when we look at the anecdotal evidence, that doesn't work either.
14 The Melissa virus had nothing to do with luring people in based on
15 objectionable content.

16 The lure was related to an important message, or purportedly
17 important message from a known contact. So we can't rely on Dr. Jeffay's
18 say so as a general matter, and the anecdotal evidence doesn't get there
19 either. So what can we do? What can we do?

20 We can look at Dr. Lee and what he had to say. We're on Slide 9
21 now. Dr. Lee does have experience in the related field. He was very in-tune
22 with what was going on in industry at the time of the invention. When
23 cross-examined on this specific topic, he explained that "objection material
24 is no more likely to have a security issue than other content". And he was
25 asked on cross, in particular about why that was the case, he was asked
26 about pornographic content in particular.

1 And he explained that the answer all goes back to what was going in
2 industry. One would reasonably expect pornographic sites to be driving
3 technology implementation, one would reasonably expect those sites to be
4 secured, they were implementing Secure Sockets Language or technology,
5 SSL technology. Why?

6 They needed to charge for their content. In order to charge for their
7 content, the content needed to be secure and safe, at least from a security
8 perspective. So if we start with this notion of objectionable content, we
9 never get to the idea of security, never get there. We never get to the idea of
10 an attack against a computer network as per the agreed upon construction in
11 litigation.

12 Now, we talked about Chu a little bit. Let's dive in and look at the
13 combinations. So combining Duvall and Chu would not have led to the
14 combination being used for security, right, that's despite the shifting
15 motivations.

16 PAN's Slide 11, which they really only talked about for a little bit, ran
17 away from the positions that were -- that PAN put in the petition and in the
18 reply. But let's look at the initial petition motivation. The initial petition's
19 motivation, because filtering too much or too little would have motivated a
20 person skilled in the art more accurate residue data.

21 So we asked Dr. Jeffay about that. Dr. Jeffay said, no, that's actually
22 not correct. He said nothing more is needed beyond what is already in
23 Duvall in order to address the problem of filtering too much or too little.
24 What Dr. Jeffay is saying, yeah, there is a problem, and we don't need
25 anything extra to solve it. So since he underlined that position, the reply
26 tried to shift --

1 JUDGE EASTHOM: Can we go back to -- now he said -- where was
2 it that he said that, it was on -- I think it was on Page 177 of his --

3 MR. ROBERTS: Exhibit 2007. This is his deposition testimony it
4 cites Duvall.

5 JUDGE EASTHOM: Exhibit 2007?

6 MR. ROBERTS: Yes. Page 133, Line 1722.

7 JUDGE EASTHOM: Okay. I'll wait until my colleagues get there.
8 But I was just looking at this earlier, and it seems like the premise of your
9 question begins at the top and it said you asked, I don't know if you were the
10 deposer or your colleague, anyway, it doesn't matter. "Could the person who
11 was authorized to adjust the filters see what content is allowed and blocked
12 and use the editing manager to tune the filters?" So your question already
13 pre-supposes there's a person there. So if there's a person in Duvall, maybe
14 you don't need a person, another person? Is that?

15 MR. ROBERTS: I don't think that --

16 JUDGE EASTHOM: I mean, I'm just wondering how this line of
17 questioning helps you, that he says Duvall doesn't need anything else, but
18 that's in the context of Duvall already having a person or an analyst system.

19 MR. ROBERTS: That's in the context of someone who is using the
20 editing manager of Duvall, I believe. And the specific question is asked,
21 does Duvall recognize the need for any technique to address the problem of
22 filtering too much or too little beyond the disclosed editing manager. That's
23 building on that a little. We'll talk, maybe if we have a teeny bit of time
24 later on in the analyst system.

25 JUDGE EASTHOM: Okay.

1 MR. ROBERTS: But the question is a little bit broader, and it's linked
2 to specifically, the use of an editing manager and his answer could not be
3 crisper. Given the operation of Duvall, a person skilled in the art would
4 understand that "nothing more is needed." You don't have to go beyond
5 Duvall to figure this out.

6 So recognizing that problem, we think PAN shifted its motivation.
7 You can see here that there is a major shift in why they moved from moving,
8 more accurately resolving residue data to ensure transitions currently
9 allowed for latitude, improving the process for determining when to edit
10 filters. That is totally different. We would ask that that not be considered,
11 that be stricken.

12 JUDGE EASTHOM: Counsel, I think we went through this a little bit
13 when we have a motion to strike, and I still don't understand why that's a
14 shift in their motivation. It seems as if what they're saying here is, this
15 analyst is going to look at the data and determine if it does need to be
16 adjusted. So the word when and make it better, all of it, the whole time
17 they're trying to make it better, it seems to me, whether it would be more
18 consistent or more accurate. I just don't understand the focus on the word
19 "when", seems to be a little bit half a story, if you will.

20 MR. ROBERTS: I understand. And we think that it probably needs
21 to be read in it's completion. And more active in resolving data is not -- so if
22 we were to get there, Judge Easthom, you have to make the case that editing
23 at this particular point would make it more accurate, and we don't have that
24 linkage.

25 JUDGE EASTHOM: Okay.

26 MR. ROBERTS: We just don't have that linkage.

1 JUDGE EASTHOM: I see what you're saying.

2 MR. ROBERTS: And we'll also talk about, a little bit about what
3 Duvall and Chu say about who's doing it, and when it's happening, and
4 where it's happening, and for what purpose. We'll get to that in just a few
5 slides, I promise.

6 JUDGE EASTHOM: Okay.

7 MR. ROBERTS: But either way, you know, you just don't get to the
8 idea of improving this for the purpose of security, for the purpose of
9 identifying potentially security-related events. More accurately resolving
10 residue data to ensure that objectionable transmissions are blocked or
11 allowed, just gets you to more accurately resolving residue data, without
12 whether objectionable transmissions are corrected, blocked, or allowed.

13 Remember that's a discreet, refinable concept to potentially security-
14 related events, as per the agreed upon construction, as per the evidence from
15 both experts, as per all of the evidence in this trial.

16 Similarly, improving the process for determining when to edit filters,
17 maybe I'm putting too much effort on -- emphasis on the when, but either
18 way, and I mean, an objectionable content filter, now or later, at some point
19 in the future, is just going to change when you're editing the filters, it's not
20 going to suddenly convert these objectionable content filters into filters that
21 look for potentially security-related events, as per the agreed construction,
22 and as per all of the evidence regarding the meaning to that term.

23 JUDGE EASTHOM: So you're going back -- you're relying on your
24 argument, that's Duvall nor Chu, do not, neither one suggests potentially
25 security-related events; is that what you're saying?

1 MR. ROBERTS: They're related, but their actually distinct. All right.
2 So yes, if you are improving a process, allegedly improving a process, or
3 more accurately resolving residue data, you have to ask for what. But we
4 also have to look at that in the context of what Dr. Jeffay said. He said that
5 you don't even have to do that at all. So there's no motivation there to start
6 with. And then if you follow the --

7 JUDGE EASTHOM: I don't understand, I mean, Duvall itself says
8 that the person's going to edit the filters, delete, and do all kinds of things to
9 it to make it better, right?

10 MR. ROBERTS: To make it -- well, if it's filtering too much or too
11 little, right. And so maybe that makes it better, maybe it doesn't. But it
12 certainly doesn't make it better for potentially security-related information.

13 JUDGE EASTHOM: Okay. So we're back to the same --

14 MR. ROBERTS: So now we're back to the -- okay.

15 JUDGE EASTHOM: Okay.

16 MR. ROBERTS: So we're --

17 JUDGE EASTHOM: Thank you.

18 MR. ROBERTS: Staying around on this one. All right. So --

19 JUDGE RAEVSKY: Counsel, at the risk of being nebulous, I
20 actually have a question which is just slightly different. So Petitioner on
21 Page 2 of your reply, said that Patent Owner did provide a construction for
22 the term potentially for security. Do you agree with that? Do you have a
23 name for those terms that we can apply here?

24 MR. ROBERTS: You can rely on the definitions in the joint claim
25 construction brief that we wrote -- that we cited. So hitherto, we had had
26 implicit instructions just like the Petitioner. And now what's changed,

1 what's a massive shift, what's never been accounted for by Petitioner, is that
2 we have agreed upon express constructions., and you can rely on that. You
3 can rely on that because both parties have said something consistent.

4 It would actually be wrong to not do that. I mean, I would commend,
5 Judge Raevsky, Microsoft v. Ozmo Licensing, IPR 2023-01060, criticizing
6 the petitioner for failing to point out in its advocating petition different from
7 what was reached in the district court, including taking a position that was
8 broader, and including taking a position that was contrary to what the parties
9 understood was to govern that case.

10 JUDGE EASTHOM: And that's Exhibit 2021, just for the record
11 there, right?

12 MR. ROBERTS: That's correct. That's the joint plaintiff claim
13 construction brief. Okay. That's what we can rely on for that claim
14 construction. It's something that the parties agree, one construction controls,
15 you know, we can also look at 83 Fed.Reg. 51-340 at 51350, that's the
16 official U.S. PTO position by Dr. Phillips. It's one construction, it applies
17 everywhere. They agreed to it, they're stuck with it, we're all in agreement.

18 JUDGE EASTHOM: Can we -- can you point me to a specific page,
19 please? I'm trying to find that definition.

20 MR. ROBERTS: I believe it's 49. We have --

21 JUDGE RAEVSKY: That sounds right, that's what I'm looking at it.

22 MR. ROBERTS: Okay. It appears in a few places, but 49 is a pretty
23 good one, nice summary table if I recall correctly.

24 JUDGE EASTHOM: Thank you.

25 MR. ROBERTS: So I would suggest that we sort of take a step back
26 and if we look at things more broadly, we've already shown that PAN's

1 expert undermined the petition's motivation. We've already shown that the
2 revised motivations were procedurally improper.

3 It's also flawed because it relies on this when temporal component
4 without considering Chu as a whole. It's problematic from a factual
5 perspective because it's apparently proposing some sort of new default
6 filtering mechanism where there's no separate default filtering mechanism.

7 And it would be unfairly prejudicial to consider this without evidence
8 in the record taking on this new -- this new motivation. Even beyond those
9 basic points, it just doesn't make sense to combine Duvall and Chu at all,
10 much less in a manner that would result in the claimed invention.

11 There was simply no reason to use Chu in the first place. It doesn't
12 make sense to use an end user override from a trained security analyst, have
13 an analyst assistants edit default filter. Chu only teaches prompting the same
14 user to request the content for an override when an allow or block it
15 determination returns unknown.

16 That, if you want to go to the supplemental motivation that was
17 provided by PAN's counsel, I think it's slide 12, you actually see that they're
18 expressly relying on Chu's specific user intervention. There's no analyst or
19 analyst system, nothing is transmitted anywhere, it's just the end user and the
20 website.

21 The Chu's user responds immediately, unrealistic for a trained security
22 analyst. If you put Chu's teaching in the hands of an end user, that would
23 have been disastrous for Duvall. It's even more far-fetched to think about
24 changing a default rule based on this kind of snap judgment. But that's what
25 the combination would require.

1 And a person of skill in the art would never change a multi-use, multi-
2 user filter intended for future application based on this kind of N equals one,
3 snap decision. So what's really going on? Let's like, just look at PAN's
4 motivation and follow it through.

5 PAN invented a problem at Duvall that it says needs to be solved.
6 That's a problem with Duvall's filtering system filtering too much or too
7 little. It then solves that non-existent problem by introducing Chu.

8 Well, that creates another problem, which is prompting the wrong
9 user. So PAN has to solve this problem of its own creation, by creating a
10 new transmission to a third-party, who is using some sort of imagined
11 analyst system.

12 Then, rather than making a one-off decision that applies only to this
13 particular transaction, that person is supposed to change a default rule, a
14 default filter that applies for all time into the future, for multiple users. PAN
15 is proposing motivations that repeatedly break the references and then need
16 to be solved, multiple times over.

17 That, supposedly, all ends up in a claim technology environment.
18 That is the epitome of an improper expos reconstruction of the claim
19 language, that is improper hindsight. One skilled in the art would not have
20 made these series of modifications. One skilled in the art would not have
21 repeatedly broken something, only to try to fix it and magically end up with
22 Claims 1 and 18. Okay.

23 So what would a person of skill in the art think about the
24 combination? Chu is all about trust and trust management, as we talked
25 about a little bit earlier. It asks the question, can I trust this website, can I
26 trust this source to be secure. It tries to answer that question automatically,

1 and if it can't, it prompts the end user if it can't come to a completion on its
2 own.

3 Chu doesn't care about the events themselves, it doesn't care about
4 content, it cares about the source and whether the source can be trusted. So
5 what happened if one made a trust-based decision as taught by Chu? Well,
6 the evidence shows that pornographic websites could be trusted to be secure.
7

8 So remember, porn sites were among the first adopters of SSL, you
9 can trust that source to be doing who it purported to be, you can trust that
10 content to be encrypted, and thus not be tampered with, you can trust the
11 pornographic content, which would be objectionable, to be reasonably
12 secure.

13 A trained analyst would understand that objectionable material is
14 reasonably secure and would let it through. Ironically, the proposed
15 combination would lead to more objectionable content reaching end users.
16 A person of skill in the art would never have combined Duvall and Chu as
17 alleged, because that would have broken Duvall.

18 That's the potentially security-related event limitation. We've got an
19 agreed upon construction, we know the implicit constructions don't work.
20 This transition to first filtering residue limitations, this is another example
21 where PAN's litigation counsel and PAN's IPR counsel disagree with one
22 another.

23 It's another example where PAN's IPR counsel didn't tell the court that
24 PAN's litigation counsel and Patent Owner are aligned. Here's the precise
25 language that we're talking about, and this slide, you know, talks a little bit

1 about PAN having some difficulty cohesively describing post-filtering
2 residue.

3 I want to highlight these last two issues, because they are directly --
4 directly contradicted by what PAN's litigation counsel said in the co-pending
5 litigation. First pertains, this is Slide 18, to what's required by the overall
6 analysis. PAN's IPR counsel argues filtering that creates "post-filtering
7 residue" need -- the IPR counsel, argues that filtering that creates "post-
8 filtering residue" need not be distinct from the "analysis of the post-filtering
9 residue".

10 They essentially collapse this into one level, but that's not what PAN's
11 litigation counsel argued. You can see that PAN's litigation counsel argued -
12 -

13 JUDGE EASTHOM: But Counsel, is this relevant? I mean, they just
14 showed how they -- can you address their showing where they're saying that
15 they -- that it's not separate -- that it is separate?

16 MR. ROBERTS: We'll get --

17 JUDGE EASTHOM: Can we just --

18 MR. ROBERTS: Yes, yes. Absolutely. So here's the macro frame on
19 this issue. If you agree with us, then you have an issue with the same data
20 not being analyzed. If you agree with them, --

21 JUDGE EASTHOM: Let me -- that -- that's -- that was in [inaudible]
22 because you heard me explain the system before. And the way I understand
23 it, if we go to your Figure, whatever it is, 1 or 2, the residue data never gets
24 filtered by the allow or block filter, right?

25 MR. ROBERTS: Let's trace this. Okay. Let's trace the language and
26 let's trace the data --

1 JUDGE EASTHOM: No. Let's just look at Figure 1, please?

2 MR. ROBERTS: Figure 1 --

3 JUDGE EASTHOM: Of the --

4 MR. ROBERTS: I can't bring up. But I think Figure 2 is probably
5 what you're wanting to look at?

6 JUDGE EASTHOM: Yes, thank you.

7 MR. ROBERTS: Yes. So you can see, you can trace on the right
8 side, the sensor data going to the sensor data collector, going through
9 negative, going through positive, going through the anomaly attached. So
10 what you see is that there has to be some residue, right. It's not just --

11 JUDGE EASTHOM: Clearly no. Can I -- can I? So Figure 2, you
12 have it up there, right?

13 MR. ROBERTS: Yes.

14 JUDGE EASTHOM: So you have a negative rejection filter 2020,
15 and so let's say it doesn't -- it doesn't -- it doesn't reject it there, so it goes
16 through the positive filter, I guess. And the positive filter, if it does accept
17 it, it goes down to through 2060, that line. But if it doesn't go through the
18 positive filter, it's residue data, right? It goes to the right, and this slanted
19 arrow over -- so it never really got filtered by the positive and it never got
20 filtered by the negative, it went right through it. Otherwise, you wouldn't
21 have it, right?

22 MR. ROBERTS: No. I think it has to not be rejected. It has to not --

23 JUDGE EASTHOM: Right.

24 MR. ROBERTS: -- it has to not be allowed.

25 JUDGE EASTHOM: If not -- by not being rejected, that means it
26 didn't get filtered?

1 MR. ROBERTS: It didn't get filtered so, right. So --

2 JUDGE EASTHOM: So what's the difference between that and what
3 happens in Duvall? I guess, that's my question. I -- I just don't see any
4 difference. Maybe you could explain it.

5 MR. ROBERTS: Yeah. Okay. So maybe we'll move on and we'll
6 talk about Slide 21. And basically, so we can talk about how we think
7 Duvall should be read, and how -- and how they read it. I'd like to present
8 first, how we think it should be read. Because it is difficult to understand
9 what's happening in Duvall if we only look at the pretty pictures. We have
10 to look at the text, and we have to look at the expert testimony to figure out
11 what's going on.

12 JUDGE EASTHOM: Can you answer my first, my fundamental
13 question is what is fundamentally different between your Figure 2 and what
14 Duvall does, when in the context of the discarded and the positive, those
15 three filters? Can you please?

16 MR. ROBERTS: Yes. And thank you, Judge Easthom. And there
17 are two differences, and the two differences depend on whether you credit
18 our explanation of how Duvall operates, or if you credit their operation of
19 Duvall.

20 JUDGE EASTHOM: Okay. Okay. I see where you're going. Okay.
21 Thank you.

22 MR. ROBERTS: It's either way, regardless, they're in trouble,
23 because it doesn't do the same thing.

24 JUDGE EASTHOM: Okay.

25 MR. ROBERTS: So I'd like to first start, and I think talk about what
26 Duvall actually does and how one skilled in the art would read this and how

1 it should be interpreted. And that is the idea that Duvall has directed and
2 deferred action filters that operate on different transitions. And the direct
3 action filters determine whether a stream can be open, and then deferred
4 action filters operate on transmission within a stream that's already opened.

5 JUDGE EASTHOM: Let me ask you this, maybe we can cut to the
6 chase here. Let's say you're right. Let's say that this only operates on open -
7 - it doesn't -- it determines whether it's open. But now let's say that it's -- it
8 was -- it went -- it sent through the allowed filter, so it was allowed, it wasn't
9 blocked, right?

10 MR. ROBERTS: That's right.

11 JUDGE EASTHOM: And then okay, so that wouldn't go through any
12 of the filtering processes?

13 MR. ROBERTS: Right. So again, this is an apparatus system claim,
14 and we can't just look at one specific instance and think that it's optional
15 under the language, you know. We have to consider the elements as an
16 order combination of the system, right, not a method claim optional steps.

17 So if we track this whole thing through, what we get to, if our
18 interpretation is correct, is that the status data, the same status data is never
19 analyzed. And we know that the claim has to be interpreted, that the same
20 status data has to be operated -- analyzed, because of the plain language of
21 the claim. Because of, well the slide that they put up, which was the
22 examiner's statement of reasons for allowance, and because that's what's in
23 the agreed construction, that's what's in Exhibit 2021. So again, that was
24 something that they didn't tell you, that they didn't address during their
25 opening. This is an agreed issue. This is --

1 JUDGE EASTHOM: But isn't that -- I still don't understand. It
2 seemed like Duvall does that in those paragraphs your friends were citing,
3 Duvall says, look, I'm going to pull up all three of these filters and if it
4 doesn't apply to the discard filter, it doesn't apply to the allow filter, for lack
5 of a better term, it might apply to the deferred action filter. So it's asking the
6 question, which filter does it apply to. And it seems to be very similar to
7 what's going on in your Figure 2?

8 MR. ROBERTS: Yeah. That's the trap they want you to fall into. It's
9 not a question of whether you're pulling a set of filters that can all be run.
10 It's a question of what's the data that's being filtered by the unitary set of
11 filters that are all stored together, all searched together, and then applied
12 linearly at order. And so there's a difference between finding a common set
13 of filters and operating filters on the same data.

14 JUDGE EASTHOM: But in your Figure 2, you don't operate -- it
15 doesn't seem like you're operating on the same message. In other words,
16 some of the messages go through the allow box, some of them get discarded
17 by the discard box, and the other ones --

18 MR. ROBERTS: Right. And different ones --

19 JUDGE EASTHOM: Go to the residue box.

20 MR. ROBERTS: Focusing on the post-filtering residue, right, so the
21 post-filtering residue has to be the residue, okay, of what's come through.
22 Right. That's what's in the claim language, which that's what --

23 JUDGE EASTHOM: Where is that in your spec? Where is that in
24 your spec?

25 MR. ROBERTS: I think that if you trace Figure 2, that's what's
26 happening. You've got the sensors going to the sensor data collector,

1 negative/positive and the anomaly of that detection, that's the analysis of the
2 sensors..

3 JUDGE EASTHOM: The only thing that goes to the -- the only thing
4 that -- the residue there, is something that was neither discarded nor allowed,
5 it didn't go through any of the filters, as far as I see.

6 MR. ROBERTS: So is -- I guess -- I guess what you're trying to
7 perhaps suggest, is that some other data coming from somewhere could be
8 this filter residue?

9 JUDGE EASTHOM: No. I'm just trying to figure out how your
10 patent works. And you're saying --

11 MR. ROBERTS: Right. So the word residue has to mean something.
12 And we think that it has to mean what litigation -- PAN's litigation counsel
13 says that it means, and what the examiner during prosecution said it means.
14 And it's all the same stuff, all going through all these filters and getting
15 analyzed by the anomalous event detection subsystem or anomaly engine
16 Box 2050, in Figure 2, as one example of volume.

17 JUDGE EASTHOM: Okay.

18 MR. ROBERTS: It has to be the same data, all the parties agree on
19 that. Okay. And again, if we read this reference correctly, that's not what's
20 happening, because the initial direct, allow, or block filters work only on the
21 TCP open command, right. So that's only operating on TCP open.

22 The deferred action filters are operating on downstream transmissions
23 at HTTP level, different transmissions, different data is being analyzed in
24 Figure 3 with respect to the direct-action filters and in Figure 4 of Duvall
25 with respect to the deferred-action filters. That's consistent with how TCP

1 works. That all is from a plain reading of Duvall's example, considering
2 both the figures and the text.

3 And so, you know, the bottom of Page 4 is something that you
4 brought up, Judge Easthom, that's the only way that it's described -- that the
5 blocking of the open command is described. And what we heard from
6 PAN's counsel is appointed at Columns 6 and 7, the bottom of 6 and
7 bridging with 7, that's referring only to Figure 3 or 4, sorry, and not Figure
8 3.

9 So it just doesn't work like they're telling you it works and you have to
10 read the invention as a whole. We can further confirm that when we look at
11 how the patching code operates. And you're correct, they never address the
12 patching code. And again, that's the only embodiment that they talk about.

13 Just because they moved from a stand-alone to a server-based
14 embodiment, they don't get a mulligan to say that this is how it could have
15 worked. They have to show that that's how it would have worked. And
16 given the only disclosures in Duvall, they can't make this showing.

17 Dr. Jeffay admitted during his deposition that he was blending
18 together improperly, packet level and application level transmissions to try
19 to somehow come up with what was actually claimed. And you just can't do
20 that.

21 JUDGE EASTHOM: Can you explain to me the patching code
22 argument on this?

23 MR. ROBERTS: Yes. Okay. Great. I get really excited about this,
24 because I remember Winsock, back in like Windows '95 and '98, right, and
25 every unit. So the patching code, basically patches into Winsock, the
26 Winsock fdl. And you remember from that time period, tons of error

1 messages, right related to Winsock, and it was always getting corrupted or
2 whatever.

3 So what this proposes doing is patching into that. And it says, if
4 there's an open command, if there's -- if there is an open command, don't
5 open it, do this other stuff, right. Go through the allow and the block filters,
6 right, do the allow and block filters.

7 If you get through the allow and block filters, go ahead and open the
8 port, and we'll start looking at the transmissions, we'll start looking at these
9 later things. And that's where we operate separately on a TCP open
10 command in Figure 3 in those direct and deferred-action or direct-action
11 filters. And where we get to the application level stuff, HTTP stuff.

12 JUDGE EASTHOM: So you're essentially saying in that Figure 3 sort
13 of has a mistake in it? Because it says, "Get list of IP addresses associated
14 with the open port in 102". So it seems like it's only dealing with open, but
15 you're saying that must be some kind of mistake?

16 MR. ROBERTS: No. It's actually consistent with the patching code.

17 JUDGE EASTHOM: Okay.

18 MR. ROBERTS: So the patching code, they're going to -- there's a
19 difference between -- really crudely, there's a difference between trying to
20 open something and actually opening something. And when you try to open
21 something, you hit the patching code and that goes through this whole thing,
22 right. And so --

23 JUDGE EASTHOM: So that would occur before Step 102; is that
24 what you're saying? Because Step 102 says it's opened?

25 MR. ROBERTS: We -- okay. So is the data stream opened, okay, is
26 Step 100. Right. Is there a command saying go out there and try to navigate

1 to this website. And then that's where the patching code comes in, and it
2 says, ah, I better go get this list associated with the opening port, this port
3 that's trying to be opened.

4 It's not actually sending the open command, right, but it's caught,
5 basically, the attempt to open it, right, through the patching code, which
6 again, is the only embodiment. And then, run these filters, in Step 104. So
7 there's a difference between opening a stream and executing the open
8 command.

9 That's another, perhaps less crude way of thinking about it. But
10 there's a difference between opening a stream and executing an open
11 command, right. And executing an open command, does not necessarily
12 result, does not get result in something being opened. You have to get
13 through 102 and 104 for something to actually be opened.

14 If you want to go really, really deep in the weeds, there's a distinction
15 between connection establishment phase of TCPIP and which IP address is
16 the sender, and which IP uses the handshake process, right.

17 And there's a difference between that and then the phase where the
18 data is actually sent across. I mean, that's like super in the weeds, but I think
19 it's sufficient for our purposes to read Steps 101, 102, and 104 in connection
20 with the patching code, in connection with what Dr. Lee's explained and
21 understand that really, we're looking at whether to actually allow or block an
22 opening.

23 That's how this should be read. And all Dr. Jeffay can do is come
24 back and say well, actually, I'm relying on packets, and Duvall talks about
25 packets and packets, packets, packets. But what actually is really the case, is
26 Duvall never talks about packets. And Dr. Jeffay said that packet instruction

1 was a "new thing" remember, three years after Duvall. So Duvall itself
2 could never have talked about that, that's an unreasonable inference.

3 Remember, this is an example, from Slide 15 that we saw where
4 there's direct citations to Duvall, and then a conclusion that's not based on
5 Duvall, it's a conclusion based on an expert. If it was in Duvall, they would
6 have said it, they would have cited to it, they didn't. And Dr. Jeffay said that
7 it can't work like that. And we've just shown why it -- the patching code
8 embodiment, the only embodiment here, won't have it work like that. So
9 that's why this patent should be read -- or why Duvall should be read in this
10 way.

11 Moving on, if you read it incorrectly, if you read it as PAN argues,
12 Duvall just has a single collection of those deflect and deferred-action filters,
13 they are stored and searched together. They're one unitary thing. You can't
14 chop them up. You can't arbitrarily divide them as you were picking up on
15 earlier. Okay.

16 Fundamentally, there's no difference between the filters, other than
17 maybe the order in which they're considered, maybe. Because Duvall
18 actually says that you preferably process them in this particular order, but
19 you don't have to, they can be arranged in any order. You might process a
20 deferred-action filter later. It's got a single collection of the direct and
21 deferred-action filters that are stored and searched together. We know that.

22 We can't read more into the alleged sequential relationship between
23 Boxes 104 and 116 for that reason. So I'll leave the Board with this slide
24 which summarizes, this is Slide 27, Duvall just doesn't teach the post-
25 filtering limitation regardless of how you're inclined to read Duvall.

1 Let's talk a little bit for a moment about secondary considerations.

2 We --

3 JUDGE EASTHOM: Can I ask you about Claim 6? I know you're
4 friends, if you don't want to -- but I don't think your friends touched it, you
5 can just submit on your brief. But I was curious because they seemed to --
6 your friends are saying that Claim 6, you know, you really -- you really can't
7 interpret Claim 6 other than the way they've interpreted it. Because the way
8 I understand it, in Step C of Claim 1, it says you have this analyst system,
9 right? In Step C of Claim 1?

10 MR. ROBERTS: Right.

11 JUDGE EASTHOM: Now that analyst system, that's a broad generic
12 term, but one of the embodiments is the SOC; is that right? Do I have that
13 right?

14 MR. ROBERTS: That's correct.

15 JUDGE EASTHOM: Okay. So if you go to Claim 6 and it says that
16 the multi-stage analysis of Claim 2, which Claim 2 makes that the -- that
17 analysis, the multi-stage analysis, to be an identifying step of Step B, then
18 how can you do that in the identifying stuff, if the analyst system is waiting
19 for the data to be transmitted in Step C?

20 MR. ROBERTS: So basically, there's stuff that happens with the
21 probe and there's stuff that happens in the socket, okay, in the example
22 embodiments. And what -- and Claim 6 depends from Claim 2, as you
23 probably knew, Claim 2 further limits 1B. So the multi-stage analysis is
24 essentially adding three levels, right. Two things that happen, one happens
25 at the SOC, and at best, I mean, PAN identified two out of the three. And if

1 you go back and look at our briefs, I think we spelled this out in a ton more
2 detail, but it's wrong to totally move Claim 2, which is what --

3 JUDGE EASTHOM: No, I understand. I understand you're saying
4 they have to be in order. I get the reason why it would have to be in order
5 because Step C refers to the event -- the whatever the language is, the --

6 MR. ROBERTS: Identify.

7 JUDGE EASTHOM: Identify the events, right. But I still don't
8 understand how you can perform Step B at the probe if you're performing an
9 analysis at the SOC? Which is basically what you're saying has to happen.

10 MR. ROBERTS: So lots of analyses can be happening -- can happen
11 in lots of places, right. And our spec talks about that. It talks about
12 discrimination analysis happening here and it talks about discrimination
13 analysis happening there.

14 JUDGE EASTHOM: Yeah, but if you do Step B the way you say,
15 and you're identifying things at the SOC and then you're sending them to the
16 SOC, that doesn't make much sense to me?

17 MR. ROBERTS: Oh, I'll fall back on my brief because we're getting
18 very short on time for this.

19 JUDGE EASTHOM: Okay.

20 MR. ROBERTS: What I would point out is that, analysis can happen
21 in a lot of places for a lot of really good reasons, right. You might want to
22 do things locally at the probe because that makes a ton of sense, right, before
23 you ship it off to the SOC.

24 JUDGE EASTHOM: Right.

25 MR. ROBERTS: And that's -- Claim 6 stands for that really
26 unremarkable proposition, right. And you have to --

1 JUDGE EASTHOM: No. Claim 6 doesn't stand for that, though
2 because it's not shipping -- you can't ship something from the SOC to the
3 SOC, which is essentially what you're saying has to happen.

4 MR. ROBERTS: I think it's -- I think it's -- we'll rely on our brief
5 there. But I think that --

6 JUDGE EASTHOM: Well, that's kind of a critical thing, if you could
7 explain it. Because I'm having trouble understanding the scope of the claim?

8 MR. ROBERTS: Another way of thinking of this is that we have
9 pipes, right, we call them pipes. And it just, it's going down and up and
10 down and up and down and up, right. For the multistage analysis, right.
11 That's -- this isn't --

12 JUDGE EASTHOM: Okay. Thank you.

13 MR. ROBERTS: I would like to touch on secondary considerations,
14 only to mention that the attacks against Dr. Lee are unavailing. Dr. Lee gave
15 us a lot of good information. He considered what he needed to consider.
16 There was a citation on one of the slides which PAN's counsel didn't get to.
17 I would ask the Board to read the immediately following sentences at Page
18 28, Lines 4 through 16: "Did you analyze Counterpane MSM to form any of
19 your opinions?" So like I said, in Paragraph 215, yeah, through the end,
20 basically yeah,
21 "I mean I was aware of Counterpane, I actually knew the inventor. I mean,
22 since 1998, I knew what they were trying to do. So I can offer opinion of
23 the contextual information about MSM, how we can note people like me will
24 understand what product MSM is doing and technologies behind it."

1 JUDGE EASTHOM: Yeah, but that's not -- I don't -- I think there's a
2 recent case or something that I -- I don't understand, the expert can't rely on
3 something that's not, there's no evidence to support, right?

4 MR. ROBERTS: So he's relying on his recollection, he's relying on
5 the exhibits, on 2009, 2015, and 2017. So it is contemporaneous at the time
6 of the invention discussions and meetings and listening to presentations from
7 Bruce Schneier, the rather famous inventor. And he's relying on these other
8 documents and exhibits, 2009 to 2015, 2017. That's all that's needed, we've
9 shown that it reads on the product that was then existing.

10 JUDGE EASTHOM: Well, in your brief you said that those exhibits
11 show that there's analysts of residue data and I think you cited 2009. And I
12 didn't -- I think your firm's point is that, I didn't see anything in those
13 exhibits about analyzing residue data. Did I miss the cite or?

14 MR. ROBERTS: We think it's there, and we think it matches --

15 JUDGE EASTHOM: Can you tell me where it is now?

16 MR. ROBERTS: I'll -- I'll --

17 JUDGE EASTHOM: Do you want to do it on surrebuttal?

18 MR. ROBERTS: Yeah. I will do it on surrebuttal if you will permit
19 that.

20 JUDGE EASTHOM: Thank you.

21 MR. ROBERTS: Reasonable capability, let's talk about that for just a
22 moment. Look, you know, the Board already held -- this panel already held
23 in a related proceeding that, just because there's a sub-optimal limitation
24 doesn't mean that it would have been obvious to improve it. Right.

25 So for reasonable capability, though, which we have to discuss
26 because that was raised in the institution decision, we can't credit legal

1 arguments from PAN as the Board properly held in a related proceeding,
2 those legal arguments don't work.

3 So what we need to look at is for a factual matter, is there a disclosure
4 that would be reasonably capable of meeting the dynamic modification
5 language at least some of the time, without reasonable -- or without
6 significant alterations. And all we've got from PAN on that, is some
7 inherency argument that again, as you heard, relies on the difference -- relies
8 on the update to the database, not the probe or the application. So remember
9 --

10 JUDGE EASTHOM: Can I ask you this? I meant to ask your friend
11 this, and I apologize. I don't think they're making an inherency argument,
12 they're making an what's implied and implicit in the reference. They're
13 saying that everybody knows these databases can be worked on while they're
14 online and while they're working. Do you dispute that?

15 MR. ROBERTS: And that -- that's just fine. Our position is that you
16 have to consider what's expressly in the reference. And what's expressly in
17 the reference says that you're caching a copy of the database and there's no
18 express description of re-caching in response to an update to the database.

19 So you could, fine, I mean, you could, theoretically update the
20 database. But that's not guaranteed or even impliedly going to update the
21 application or the probe, right, in the server-based embodiment. There's
22 been no linkage between updating the --

23 JUDGE EASTHOM: No. Wait a minute. I mean that, the sentence,
24 and my colleague read part of it, but the part that your friend is arguing on
25 about says that there are these database edit techniques that are well-known
26 and they're referred to editing the filters.

1 MR. ROBERTS: They're referring to editing filters that are in the
2 database.

3 JUDGE EASTHOM: Okay. Well, so if you can do that when they're
4 online, and the filters are part of the probe?

5 MR. ROBERTS: Duvall's preferred implementation at Column 3,
6 Lines 46 and 49 talks about caching the database. You can update the
7 database without updating the cached version. There's no indication in any
8 of the evidence, that petitioners put in, that that's actually being re-cached.
9 They're relying on some other embodiment, they're operating -- they're
10 asserting this is going to operate in some way that is not taught or suggested.

11 JUDGE EASTHOM: Oh, I see. You're saying that anything that the -
12 - I see what you're saying the -- their probe is working off a cache?

13 MR. ROBERTS: Exactly. That's the only embodiment, it's at
14 Column 3, Line 46 to 49. If we get to Claim 15, even if you're inclined to
15 credit that reasonable capability argument, which we don't think you should,
16 Claim 15 clearly uses active language, that active language ties back to the
17 1-E limitation.

18 JUDGE EASTHOM: Isn't that just normal to pull stuff when you're
19 operating -- when you're using it live, you just use the cache?

20 MR. ROBERTS: Maybe yes, maybe no, but remember we're going
21 from -- we're going from --

22 JUDGE EASTHOM: No one's knowing going to update a cache,
23 right? You don't update the cache, but with dynamic editing, right?

24 MR. ROBERTS: We don't have any evidence --

1 JUDGE EASTHOM: But that's not how you do it, you don't -- you
2 don't even have an explanation of what you do, right? You just say dynamic
3 editing and then we don't really know how it's done.

4 MR. ROBERTS: That's correct. But look at what's being
5 dynamically modified, right. And it's an analysis capability, and I don't
6 think we need that because we're three years after Duvall and we're tying
7 together these points.

8 Again, it's a question of what's claimed and whether that reads on
9 what's disclosed, and it doesn't. And there's too many inferences and
10 adjustments from the stand-alone embodiment to a server-based
11 embodiment. We just don't get there in the context of Claim 1. And we
12 especially don't get there in the context of Claim 15, which extends that
13 language to require actually doing something.

14 The only comeback that Petitioner has to that is IPXL, which the
15 federal circuit says doesn't apply in these contexts, it's not obligation or
16 infringement's an issue, it's not a situation where the claim is so hopelessly
17 ambiguous, it can't be construed.

18 Claim 15 has to survive even if Claim 1 doesn't work because of the
19 reasoning that this panel has already adopted in the related IPR. We are
20 really short on time. We'll leave this with the Board.

21 And we'll just make maybe the general point that throughout the rest
22 of this, what's not explained is how the combinations would work. Right.
23 How would these combinations work? Why would they work in a manner
24 that we'd claim -- the claims that are referenced, that's a prerequisite to a
25 legal conclusion, obviousness, it's not there.

1 Saying that a combination could be made does not establish that it's
2 there. That applies to analyst system, that applies to Claim 18, that applies
3 to the Duvall-Chu-Trcka-Ziese Four-Way Combination. It applies
4 throughout all of these secondary considerations or secondary or subsidiary
5 positions that we've talked about earlier. We will leave that with the Board.

6
7 Just to summarize, we would respectfully request that you go back
8 and look at what the references teach and what Dr. Jeffay says they teach.
9 You'll find that there is a big divergence, you'll find that those items are
10 being improperly stretched, and that's not a sound legal basis for the legal
11 conclusion of obviousness.

12 We'd also ask that you credit what PAN's litigation counsel said in
13 related district court litigation, you'll find, if you do that, that there is no
14 disclosure of the post-filtering residue limitation when properly construed.
15 And you'll find that there is no disclosure of identifying potentially security-
16 related events when properly construed.

17 JUDGE EASTHOM: Can I just ask you a quick question? So for the,
18 you know, the evidence of secondary considerations, what's your main
19 argument, what's the great thing there that it's the residue --

20 MR. ROBERTS: So there's -- there's a couple of issues here. But
21 basically the foundational legal issue is that the nexus is presumed because
22 our expert has shown that the claims read on the commercial product. Right.
23 And that's the legal argument. There's a presumption, they haven't rebutted
24 that presumption. Now, beyond that, yeah. There's some pretty big filtering
25 residue stuff. There's you know, commercial success of the company. And
26 you can see that this --

1 JUDGE EASTHOM: But what claim features are the great -- that
2 you're relying on that are great?

3 MR. ROBERTS: Those filtering residues and --

4 JUDGE EASTHOM: Okay.

5 MR. ROBERTS: -- and the way that that operates as a whole.

6 JUDGE EASTHOM: Okay.

7 JUDGE RAEVSKY: Counsel, one question for you to answer on
8 surrebuttal, please. I couldn't find any briefing on just a quick perusal, this
9 cache argument that you made. I was just now in 17, can you point us to
10 where that sentence is? Or, I do see the word cache showing up on Page 37
11 of the POR, but otherwise it sounded like it might be a new argument to me.
12 So I would like to hear more, as to where that's in the briefing.

13 MR. ROBERTS: We'll take a look.

14 JUDGE RAEVSKY: Thank you.

15 MR. ROBERTS: Great. Thank you.

16 JUDGE EASTHOM: Thank you, very much. It's we'll give you 6:30
17 for rebuttal, surrebuttal. Any time you're ready, Mr. Tuminaro, you have 22
18 minutes rebuttal.

19 MR. TUMINARO: If I could just get set up here, Your Honor.

20 JUDGE EASTHOM: Take your time. I'll set the clock. Give me one
21 minute. Whenever you're ready.

22 MR. TUMINARO: Thank you, Your Honor.

23 JUDGE EASTHOM: Re-introduce yourself for the record.

24 MR. TUMINARO: Jonathan Tuminaro on behalf of the Petitioner,
25 Palo Alto Networks. I just wanted to start out with a couple quick points to

1 that on Claim 6, Your Honor, we agree with the way, Judge Easthom, how
2 you are reading Claim 6, we agree with your reading of that.

3 And we agree that we are not making an inherency argument with
4 respect to the dynamically modifying limitation. We're saying that it would
5 be obvious to use that dynamic modifying limitation based on what was
6 known in the art about known database editing techniques.

7 JUDGE EASTHOM: Can I ask you -- your friend responded about
8 the pipes that, in other words, with respect to this Claim 3 and C business,
9 that in Claim Step B where you're doing the identifying of the event, that
10 you could get feedback there from the SOC I take is what they're response
11 is. And then that would -- that would satisfy their reading of the claim and
12 show that you didn't --

13 MR. TUMINARO: We disagree with that, Your Honor.

14 JUDGE EASTHOM: Okay.

15 MR. TUMINARO: So I put up Slide, this is Slide 28, this has Claim
16 1 and Claim 6. So again, Claim 2 does limit the identifying step of Claim
17 1B. It says that there's a multistage analysis. And then Claim 6 says that
18 that multistage analysis includes two things, it includes an analysis at the
19 probe and then an analysis at the secure operations center based on or based
20 on data that's received from the probe, right, it's the analysis at the secure
21 operations center configured to receive data from the probe.

22 So the point is that in Step 1B, in the identifying step, there's no
23 requirement on this claim that that identifying step should be complete, that
24 it be finished before data is sent -- information about the identified events, is
25 sent to the analyst system in claimed Element Step 1C. There's just no
26 requirement that you complete the identifying. That identifying can happen

1 in some later time after information about the identifying events is sent to
2 the analyst system. And that's precisely what we showed in our petition. I'm
3 just moving to Slide 30.

4 JUDGE EASTHOM: So in Step C, when it says couple to transmit
5 information about the identified events, you're saying that that could be
6 information about events that aren't necessarily fully fleshed out?

7 MR. TUMINARO: Yes. For example, that could be information that
8 is identified based on analysis at the probe. And that information about the
9 potentially identified events, they could be sent to the secure operations
10 center, the analyst. And the analyst as required by Claim 6, can do some
11 further analysis on that information to determine whether it's a potential -- it
12 really is a potentially security-related event.

13 So the analysis in Claim 6 could relate to the identifying the
14 potentially security-related events. Claim 6 doesn't specify exactly what that
15 analysis is, only that it is part of the multistage analysis associated with
16 identifying events. And we showed in our petition how those limitations are
17 met.

18 There's simply no requirement to incorporate the analysis from a
19 secure operation center into Element 1B is one of the arguments that BT
20 makes, that's not a requirement of the claim. So we think we've shown that
21 this claimed element as it reads, is met by the analysis that we set forth.

22 There's no alignment in the spec of the '641 Patent that talks about
23 somehow the -- if you're going to identify potentially security-related events
24 completely, send it to the analyst, and then send it back before other
25 information goes to the analyst system. The reading just, it frankly, doesn't

1 make sense and it's not supported by the '641 Patent. And we've shown how
2 this limitation is met.

3 JUDGE EASTHOM: So in other words, you're saying the analysis at
4 the secure operations center, that could occur sometime after Step B?

5 MR. TUMINARO: Yes. For sometime after Step B and well, it could
6 -- it could be sent from information from Step B, it could come from that
7 information. But the analysis of the secure operations center, I guess, could
8 occur when the information about the identified events is sent to the analyst.
9

10 Because once it gets to the secure operations center, all that the claim
11 requires is that analysis is to further identify potentially security-related
12 events. So the scenario can happen where the probe says, this is a
13 potentially security-related event, sends that on to the analyst. The analyst
14 could look at that and say -- look at it again and say, identify whether it is a
15 potentially security-related event. If that were to happen, that would satisfy
16 the language of Claim 6. And that's what we've shown in our petition, that
17 that's --

18 JUDGE EASTHOM: But their -- I mean, their argument is that
19 wouldn't satisfy Claim 6 because the multistage analysis of Claim 6 has to
20 occur in Step B?

21 MR. TUMINARO: But there's no requirement that the analysis in
22 Step B has to be done, has to be completed before that information is sent to
23 the analyst. That's not required.

24 JUDGE EASTHOM: Okay. I'll let you move on. I will think about
25 that, I'm still struggling.

1 MR. TUMINARO: So I guess then, I think I have seven points to
2 respond to.

3 JUDGE EASTHOM: Okay.

4 MR. TUMINARO: Given what they had talked about. First on
5 security, that this is not a plain construction issue. We're not trying to read
6 out claim terms. The claim term at issue here is potentially security-related
7 events. It's not limited to security, it's security-related, and it's not simply,
8 doesn't have to be actually security-related, it's potentially security-related
9 events.

10 We're asking the Board to give meaning, add more meaning to all of
11 those terms, all of that language in that term. So we're not asking you to
12 read-out any terms.

13 JUDGE EASTHOM: So are you asserting that you would satisfy the
14 Exhibit 2021 claim construction?

15 MR. TUMINARO: So that claim construction does not address the
16 word "potentially". That's at Exhibit 2024, Page 49. The word "potentially"
17 is not in the construction, it's security-related event. I will note that that
18 claim construction brings one in after, well after, Petitioner filed the petition
19 in this case, right. So we couldn't address this in our petition.

20 And that claim term doesn't -- the constructionists don't construe that
21 word "potentially". But putting all of that aside, we argued in our petition
22 that it would have been obvious to apply Duvall to this claim term. This is
23 at Page 36 of our petition.

24 In the middle of the page, we say, "To the extent Patent Owner argues
25 that identification of illegal or indecent material in a data transmission is not
26 a potentially security-related event" -- which it is -- "it still would have been

1 obvious to apply Duvall's and Chu's techniques to filter and identify data
2 representing potentially security-related events." And the argument goes on
3 at the top of Page 36 of the petition.

4 We say explicitly, "Applying Duvall's techniques in this manner
5 amounts to nothing more than the use of known techniques to improve
6 similar devices, methods, or products in the same way, e.g. to detect
7 malware or a potential intrusion instead of objectionable material".

8 We make this obviousness argument, BT simply hasn't addressed it
9 anywhere. Their responsive arguments are focusing on attacking the
10 connection between objectionable material and security. And they simply
11 do not address our obviousness argument. So for that basis alone, we should
12 win.

13 Moving on to --

14 JUDGE RAEVSKY: Counsel, let me -- on your obviousness claim,
15 I'm wondering if you're going to get here, but just in case, did you address
16 the testimony of Dr. Jeffay on Page 133 of the deposition, by Patent Owner's
17 counsel, that Duvall does not disclose editing where it's neither a person of
18 ordinary skill in the art, for the understanding that was needed to perform the
19 filtering disclosed in Duvall?

20 MR. TUMINARO: I think Judge Easthom pointed this out, at the top
21 of -- the question that was asked there, assumes that there would be a person.
22 So the question is, at the top of Page 133 of Dr. Jeffay's deposition said,
23 "Could the person who was authorized to adjust the filters see what content
24 is allowed and blocked and use the editing manager to tune the filters."

25 So the question itself assumes that there would have been a person, so,
26 associated with the editing of the database. So that question itself, simply

1 doesn't stand for what BT is arguing that it means and it's no admission
2 about -- and so broadly sweeping as BT argues. And we address the
3 motivation to combine in the petition, if I could switch back to that. Well, it
4 looks like I'm not presenting right now.

5 JUDGE BRADEN: So Counsel, I want to make sure I understand that
6 you're saying Dr. Jeffay's testimony at the bottom of Page 133, that when
7 you say that Duvall doesn't need -- does not disclose that anything more is
8 needed, you say that's because the person already has the ability to use the
9 editing manager to tune the filters? Is that correct?

10 MR. TUMINARO: That's correct. Because you have to understand
11 the remainder of his testimony in the context of the question that was being
12 asked, and not taken out of context. And what did we say about the
13 motivation to combine Duvall and Chu, if you would like to talk about that,
14 that's at our Slide --

15 JUDGE RAEVSKY: Counselor, I'm not sure I understand your point.
16 I think that I get what you're saying, but that's a separate question. That
17 wasn't the question, the rest of the testimony. That's a previous question.
18 You're saying that those questions, we have to read them as implicitly
19 connected, the two questions on Page 133?

20 MR. TUMINARO: That's correct. You have to read them in context
21 and you can't take these quotes out of context. And I don't think Dr. Jeffay
22 was recanting all of his testimony from his declaration that was submitted in
23 support of the declaration. And I think that's what BT is urging the Board to
24 interpret his deposition testimony as sort of recanting the motivation to
25 combine Duvall and Chu. That is addressed at our Slide 11.

1 It's a very simple motivation to combine. Already Duvall talks about,
2 on the lefthand side of Slide 11, that there is an editor manager, and a user
3 who believes that the filtering system is editing too much or too little, could
4 use this editing manager to adjust the filters. But the default in Duvall is to
5 simply allow or to block.

6 What Chu teaches is that you might have user intervention if there's
7 something that's not on the whitelist or a blacklist. And the motivation to
8 combine would be that a person of ordinary skill in the art would be
9 motivated to include Chu's user and intervention into Duvall's editing
10 manager to determine whether the system is filtering too much, rather than
11 simply just doing a default block or allow to edit those filters.

12 Just quickly on motivation to combine, we're not changing our
13 position on motivation to combine, we're simply -- we agree with Judge
14 Easthom, we're just sort of clarifying motivation to combine as set forth in
15 our petition.

16 Next point on the operation of the '641 Patent, Your Honor, Judge
17 Easthom, mentioned that Figure 2 of Duvall has -- I mean, Figure 2 of the
18 '641 Patent that's shown, for example, on Slide 20 of BT's slide, there's the
19 Figure 2, Your Honor, Judge Easthom, mentioned that that Figure 2 operates
20 in a similar manner to Duvall's Figure 3 with respect to the filters.

21 That there's either data will be blocked or negatively filtered or it will
22 be positively filtered. And if data is neither of those, they will go on to be
23 residue. So we agree with Your Honor that Figure 2 and Figure 3 -- Figure 2
24 of the '641 and Figure 3 of Duvall operates similarly in that regard.

25 Next point on patching code, a patching code, that's honestly
26 completely irrelevant. Duvall's Figure 3 and this is showing on Slide 15,

1 Duvall's Figure 3 shows, our Slide 15, if the data stream is opened -- so
2 there's a scenario in which the data stream is opened, if the data stream is
3 opened, the data will flow through the remainder of Duvall's filters or the
4 analysis shown in Figure 3 and Figure 4 of Duvall, potentially Figure 4.

5 There's simply nothing about the patching code that changes what
6 happens in Figures 3 and Figure 4 of Duvall. Questions on that point?

7 JUDGE EASTHOM: Is patching code a sole embodiment, your
8 friend argued that this was the only embodiment, that every embodiment has
9 patching code?

10 MR. TUMINARO: Patching code is -- it is the way that it's described
11 as how Duvall could be -- those filters could be implemented into like a
12 Windows environment. That is one sort of implementation detail.

13 But that level of detail is sort of irrelevant to what's going on again, in
14 Figure 3 of Duvall, where there's the scenario where the data stream is
15 opened. That data stream will go through the remainder of the filters. So
16 whether it is the only embodiment of how you might implement these filters,
17 is an irrelevant point.

18 Moving on to secondary considerations, unless there is additional
19 questions on the patching code. Secondary considerations, on secondary
20 considerations, BT argued when they split -- Mr. Roberts argued that they
21 are entitled to the presumption of a nexus.

22 They only get the presumption of a nexus if they make a showing that
23 the product that they're relying on is essentially the claimed invention. So
24 they -- and to activate that initial showing in order to get the presumption,
25 our position is they have not made that initial showing.

1 They did nothing to show that the Counterpane product actually
2 satisfies the limitations of the claims, of Claim 1 or any of the other claims.
3 In fact, their expert wouldn't even identify which claims he believed were
4 embodied by the Counterpane system. And there's no showing that the post-
5 filtering residue, the dynamically modifying limitations of Claim 1 are found
6 in the Counterpane product.

7 JUDGE EASTHOM: Sorry, I have to interrupt. With respect to some
8 of these claims, like, for example, Claim 18, your friends are already in
9 those -- Cogger is just incompatible with that because the way I understand
10 it -- well, that's one of the questions I have is with respect to Claim 18, it's
11 incompatible because there would be no way for these analysts and users to
12 be able to fill out one of those problem tickets. That's one question.

13 And then the other question I have is what about their argument with
14 respect to Trcka, they seem to be saying that Trcka can't be used with the
15 Duvall-Chu system because that system, Duvall-Chu system is working on a
16 real time basis, if you will, with this probe. And the way I understand it,
17 maybe Trcka is archiving data and wouldn't be compatible with this real
18 time system. And --

19 MR. TUMINARO: So I'll address those points. So I'll start with
20 Cogger and then move on to Trcka. So I'll address both of the Cogger
21 arguments that BT makes. That's at Slide 45 of our presentation if you want
22 to jump there. So they make two arguments with respect to Cogger. The
23 first is that they say that there's no evidence that a person of ordinary skill in
24 the art could implement Cogger's CSM. That CSM stands for Customer
25 Service Management system. So that's wrong.

1 Let me address that point quickly. So first, Cogger's CSM is what we
2 map in the petition to the claimed SOC, the security operating center and
3 Cogger's describes the CSM as a legacy host system.

4 And in fact, the evidence in the record shows that secure operations
5 systems were known, for example, the IBM system presented at the
6 beginning, it was known to have a secure operations center, so that's not
7 really the focus of Cogger's description. Cogger's is disclosing a system that
8 allows users to interface with that CSM. And that system allows the users to
9 input information to create trouble tickets to go to the CSM. So that's what's
10 disclosed and that would be enabled.

11 So with respect to the second point that Your Honor raised about
12 Cogger, that there's no evidence that the information in Cogger's problem
13 tickets could be generated, that's BT's argument. That's wrong. What
14 Cogger discloses, this is on Slide 45 of our presentation, what Cogger
15 discloses is that the user is able to input information into the trouble ticket in
16 order to help create that trouble ticket.

17 That's shown, for example, in the petition at Page 70 that has an
18 annotated Figure 8 from Cogger, Figure 8G, that the user can actually
19 implement information into the trouble ticket to help create that trouble
20 ticket. And what the petition relies on is that functionality or that feature of
21 Cogger.

22 This is shown on the lefthand side of our Slide 45. It says, "Allowing
23 the client user or network administrator in the Duvall-Chu's system to
24 include remarks regarding a residue data transmission would allow Cogger's
25 network administrator to better diagnose whether the residue data should be
26 allowed or blocked." So --

1 JUDGE EASTHOM: I wasn't understanding, are you saying the
2 network administrators were leaving comments for other network
3 administrators?

4 MR. TUMINARO: The network administrators in Duvall would
5 provide comments into this trouble ticket that could be reviewed by the
6 analyst, the security analysts who were at the secure operations center.
7 That's what we're saying.

8 JUDGE EASTHOM: Of Cogger?

9 MR. TUMINARO: Of Cogger, yes. Because we're mapping Cogger
10 to the secure operations center.

11 JUDGE EASTHOM: Okay.

12 MR. TUMINARO: That's what we're saying. Now quickly on Trcka,
13 if I may, on Trcka, this is at our Slide 37, I believe -- 36. So what Trcka
14 discloses, this is on Slide 36, what Trcka discloses is a security system with
15 analysis applications and a GUI to analyze security information and apply
16 that to the -- to identify security-related events.

17 And what the combination is that we're relying on, is we're saying that
18 Duvall already discloses this editing manager, but doesn't provide
19 implementation details about how to implement such a security and editing
20 manager. But a person wanting to implement that editing manager would
21 have wanted those secured, those implementation details and would have
22 looked to something like Trcka to apply those, the Trcka's editing
23 techniques.

24 And the fact, I think Your Honor raised the notion that Trcka looks at
25 -- Trcka looks at not live data but looks at data that sort of comes after the
26 fact. So that's precisely what Judge Braden had asked me in the beginning.

1 There's a notion in Duvall that a user of the editing manager might
2 want to save information to edit it later. And that's precisely how Duvall in
3 the Duvall-Trcka combination, that's precisely how it would work. The
4 person would look at the traffic, and figure out how to, based on that traffic,
5 how the filters might be edited.

6 JUDGE EASTHOM: So Trcka does work in real time; is that what
7 you're saying?

8 MR. TUMINARO: No. Trcka works on archived data, but the person
9 looking at the editing manager would want to look at that archived data to
10 look at the potentially security-related events in that archived data to figure
11 out how to edit the filters.

12 JUDGE EASTHOM: Okay. Counsel, we've asked you a lot of
13 questions and you're over a minute, if you want to wrap it up, please?

14 MR. TUMINARO: Oh, I will just wrap it up. Thank you, Your
15 Honor.

16 JUDGE EASTHOM: We will give Counsel extra time, too.

17 MR. TUMINARO: So managed security -- as I stated in the
18 beginning, managed security services were known before the '641 Patent.
19 During prosecution, patentability of the '641 Patent was narrowly focused on
20 a single limitation, the post-filtering residue limitation.

21 And as the petition showed, and as I talked about here today Duvall
22 and Chu both teach this filtering residue limitation. And the petition shows
23 how all of the challenged claims were obvious. BT's responsive arguments
24 are not commensurate in scope with the claim language and they attack the
25 references individually. The challenged claims, all the challenged claims
26 should be found unpatentable.

1 JUDGE EASTHOM: Thank you, Mr. Tuminaro. Any questions?

2 MR. TUMINARO: Any questions?

3 JUDGE EASTHOM: Okay. Let's move on to your friends and we'll
4 give you let's say you have 10 minutes.

5 MR. ROBERTS: Okay..

6 JUDGE EASTHOM: Mr. Roberts, whenever you are ready.

7 MR. ROBERTS: Oh, thank you. Thank you, Your Honor. I hope I'm
8 not wasting your time.

9 JUDGE EASTHOM: Oh, thank you. Thank you very much, I
10 appreciate that.

11 MR. ROBERTS: So I'll begin, we're all be doing higher order of
12 math, and I think we're all computer scientists.

13 JUDGE EASTHOM: Yeah, quite.

14 MR. ROBERTS: But we can't count past one, right.

15 JUDGE EASTHOM: That, and you know, I can set the clock, but I
16 have to be able to use it too, I guess. So let me restart. Okay. Whenever
17 you're ready.

18 MR. ROBERTS: Thank you, Judge Easthom. So just a couple of
19 quick hitters to start with. One, if it weren't for cache, you could find in that
20 type of argument, you could on find Page 37 of the Patent Owner reply
21 which cites a little bit to SOCRATES discussion, you'll also find a more
22 wholesome discussion on Page 39 of the Patent Owner reply. And that cites
23 to Exhibit 2016, Paragraph 139, of Dr. Lee's declaration, you will see that
24 this isn't a new argument. There's a lot of stuff, all that good stuff in there
25 already.

1 Two, another quick hitter, regarding the patching code, what I think
2 you heard was that yes, there is only one embodiment in Duvall and yes, it is
3 patching code. The rest of the stuff is just made up.

4 Number three, as a quick hitter, when we talk about support for
5 secondary considerations, I think you'll see in Exhibit 2009, Page 6, about
6 halfway down, you'll find a reference to the data in our security analyst,
7 starts with "sentry", that's a term used in the patent.

8 A monitoring device installed on the network, the sentry collects data
9 from the devices in our network, then sorts, analyzes, and correlates it using
10 over 20,000 security filters in our own analysis engine, in our own analysis
11 engine, is sufficient to get us to filtering residue limitations even if it's not,
12 we go down a little bit further, and you'll find the word "SOCRATES".

13 It would be very strange to find the word "SOCRATES" here in
14 Exhibit 2009 and MSM and our analysis engine, and all those exact words in
15 the patent and find them unrelated.

16 JUDGE EASTHOM: Page -- I'm on Page 9 of Exhibit --

17 MR. ROBERTS: 2009, Page 6 of Exhibit 2009.

18 JUDGE EASTHOM: Oh, Page 6, I'm sorry. Thank you.

19 MR. ROBERTS: I'm talking quickly.

20 JUDGE EASTHOM: Go ahead, okay. I don't want to slow you
21 down. I appreciate that. So this two of this from the data incentive --

22 MR. ROBERTS: That's Table C. MSM in the very first part, you'll
23 see our analysis engine described in the context that we described those
24 filtering residue analysis. And then you'll see further down "SOCRATES",
25 reference to SOCRATES. Which is the acronym that's used in analysts, the
26 one that's used contemporaneously. There is a clear linkage.

1 JUDGE EASTHOM: So is there residue datum, and you read residue
2 data earlier, was there?

3 MR. ROBERTS: So the residue data is linked to what's going on in
4 analysis engine. When you read that in context with what Dr. Lee explains,
5 what he testifies to.

6 JUDGE EASTHOM: But SOCRATES says that's the system, that's
7 not in the probe, that's not --

8 MR. ROBERTS: That's the whole thing, that's --

9 JUDGE EASTHOM: That's not -- that's not the residue filters?

10 MR. ROBERTS: That's the SOC -- that's the SOC. So you know, it's
11 this one paragraph, I think captures a lot. It's about the best we could do
12 with 25 minutes of finding support for these complex terms. And again, it's
13 a direct linkage between terms in the patent and terms that were used for
14 contemporaneous documents that matched Dr. Lee's testimony.

15 JUDGE EASTHOM: Okay.

16 MR. ROBERTS: -- his contemporaneous testimony.

17 JUDGE EASTHOM: Can I ask you another question because I think,
18 in your brief or your expert, you cited Claim 1 and 18 as reading on the
19 SOCRATES system or a MSM system, whatever it is -- whatever it is, I
20 guess it's the MSM system. So my question to you is how can that show
21 nexus? You have two different claims that we need elements from both of
22 those claims?

23 MR. ROBERTS: You probably -- so we have the testimony and the
24 testimony is what the testimony is. I'm not aware of any case law that says
25 that you have to have a discreet claim chart. During Dr. Lee's deposition,

1 they picked at two limitations. Dr. Lee provided at his deposition support
2 for both. That's all we need. There's a presumption --

3 JUDGE EASTHOM: But I'm -- I guess what I'm struggling with is
4 you have this great system, SOCRATES, it's not claimed, parts of it are
5 claimed in one claim, parts of it are claimed in another claim. I don't even
6 think there's much claim in Claim 1, there's some trouble ticket stuff claimed
7 in Claim 18 and I'm looking for, you know, what's the nexus to your success
8 here.

9 And it looks like you have two separate claims. And that sort of runs
10 afoul of what the federal circuit has told us, we can't have the same evidence
11 showing two different types of nexus to two different types of claims, right.
12 That was in that bicycle case whatever, if you remember?

13 MR. ROBERTS: Yeah. I think -- I think the question is nexus to the
14 claim language, not nexus to the fulsome description of what's in the
15 disclosure. Right. So we've got the nexus, we've got what we minimally
16 need. And we've -- we would respectfully submit shifted the burden in that
17 respect. And if there is a question about specific limitations, to rebut that
18 presumption, Petitioner's counsel has not met its burden in that respect.

19 JUDGE EASTHOM: Okay. All right.

20 MR. ROBERTS: The legal argument doesn't work because we can't
21 adopt an overly rigid view of essentially a planned invention, and two, we've
22 pointed to enough stuff, and Dr. Lee's pointed to enough stuff.

23 So Dr. Jeffay, regarding motivation, I think as Judge Raevsky noted,
24 it's very telling that they're pointing to the answer to a different question.
25 Okay. It was just a different question. He gave you the exact question and
26 the exact answer, that's all that's needed.

1 Furthermore, of course, there's a person, that's part of the problem
2 with the analyst system claims, right. So why is that an issue if we're
3 looking at this thing in a fulsome manner? Okay. Why is that suddenly an
4 issue when that's what they're relying on in the combination. So I don't get
5 that. I don't get why, yes, there was recant -- at least significant, significant
6 revision or further explanation in the reply brief.

7 And I don't also get why those motivations were not anywhere to be
8 found in the slides that were presented. If it really was there, it should have
9 been there, and it wasn't. That's the direct question. That's what was
10 answered. Dr. Jeffay recanted it, if you don't want to call it that, he further
11 explained, he further considered, whatever it is, the motivation has been
12 undermined. There is no benefit that's been established to get there.

13 We'll get next to construction. Now Judge Easthom, you may
14 remember during this little hearing we had, they wanted to keep all that
15 evidence out. You also may remember that I offered them the ability to have
16 further briefing. They didn't want that opportunity. They just wanted it out.

17
18 So it's a little bit rich to get those arguments that they didn't have an
19 opportunity to respond, when, yeah, they actually did and they didn't want to
20 take it. That was a strategic error on their part. This is undisputed evidence.
21 It controls according to the Board's rules. It doesn't matter if it came in
22 yesterday, it needs to be considered.

23 And it needs to be considered regardless of this manufactured
24 difference between potentially. And I'll tell you why. Number one, if a
25 definition in the discussion of Term 6, which is what we point to on Page 49,
26 they actually potentially means possibly, and so to the extent that there is a

1 distinction, we'll live with possibly rather than potentially, it's the same
2 thing, that's what they said.

3 And if you want further evidence, just take a look at Term 7 on Page
4 54, which is further confirmation that PAN's litigation counsel is consistent
5 and consistently aligned against PAN's IPR counsel. This has to be an attack
6 or intrusion against a network. It cannot be attack -- intrusive material
7 coming across a network.

8 That position was purged initially by PAN's litigation counsel and
9 they dropped it. They waived that argument. They waived the argument
10 that the Petitioner's counsel is hinging its entire case on. That was waived in
11 the litigation. That litigation controls here. It's the same term. We will not
12 hear an argument from them that should not apply here. They can't make
13 that argument. It's a procedural argument. We'll leave it at that.

14 Finally, look with respect to Trcka and with respect to Cogger, we
15 touched on this briefly. And all I heard during that short response, short
16 rebuttal, was Judge Easthom, you asking a bunch of questions about well,
17 couldn't this have been made, and they're saying yeah, it could have been
18 made.

19 No information about why it would have been made, aside from this
20 frolicking detour on Dr. Jeffay's part, you can refer back to our briefs where
21 we showed that he, you know, again, went back and said that that's not really
22 in those references.

23 With respect to the CSM in particular, the petition doesn't even cite to
24 the CSM. So it's like, it's very strange that they would be relying on that
25 embodiment and what could have been done as opposed to the legal
26 requirement of what would have been done by one skilled in the art. And

1 also the legal prerequisite that we know from early case law, certain case
2 law that you have to explain how the combination would have operated.
3 They clearly failed on that one.

4 In conclusion, we'll wrap it up here. In conclusion, the district court
5 litigation should control. We've talked a lot about the identifying potentially
6 security-related events. The litigation construction should control. Duvall
7 doesn't get us there.

8 We've talked about the motivation, Dr. Jeffay walked it back, even so,
9 if you've been following, you still don't get to these things being used, these
10 filters being used for security purposes. Even if you do somehow import the
11 block filters or the blacklist filters from Chu, all you get from the
12 combination is more information of an objectionable quantity coming
13 through Duvall, which would be a problem.

14 The facts simply don't support the legal conclusion of obviousness.
15 The agreed claim constructions simply do not work in Petitioner's favor. We
16 respectfully request that you find all claims patentable over these
17 complications. Thank you.

18 JUDGE EASTHOM: Thank you, Mr. Roberts. Well, that, we are
19 adjourned.

20 (Whereupon, the hearing in the above-entitled matter was concluded
21 at 3:12 p.m.)

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