UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

CENTRIPETAL NETWORKS, INC.,
Patent Owner.

IPR2018-01437
Patent 9,160,713 B2

Before BRIAN J. McNAMARA, J. JOHN LEE, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
Denying Petitioner's Motion to Exclude
Denying Patent Owner's Motion to Exclude
35 U.S.C. § 318(a)

INTRODUCTION

Cisco Systems, Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1–20 ("the challenged claims") of U.S. Patent No. 9,160,713 B2 (Ex. 1001, "the '713 Patent"). An *inter partes* review of all challenged claims was instituted on January 24, 2019. Paper 7 ("Inst. Dec."). After institution, Centripetal Networks, Inc. ("Patent Owner") filed a Patent Owner Response (Paper 18, "PO Resp."), Petitioner filed a Reply (Paper 25, "Pet. Reply"), and Patent Owner filed a Sur-reply (Paper 27, "PO Sur-reply"). The parties also filed additional motions that remain pending, which are addressed below. An oral hearing was held on December 2, 2019. Paper 39 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). As explained below, Petitioner has shown by a preponderance of the evidence that all challenged claims of the '713 Patent are unpatentable.

A. Related Cases

The parties identify as related to the present case *Centripetal Networks, Inc. v. Cisco Systems, Inc.*, Case No. 2:18-cv-00094-MSD-LRL (E.D. Va.). Pet. 2; Paper 4, 1.

B. The '713 Patent

The '713 Patent relates to filtering network data transfers. Ex. 1001, 1:57–58. When multiple data packets are received by a system, "[a] determination may be made that a portion of the packets have packet header field values corresponding to a packet filtering rule." *Id.* at 1:58–61. The specification discloses an embodiment in which a determination is made as

to whether one or more of the received packets have header field values corresponding to, for example, particular versions of Transport Layer Security (TLS) protocol specified in a packet filtering rule. *Id.* at 6:11–19, 9:19–28. Based on that determination, the packets in question may be allowed to continue to their destinations (*id*. at 9:34–42), or blocked from continuing to their destinations (*id.* at 9:56–10:1). The specification further discloses other criteria that can be applied in packet filtering rules, such as network address, port number, or protocol type. *Id.* at 5:38–7:9, Fig. 3.

C. Challenged Claims

Petitioner challenges all of the claims of the ’713 Patent. Claims 1, 8, and 15 are the only independent claims. Claim 1 is illustrative and is reproduced below:

> 1. A method comprising:
>
> receiving, by a computing system provisioned with a plurality of packet-filtering rules, a first packet and a second packet;
>
> responsive to a determination by the computing system that the first packet comprises data corresponding to a transport layer security (TLS)-version value for which one or more packet-filtering rules of the plurality of packet-filtering rules indicate packets should be forwarded toward their respective destinations, forwarding, by the computing system, the first packet toward its destination; and
>
> responsive to a determination by the computing system that the second packet comprises data corresponding to a TLS-version value for which the one or more packet-filtering rules indicate packets should be blocked from continuing toward their respective destinations, dropping, by the computing system, the second packet.

Ex. 1001, 11:8–25.

D. Instituted Ground of Unpatentability and Asserted Prior Art

Trial was instituted on the sole ground of unpatentability asserted in the Petition:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–20	103(a)	Sourcefire[1]

Inst. Dec. 16; *see* Pet. 26–27. The parties dispute whether Sourcefire qualifies as prior art under 35 U.S.C. § 102(b), specifically whether it was publicly accessible in (or before) April of 2011. *See* Pet. 27; PO Resp. 2–7; Pet. Reply 2–6; PO Sur-reply 1–7.

ANALYSIS

A. Level of Ordinary Skill

Petitioner asserts that a person of ordinary skill in the art would have had a bachelor's degree in computer science, computer engineering or an equivalent, as well as four years of industry experience. Pet. 15. In addition, Petitioner indicates a person of ordinary skill would have had "a working knowledge of packet-switched networking, firewalls, security policies, communication protocols and layers, and the use of customized rules to address cyber attacks." *Id*. Patent Owner does not dispute Petitioner's proposed definition of the level of skill in the art.[2] We agree with Petitioner's definition, and apply it herein, based on the testimony of

[1] Sourcefire 3D System User Guide, Version 4.10 (Ex. 1004, "Sourcefire").

[2] Patent Owner's expert witness, Dr. Alessandro Orso, testified to a slightly different definition of the level of ordinary skill. *See* Ex. 2002 ¶ 43. We note that our Decision would be unchanged were we to apply Dr. Orso's proposal instead.

Petitioner's expert witness, Dr. Stuart Staniford, which we find supports Petitioner's view. *See* Ex. 1003 ¶¶ 23, 62.

B. Claim Construction

For petitions filed before November 13, 2018, as here, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b) (2018); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016); Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018).

Patent Owner argues that the term "packet" should be construed as "IP packet." PO Resp. 18–20; PO Sur-reply 7–8. According to Patent Owner, the proper construction of "packet" within the meaning of the challenged claims excludes other types of packets, including packets that are encapsulated within an IP packet—e.g., TCP packets, application packets. *See* PO Sur-reply 7–8; Tr. 76:24–77:19. Petitioner disagrees, arguing that Patent Owner's proposed construction is too narrow and inconsistent with the Specification of the '713 Patent. We agree with Petitioner.

First, the intrinsic evidence cited by Patent Owner does not support its proposed construction. Patent Owner does not identify any special definition of "packet" in the Specification. Further, Patent Owner does not identify any aspect of the Specification that clearly indicates the term "packet," in fact, excludes certain types of packets. Instead, Patent Owner relies (PO Resp. 18–19) on a description of several kinds of packets, including "IP packets," "application packets," and "TLS Record Protocol packets." Ex. 1001, 7:62–8:2. Nothing in that description indicates the term

"packet" refers only to one of those types of packets, much less to "IP packets" in particular. *See id*.

Patent Owner also relies on dependent claims 4, 11, and 18, which require that the recited "packet" further "comprises a network address." *See* PO Resp. 19. But Patent Owner does not explain sufficiently why the limitation of comprising a network address in certain dependent claims requires a "packet" *generally* to include only an "IP packet" and not other types of packets. *See id*. Indeed, these dependent claims underscore that a "packet" within the meaning of the broader independent claims, for example, is *not* necessarily required to comprise a network address. Moreover, the fact that the Specification uses both the terms "packet" and "IP packet" indicates that the '713 Patent distinguishes between a "packet" generally and specific types of packets, such as an "IP packet." *See* Pet. Reply 6–7 (noting that the Specification refers to multiple types of packets). Patent Owner's citation of certain examples in the Specification (PO Resp. 19–20) also is unpersuasive because it is axiomatic that limitations should not be read into the claims from mere embodiments. *See Superguide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

In addition, Patent Owner argues claim 1 requires that "the HTTPS packets are received 'by a computing system,'" which indicates they must be IP packets given that a computing system's interface receives IP packets (whereas other types of packets encapsulated within IP packets are targeted at particular "destination program[s]" on the system rather than the system itself). *See* PO Resp. 20 (citing Ex. 2002 ¶ 68). Neither Patent Owner nor Dr. Orso explains adequately, however, why a person of ordinary skill would have understood an application packet, for example, *not* to have been

received by a computing system (including the destination application on the system) when the IP packet containing that application packet *is* received by the system. *See* Pet. Reply 7.

For the above reasons, we are not persuaded that the correct construction of "packet," as recited in the challenged claims, should be limited only to "IP packet." No further express construction of this or any other claim term of the '713 Patent is necessary to resolve the issues in this case.[3] *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (holding that only claim terms in controversy require express construction, and only to the extent necessary to resolve the controversy).

C. Whether Sourcefire Qualifies as Prior Art

Patent Owner asserts that Sourcefire does not qualify as applicable prior art because it is not a printed publication. *See* PO Resp. 2–7 (citing 35 U.S.C. § 311(b)); PO Sur-reply 1–7. In determining whether a prior art reference constitutes a printed publication, "the touchstone is public accessibility." *In re Bayer*, 568 F.2d 1357, 1359 (CCPA 1978); *see Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016). "A given reference is 'publicly accessible' upon a satisfactory showing that

[3] Patent Owner argues that the proper construction of "packet" excludes "reassembled application layer messages." *See, e.g.*, PO Resp. 19. Neither party has asserted at any time in this case that "packet" should be construed to include such messages. As discussed below, this issue relates to whether certain disclosures of the asserted prior art (involving reassembled messages) would have taught or suggested the recited "packet[s]." Thus, we address this issue in the context of our obviousness analysis below.

such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it." *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008) (quoting *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006)).

Petitioner contends that Sourcefire was publicly available because (1) it was actually disseminated to hundreds of customers who purchased Sourcefire 3D System products, and (2) it was available on Sourcefire's support website. *See* Pet. 27; Pet. Reply 2. As explained below, we conclude that Petitioner has shown sufficiently that Sourcefire was publicly available due to its actual dissemination to customers.

According to Petitioner, Sourcefire was enclosed on a CD-ROM disk that was "included with each [Sourcefire] 3D System product offered for sale, including actual sales, beginning . . . in April 2011 through the priority date of the '713 Patent." Pet. Reply 2. Petitioner relies on the testimony of John Leone, a former employee of Sourcefire's manufacturer. Pet. 27 (citing Ex. 1005). Mr. Leone testified that Sourcefire was included with every Sourcefire 3D System product in that timeframe, and that "approximately 586 customers purchased the Sourcefire 3D System from April 2011 through March 2013 and had access to the Sourcefire 3D System User Guide." Ex. 1005 ¶¶ 11, 19.

Additionally, Petitioner cites a press release about the relevant Sourcefire 3D System published in BusinessWire in April 2011 (Ex. 1034), a product review for the Sourcefire 3D System published by ITPro in January 2007 (Ex. 1042), and a product review for the system published by SC Media in May 2006 (Ex. 1043), as evidence establishing that the

Sourcefire 3D System (including its accompanying user manual, the Sourcefire reference) was publicly marketed and sold. Pet. Reply 3–4. Patent Owner does not dispute the above facts. Rather, Patent Owner argues that these facts are insufficient to establish public accessibility under controlling case law. *See* PO Sur-reply 2–5.

Petitioner relies on *Mass. Inst. of Tech. v. AB Fortia*, 774 F.2d 1104 (Fed. Cir. 1985) ("*MIT*"). Pet. Reply 2–3. In *MIT*, a paper was orally presented at a scientific conference attended by "50 to 500 cell culturists." 774 F.2d at 1108. Copies of the paper "were distributed on request, without any restrictions, to as many as six persons." *Id.* at 1108–09. The Federal Circuit held that these facts were sufficient to establish public accessibility. *Id.* at 1109; *see also In re Klopfenstein*, 380 F.3d 1345, 1349 (Fed. Cir. 2004) ("The key to the court's finding [in *MIT*] was that actual copies of the presentation were distributed."). Petitioner also cites *Garrett Corporation v. United States*, 422 F.2d 874, 878 (Ct. Cl. 1970). Pet. Reply 3. In *Garrett*, the court held that a government report was a "printed publication" under § 102(b) because approximately 80 copies were disseminated, including to six commercial companies. 422 F.2d at 878. The court held, "distribution to commercial companies without restriction on use clearly" established that the report is a printed publication. *Id*.

Patent Owner relies on *Medtronic, Inc. v. Barry*, 891 F.3d 1368 (Fed. Cir. 2018). PO Sur-reply 2–3. In *Medtronic*, the prior art at issue was disseminated to attendees of three conferences. 891 F.3d at 1379. The Federal Circuit distinguished *Medtronic* from past cases involving references stored in repositories (e.g., libraries)—rather than considerations like indexing and cataloguing, the relevant inquiry was whether the

distribution of the reference to certain groups of people was sufficient for public accessibility. *Id.* at 1379–80. Issues underlying that inquiry include, for example, "whether there is an expectation of confidentiality between the distributor and the recipients of the materials," as well as "[t]he expertise of the target audience." *Id.* at 1381–82. Although agreeing with the Board that "[d]istributing materials to a group of experts" is not enough for public accessibility "simply by virtue of the relative expertise of the recipients," the Federal Circuit held that the Board in that case had not sufficiently considered all of the recipients of the distributed materials, or whether all the recipients were expected to hold the distributed materials in confidence. *Id.* at 1382–83.

Based on the above facts and case law, we conclude that Sourcefire was publicly accessible based on undisputed facts. It is undisputed that the Sourcefire 3D System was publicly marketed and sold, and that the Sourcefire reference was actually distributed to over 500 customers of the Sourcefire 3D System. Ex. 1005 ¶¶ 11, 19. This vastly exceeds the distribution to six people in *MIT* and distribution of 80 copies in *Garrett*. It is also undisputed that the customers who received Sourcefire included entities interested in network security products, including persons of ordinary skill in the art. *See* Tr. 54:5–17; *see also* Ex. 1004, 1, 32–33 (identifying Sourcefire as a "User Guide" and indicating Sourcefire provides information for network administrators); Ex. 1005 ¶ 5 (indicating Sourcefire was drafted in consultation with, and reviewed by, engineers who designed the Sourcefire system). Moreover, similar to *MIT* and as discussed in *Medtronic*, the record indicates that the recipients of Sourcefire were not subject to confidentiality requirements restricting use or further distribution.

See Ex. 1004, 2 (Sourcefire copyright page stating, "You may use . . . and otherwise copy and distribute [Sourcefire] solely for non-commercial use").[4,5] Patent Owner has not identified any evidence of such restrictions on recipients of Sourcefire. Although Patent Owner asserts that *MIT* and *Klopfenstein* are distinguishable because they involved "the free distribution of academic documents to conference and meeting attendees" (PO Sur-reply 4–5), case law indicates that distribution to commercial entities also may be sufficient. *See Garrett*, 422 F.2d at 878; Pet. Reply 3.

Patent Owner argues, however, that dissemination is insufficient and that Petitioner must additionally demonstrate that a person of ordinary skill would have been able to locate Sourcefire through reasonable diligence. PO Resp. 3, 5–7; PO Sur-reply 2 (citing *Acceleration Bay, LLC v. Activision Blizzard, Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018)). The Federal Circuit has indicated that public accessibility is established by showing that the reference was "disseminated *or otherwise* made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." *Acceleration Bay*, 908 F.3d at 772 (quoting *Jazz Pharm., Inc. v. Amneal Pharm., LLC*, 895 F.3d 1347, 1355–56 (Fed. Cir. 2018)) (emphasis added). Here, Petitioner has shown

[4] All citations to Sourcefire refer to the document's original pagination.

[5] Both of the decisions by Board panels cited by Patent Owner (PO Sur-reply 3–4) are distinguishable on their facts, including because both involved references that were subject to restrictions prohibiting their reproduction or further dissemination. *See ASM IP Holding B.V., v. Kokusai Elec. Corp.*, IPR2019-00369, Paper 8, at 18 (PTAB June 27, 2019); *VMAC Global Techs. Inc., v. Vanair Mfg, Inc.*, IPR2018-00670, Paper 9, at 13–14 (PTAB Aug. 10, 2018). In *ASM*, the panel further noted that no evidence of actual dissemination to interested artisans. *See ASM*, Paper 8, at 17.

that Sourcefire was "disseminated" to interested artisans; thus, it is unnecessary to additionally show that it was also "otherwise" made available to them. *See Klopfenstein*, 380 F.3d at 1349 ("The key to the court's finding [in *MIT*] was that actual copies of the presentation were distributed."). We note the Federal Circuit has held that if the latter is shown (i.e., accessibility through reasonable diligence), it is unnecessary to show actual access or dissemination. *See, e.g.*, *Jazz Pharm.*, 895 F.3d at 1356 ("If accessibility is proved, there is no requirement to show that particular members of the public actually received the information.").

Consequently, we are unpersuaded that Sourcefire was not publicly accessible due to various issues surrounding whether the Sourcefire website made the reference adequately accessible, given the evidence of actual dissemination through sales and commercial distribution. *See* PO Resp. 5–7; PO Sur-reply 2–3, 5–7. Nor are we persuaded by Patent Owner's contention that the cost of the Sourcefire 3D System was too high and, thus, a skilled artisan would not have been able to access Sourcefire. *See* PO Sur-reply 4. The cost did not prevent over 500 customers from actually obtaining Sourcefire by purchasing Sourcefire 3D System products. Moreover, there is no evidence in the record indicating that sales of the relevant Sourcefire products were restricted or limited to only certain customers, or that the cost[6] of acquiring a Sourcefire 3D System product was prohibitively high to the relevant artisans.

[6] The record includes evidence of a range of prices for various configurations of Sourcefire 3D System products, from $1,385 to £25,000. Ex. 1042, 1; Ex. 1043, 1. Based on Mr. Leone's testimony, Sourcefire would have been distributed with the purchase of any of these products.

Additionally, Patent Owner cites *In re Bayer*, 568 F.2d 1357 (CCPA 1978), arguing the prior art in *Bayer* (a thesis) was held not to have been publicly accessible despite actual distribution to faculty on a graduate committee reviewing the thesis. PO Sur-reply 3. In *Bayer*, the relevant issue was whether the appellant's "uncatalogued, unshelved thesis, by virtue of its accessibility to the graduate committee," constituted a printed publication. 568 F.2d at 1359. The Federal Circuit has clarified *Bayer*, explaining that the thesis was held not publicly accessible because "a work is not publicly accessible if the only people who know how to find it are the ones who created it," such as the faculty on the graduate committee reviewing and advising on student theses. *See Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1371–72 (Fed. Cir. 2019). Thus, *Bayer* is inapposite here, where Sourcefire was distributed to over 500 customers.

In summary, we find that a preponderance of the evidence establishes that Sourcefire was distributed commercially through sales of the Sourcefire 3D System to over 500 customers, including interested persons of ordinary skill, and that those customers were not subject to any restriction or expectation of confidentiality with regard to its use or further distribution. Therefore, we conclude that Sourcefire was publicly accessible, and that it constitutes prior art under § 102(b).

D. Alleged Unpatentability Under § 103(a)

A claim is unpatentable under § 103 if the differences between the claimed subject matter and the prior art are "such that the subject matter as a

Ex. 1005 ¶ 11 (testifying that Sourcefire was "included with each Sourcefire 3D System appliance (*e.g.*, 3D Sensor, Defense Center) sold to a customer").

whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

Additionally, the obviousness inquiry typically requires an analysis of "whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")); *see In re Warsaw Orthopedic, Inc.*, 832 F.3d 1327, 1333 (Fed. Cir. 2016) (citing *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006)).

1. Overview of Sourcefire

Sourcefire is a user guide for the Sourcefire 3D System, a system that provides "real-time network intelligence for real-time network defense." Ex. 1004, 32. The system operates via "3D Sensors" that can each run the Sourcefire "Intrusion Prevention System" (IPS), which allows monitoring of networks for attacks by examining packets for malicious activity. *Id.* at 33–34. Users can create custom "intrusion rules" to examine packets for attacks and manage the rules across all the 3D Sensors in the system through a centralized "Defense Center." *Id.* at 34, 254.

Intrusion rules can be "pass" rules, "alert" rules, or "drop" rules. *Id.* at 761. If a pass rule is met, the network traffic in question is ignored (and allowed to continue). *Id*. Conversely, if a drop rule is met, the packet is dropped and an "event" is generated. *Id*. Rules can be written based on "keywords" and their "arguments," i.e., the possible values of the keyword. *Id.* at 762–763.

The Sourcefire 3D System also features "preprocessors" that can facilitate processing of network traffic by identifying and decoding certain types of traffic, such as HTTP (hypertext transfer protocol) and SSL (secure sockets layer) traffic. *Id.* at 513–514. The SSL preprocessor, for example, can be used to identify encrypted traffic that IPS cannot analyze, thereby enabling IPS to ignore (pass) the encrypted packets and avoid wasting resources trying to inspect them. *Id.* at 596.

2. Independent Claim 1

Claim 1 recites a three-step method. According to Petitioner, Sourcefire teaches a computing system provisioned with a plurality of packet-filtering rules that receives first and second packets, as recited in the first step of claim 1, in its description of the Sourcefire 3D System applying intrusion rules to incoming network traffic. Pet. 40–42 (citing Ex. 1003 ¶¶ 135–139). Patent Owner does not dispute that Sourcefire teaches this limitation. Sourcefire discloses a system with 3D Sensors "us[ing] intrusion rules to examine the decoded packets for attacks based on patterns." Ex. 1004, 254. The packets are captured from the network packet stream by the 3D Sensor, which decodes them to enable its preprocessors and rules engine to inspect packet headers to determine whether any rules are

triggered. *Id*. at 257–259. We find that Sourcefire teaches the first step of the method of claim 1.

With respect to the second and third steps, Petitioner contends that Sourcefire teaches forwarding packets or dropping them, based on rules that indicate whether they should be forwarded or dropped, in its description of "pass" and "drop" rules that, when triggered, allow packets to continue to their destination or drop them, respectively. Pet. 42–45 (citing Ex. 1004, 761; Ex. 1003 ¶¶ 141–142, 150–151). Further, according to Petitioner, Sourcefire teaches that a pass or drop rule can be triggered by a determination that a packet's header indicates a particular TLS version. *Id.* at 43–44. Specifically, Petitioner asserts that Sourcefire teaches the crafting of intrusion rules using the "ssl_version keyword," which can be set to detect particular SSL or TLS versions. *Id.* (citing Ex. 1004, 597–601, 697–701, 827–828; Ex. 1003 ¶¶ 124–128, 142–144).

Patent Owner contends that Sourcefire fails to teach the second and third steps of claim 1 because Sourcefire does not teach any determination that a first or second packet "comprises data corresponding to a transport layer security (TLS)-version value." *See* PO Resp. 24–36. According to Patent Owner, Sourcefire instead teaches only determining whether a reconstructed *message* (and associated session) corresponds to a particular TLS version, not individual packets within that message. *See id.* at 24–25 (citing Ex. 2002 ¶¶ 77–78). Further, Patent Owner maintains that Sourcefire extracts TLS version information, before any intrusion rules are applied, from a reassembled handshake message. *Id.* at 25–28 (citing Ex. 2002 ¶ 82). Specifically, Patent Owner asserts that intrusion rules do not assess whether any packet comprises TLS version information but rather just receive that

information, which was previously extracted by an SSL preprocessor from the handshake message for the session. *Id.* at 26–27.

As an initial matter, even assuming *arguendo* that Patent Owner is correct that Sourcefire discloses only obtaining TLS version information from reconstructed TCP *messages*, we find that Sourcefire still teaches a determination that a *packet* comprises TLS version information. It is undisputed that such reconstructed messages consist of packets. *See* Tr. 35:4–6, 39:14–16; Ex. 1041, 161:22–162:10; Ex. 2001, 122:13–17. According to Patent Owner, the technology of the claimed invention "works because the [TLS version] information we're looking for is always going to be in the first packet." Tr. 35:6–8. In other words, as Patent Owner acknowledged, a person of ordinary skill would have understood that when TLS protocol is used, information about TLS version always is located in the packet header of the first packet in the message. *See id.* at 42:10–43:1; Ex. 1041, 194:17–23.

The sole difference in this regard between claim 1 and the teachings of Sourcefire, according to Patent Owner, is that claim 1 recites determining that a packet (e.g., the first packet of a message) comprises TLS version data, whereas Sourcefire teaches determining that a message comprises TLS version data *by extracting that data from the first packet of the message*. *See* Tr. 40:3–12. We find that a person of ordinary skill would have understood that, in both instances, the relevant data is located in the first packet of the message (e.g., a handshake message). Whether the system of Sourcefire itself recognizes that fact or deduces it is irrelevant; the relevant question is whether a *person of ordinary skill* would have been taught the recited determination (i.e., determining that a packet comprises TLS version data)

based on Sourcefire and his/her own knowledge. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) ("The test for obviousness is not . . . that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art."). Furthermore, as Petitioner notes (Pet. Reply 11–12), claim 1 does not require "inspection" of "application header values" of packets (*see* PO Resp. 22–23), and instead it broadly encompasses any method of making the recited determination.[7]

Additionally, we also are unpersuaded by Patent Owner's argument that the rules using the "ssl_version keyword" in Sourcefire do not teach the recited determination because the TLS version information was extracted earlier by the SSL preprocessor. PO Resp. 26–29; PO Sur-reply 12–13. This argument is not commensurate with the scope of the claim. Claim 1 recites a "determination . . . that the [first/second] packet comprises data corresponding to a [TLS version] for which one or more packet-filtering rules . . . indicate packets should be [forwarded/blocked]." The claim does not require that the determination be performed by the rule itself, or that the determination of the TLS version and whether it meets the criterion of the rule must be performed at the same time or by the same structure.

Instead, we find that a preponderance of the evidence supports Petitioner's view that Sourcefire teaches the recited "determination[s]" of

[7] To the extent Patent Owner contends that claim 1 should be limited by a particular example in the Specification of the '713 Patent, which purportedly describes "how to determine that a packet comprises" TLS version data (PO Sur-reply 10–11), Patent Owner has not persuasively explained why doing so is warranted, and we decline to read any such limitations into the claim. *See Superguide*, 358 F.3d at 875.

claim 1. We agree with Petitioner (Pet. 42–44) that Sourcefire teaches both "pass" (i.e., forward) and "drop" (i.e., block) versions of intrusion rules using the ssl_version keyword, which examines TLS version data. Ex. 1004, 761, 827–828; Ex. 1003 ¶¶ 141–144. As discussed above, Sourcefire describes obtaining the TLS version data from the first packet of a message using TLS protocol (e.g., a handshake message), and that data is provided to the rule engine applying the intrusion rules (*see* Ex. 1004, 827), thereby teaching a determination that the message—and, thus, the first *packet* of the message—corresponds to a TLS version that an intrusion rule indicates should be forwarded or blocked. Whether or not there are *other* packets that do not undergo such a determination is inapposite and outside the scope of claim 1. *See* PO Sur-reply 12; Tr. 37:7–17, 38:12–16.

We also find persuasive Petitioner's argument that, even after the handshake is completed to establish an encrypted session, Sourcefire teaches that each subsequent TLS-encrypted message in the session (and, thus, the first packet of each such message) can be assessed by the intrusion rules. *See* Pet. Reply 17–18. If the SSL preprocessor detects that the session is encrypted (i.e., it uses SSL or TLS protocol), IPS "can" be set to ignore (i.e., pass/forward) all packets in the session. *See* Ex. 1004, 597–599. As Petitioner notes, however, Sourcefire's disclosure that IPS "can" be set to do this indicates that it can also *not* be set to do this, i.e., the system can be set such that packets are *not* passed based solely on the fact that the session was determined to be a TLS session. *See* Pet. Reply 17–18. Consequently, we are unpersuaded by Patent Owner's argument that Sourcefire is deficient because it teaches only that TLS version for an entire session is determined solely by the handshake. *See* PO Resp. 25–27.

We further find that preponderant evidence establishes that Sourcefire teaches the forwarding or blocking of the packet (and message) responsive to the determination, as recited in claim 1. *See* Ex. 1004, 761. Patent Owner argues, however, that Sourcefire does not disclose blocking packets based on SSL/TLS version. PO Resp. 36–38; PO Sur-reply 15–16. Specifically, Patent Owner asserts that "Sourcefire vaguely references identifying, but **not** blocking, traffic using SSL version 2." PO Resp. 36–37 (citing Ex. 1004, 827). Patent Owner also faults Petitioner for failing to allege that Sourcefire makes such a disclosure rather than merely indicating Sourcefire "**could** have" been modified to block packets. *See* PO Sur-reply 15. The question, however, is not whether Sourcefire explicitly discloses an example of blocking packets based on SSL/TLS version, but rather whether Sourcefire would have taught or suggested doing so to a person of ordinary skill in the art. *See Keller*, 642 F.2d at 425. As discussed above, Sourcefire describes designing both pass and drop rules, and also describes the use of the ssl_version keyword in rules. *See* Ex. 1004, 761 ("For a *drop* rule . . . IPS drops the packet and generates an event."), 827–828. We find that these disclosures would have been sufficient to teach an artisan of ordinary skill to block packets based on the SSL/TLS version of the packet. *See* Ex. 1003 ¶¶ 141–144, 150–152.

Moreover, to the extent Patent Owner argues that a motivation is needed (and was not proven) to "modify" Sourcefire to teach the recited blocking of packets (PO Resp. 38; PO Sur-reply 15–16), we find that no "modification" would have been required. As discussed above, Sourcefire explains the use of the ssl_version keyword in designing rules based on TLS version information, and also teaches that rules can be drop rules that cause

packets to be dropped when triggered. Thus, designing drop rules that drop packets based on TLS version information would have constituted following the direct teachings of Sourcefire without "modification," and, thus, no additional "motivation" to modify Sourcefire would have been required. Moreover, even if we assume *arguendo* that such a motivation were required, we note that "the inferences and creative steps a person of ordinary skill in the art would employ" can supply a motivation to combine or modify teachings, and "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 401, 421. Based on the evidence of Sourcefire's teachings regarding this aspect of claim 1, we find that a person of ordinary skill would have been sufficiently motivated and informed by Sourcefire to design intrusion rules with the ssl_version keyword as discussed above. *See, e.g.*, Pet. 45 (citing Ex. 1004, 254, 435–439, 761; Ex. 1003 ¶¶ 150–151); *see also id.* at 30–32 (citing Ex. 1004, 762–763; Ex. 1003 ¶¶ 109, 112–116), 36–39 (citing Ex. 1004, 597–601, 697–701, 827–828; Ex. 1003 ¶¶ 124–128).[8]

For the above reasons and on the complete record after trial, we conclude Petitioner has shown that a preponderance of the evidence indicates that Sourcefire teaches each limitation of claim 1.

[8] Patent Owner argues that record evidence indicates that a skilled artisan would have been taught not to block data traffic using TLS version 1.0, despite known security vulnerabilities, because more secure versions of TLS protocol were not yet widely used. PO Resp. 37–38 (citing Ex. 2002 ¶ 95; Ex. 1037, 8). Claim 1, however, is not limited to blocking TLS version 1.0 packets, and we find that Sourcefire's teachings similarly encompass designing rules to pass or drop packets based on any TLS version.

3. Dependent Claims 2–7

Claims 2–7 depend from claim 1. The Petition sets forth arguments and evidentiary support for each of the claims. Pet. 45–57. Petitioner explains that Sourcefire discloses rules other than TLS version rules—including "5-tuple" rules based on protocol type, and source or destination IP addresses or ports—which teaches that a second portion of packets (as well as the first portion) can be filtered to be forwarded or dropped (based on such other rules) without applying the TLS version rule applied to the first portion of packets, as recited in claims 2–4. *Id.* at 46–50 (citing Ex. 1003 ¶¶ 154, 157, 160–161, 163, 165, 168, 171). The Petition also explains how Sourcefire discloses an "HTTP inspect preprocessor" that can detect HTTP methods such as GET, PUT, POST, and CONNECT, which teaches determining that a packet comprises data corresponding to such HTTP methods, as recited in claims 5 and 6. *Id.* at 50–55 (citing Ex. 1003 ¶¶ 174–180, 183). Petitioner further explains how a person of ordinary skill would have understood Sourcefire to teach determining that certain packets comprise data associated with Hypertext Transfer Protocol Secure (HTTPS), as recited in claim 7, by teaching that TCP port 443 (a standard HTTPS port) or TLS version value (indicating TLS data, which is also HTTPS data) can be used in designing and applying rules. *Id*. at 55–57 (citing Ex. 1003 ¶¶ 186, 187, 190). We agree with Petitioner's analysis and find that the cited evidence supports its contentions by a preponderance of the evidence that Sourcefire teaches all of the limitations of claims 2–7.

Patent Owner does not present any arguments specific to claims 5–7. With regard to claims 2–4, Patent Owner argues that Petitioner failed to show that "Sourcefire explicitly discloses applying the TLS-version value

packet-filtering rules recited in in the independent claims to a first portion of packets and not a second portion of packets," or "that a [person of ordinary skill] **<u>would</u>** have written such a rule." PO Resp. 41. Explicit disclosure is not, however, required for obviousness. Petitioner, in response, explains (Pet. Reply 21–24) how Sourcefire teaches applying different sets of intrusion rules to different groups of packets. *See* Ex. 1004, 259, 766–768. Patent Owner does not respond to this evidence. Upon reviewing the relevant arguments and evidence, we find Petitioner's position persuasive.

4. Claims 8–20

Independent claim 8 recites a system comprising a processor and a memory storing instructions that, when executed, perform substantially the same steps recited in claim 1. Similarly, claims 9–14 depend from claim 8 and recite limitations substantially the same as those of claims 2–7. The Petition explains how Sourcefire discloses that each 3D Sensor includes a processor, memory, and disk storage with the instructions that control the operations of the 3D Sensor. Pet. 57–58 (citing Ex. 1004, 33–34, 106–107; Ex. 1003 ¶ 192). Petitioner then relies on the same arguments and evidence as for claims 1–7 for the remaining elements of claims 8–14 that correspond to the limitations of claims 1–7. *Id.* at 57–62.

Independent claim 15 recites non-transitory computer readable media comprising instructions that, when executed, cause substantially the same steps recited in claim 1 to be performed. Similarly, claims 16–20 depend from claim 15 and recite limitations substantially the same as those of claims 2–7 (the limitations of claim 19 correspond to the limitations of both claims 5 and 6). Petitioner relies on the disk storage containing the instructions controlling the operation of a 3D Sensor as teaching the recited computer

readable media. *Id.* at 63 (citing Ex. 1004, 33–34, 106–107; Ex. 1003 ¶ 199). As with the system claims, Petitioner then relies on the same arguments and evidence as for claims 1–7 for the remaining elements of claims 15–20 that correspond to the limitations of claims 1–7. *Id.* at 62–67.

Patent Owner presents no arguments regarding these claims other than those for claim 1–4, discussed above. For essentially the same reasons as for claims 1–7, the arguments and evidence in the Petition are persuasive as to claims 8–20, and we find a preponderance of the cited evidence supports Petitioner's contentions that Sourcefire teaches each of the limitations of claims 8–20.

5. Secondary Considerations of Non-Obviousness

Before determining whether a claim is obvious in light of the prior art, we consider any relevant evidence of secondary considerations—i.e., objective indicia—of non-obviousness. *See Graham*, 383 U.S. at 17. Notwithstanding what the teachings of the prior art would have suggested to one of ordinary skill in the art at the time of the invention, the totality of the evidence submitted, including objective evidence of non-obviousness, may lead to a conclusion that the challenged claims would not have been obvious to one of ordinary skill. *In re Piasecki*, 745 F.2d 1468, 1471–72 (Fed. Cir. 1984). Patent Owner presents evidence of three such considerations: (1) long-felt but unmet need, (2) industry praise, and (3) commercial success/licensing. PO Resp. 42–53.

"In order to accord substantial weight to secondary considerations in an obviousness analysis, the evidence of secondary considerations must have a nexus to the claims, i.e., there must be a legally and factually sufficient connection between the evidence and the patented invention." *Fox Factory,*

Inc. v. SRAM, LLC, 944 F.3d 1366, 1373 (Fed. Cir. 2019) (internal quotations omitted). A nexus is presumed when "the patentee shows that the asserted objective evidence is tied to a specific product and that product 'embodies the claimed features, and is coextensive with them.'" *Id.* (quoting *Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1072 (Fed. Cir. 2018)). If the product is not coextensive with the claims at issue—e.g., if the patented invention is only a component of the product—the patentee is not entitled to a presumption of nexus. *See id.* (citing *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988)).

a. Long-Felt But Unmet Need and Failure of Others

According to Patent Owner, "the '713 Patent satisfied a long-felt need . . . namely, how to protect against '[a] category of cyber attack known as exfiltrations,'" which others had failed to meet. PO Resp. 44. With respect to nexus, Patent Owner asserts that the challenged claims "are applied on a packet-by-packet basis" and are "applied to individual packets" such that "time- and resource-intensive packet reassembly procedures" are unnecessary. *Id.* at 49–50 (citing Ex. 2002 ¶¶ 108–109); *see also* PO Sur-reply 18–19. Further, Patent Owner points to "leveraging [cyber threat intelligence] in a manner that applied TLS-version value criteria to only those packets meeting specified packet header criteria," and that the claimed techniques are "scalable." *Id.* at 45–46. Patent Owner also relies on a paper (the "ESG Paper") that praises Patent Owner's "RuleGATE" product while

identifying certain purported challenges to "operationalizing threat intelligence." *Id.* at 48–49 (citing Ex. 2006, 4).[9]

Patent Owner's nexus arguments and evidence, however, are insufficient to establish a nexus between the alleged long-felt but unmet need, and the claimed invention. First, no analysis is presented to demonstrate that the RuleGATE product is coextensive with any claim of the '713 Patent. Thus, Patent Owner is not entitled to a presumption of nexus. *See Fox Factory*, 944 F.3d at 1373. Second, insufficient analysis is presented to show that the evidence of a purported long-felt but unmet need is connected to the patented invention. Patent Owner does not adequately explain how the purported "packet-by-packet" nature of the claimed method specifically addresses the threat of exfiltrations. Nor does Patent Owner explain how "cyber threat intelligence" is related to any challenged claim, or how the patented invention achieves a "scalable" solution to exfiltrations. *See* Tr. 56:4–11 (Patent Owner acknowledging the claims do not require scalability or "larger rule sets" than prior devices). With respect to the "challenges" reported in the ESG Paper—i.e., "[l]ack of automation," "the inability to use feeds 'in a meaningful way to live network traffic,'" and "the ability to 'turn[] [cyber threat intelligence] into actionable insight'" (PO Resp. 48)—Patent Owner provides no analysis as to how the patented invention purportedly meets those challenges. Moreover, the paper praising

[9] Petitioner argues that the ESG Paper is not objective evidence of non-obviousness because it is a report commissioned and paid for by Patent Owner. Pet. Reply 24–25. We decline to disregard this evidence, or Dr. Orso's testimony about it, entirely. We find, however, that the nature and circumstances around the genesis of the ESG Paper diminish the persuasive weight it should be accorded.

Patent Owner's product identifies features contributing to the product's solutions that are not tied to any aspect of the challenged claims, such as "dynamically monitor[ing] for advanced threats using intelligence," and "converting indicators to rules that drive actions across the risk spectrum, i.e., logging, content capture, mirroring, redirection, shielding, and advanced threat detection." Ex. 2006, 7.

Therefore, we conclude that a nexus was not proven between the purported long-felt but unmet need(s) identified by Patent Owner and the patented invention of the '713 Patent.

b. Industry Praise

Patent Owner cites the ESG Paper (Ex. 2006) as well as a Gartner article (Ex. 2007) and an American Banker article (Ex. 2011) as evidence of industry praise. PO Resp. 50–52. Similar to its long-felt need contentions, however, Patent Owner does not provide sufficient analysis or explanation to establish the requisite nexus. Patent Owner again provides no analysis demonstrating that any Centripetal product is coextensive with the challenged claims, so no presumption of nexus is applied. *See Fox Factory*, 944 F.3d at 1373. Additionally, the cited praise of Centripetal products is not linked sufficiently to the challenged claims, including because Patent Owner failed to address lauded features with no relationship to the claims.

For example, Patent Owner cites the ESG Paper as praising the "high performance" of its product, its ability to process "hundreds of millions of indicators from thousands of feeds," "synthesizing into a network policy," "complex filtering rule[s]" with "at-least a dozen unique fields which had to be evaluated and applied bi-directionally and without state," etc. Ex. 2006, 7. None of these features appear to be in the challenged claims. Patent

Owner does not address whether they are part of the claimed invention or, if not, their relative contribution to the industry praise compared to any actual features of the claimed invention.

Regarding the Gartner article, Patent Owner notes that Gartner praises its product's "ability to instantly detect and prevent malicious network connections based on millions of threat indicators at 10-gigabit speeds," "the largest number of third-party threat intelligence service integrations," and using "5 million indicators simultaneously." Ex. 2007, 5; *see* PO Resp. 51. Again, insufficient analysis is presented to address how these features relate to the challenged claims. Patent Owner's reference to the American Banker article similarly suffers from a lack of explanation. *See* PO Resp. 51.

The only nexus explanation provided is a conclusory assertion that "the salutary benefits of Centripetal's [praised products] are made possible in large part by the '713 Patent's network layer, packet-by-packet, rule enforcement that foregoes deep inspection at the application layer." PO Resp. 51–52. Dr. Orso's testimony cited in support of this statement is merely a near-verbatim copy of this conclusory statement with no additional explanation. *See* Ex. 2002 ¶ 112; 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."). As a result, we find that Patent Owner has not established a sufficient nexus between the cited industry praise and the invention of the challenged claims.

c. Commercial Success and Licensing

Finally, Patent Owner contends that the commercial success of its RuleGATE product as well as a license to the '713 Patent taken by Keysight

Technologies are compelling secondary considerations of non-obviousness. PO Resp. 52–53. We disagree.

First, we note that the sole evidence cited for the commercial success of the RuleGATE product, a declaration by Mr. Jonathan Rogers of Centripetal, makes no mention whatsoever of the ’713 Patent. *See* Ex. 2016. Rather, the Rogers Declaration is testimony that was submitted in a different *inter partes* review challenging a different patent. *See id*. As such, there is no record evidence supporting any nexus between the matters in Mr. Rogers’ testimony on alleged commercial success and the ’713 Patent.

Second, as Patent Owner itself admits (PO Resp. 53), the Keysight license was a “worldwide, royalty-bearing, non-transferable, irrevocable, nonterminable, nonexclusive license to Centripetal’s worldwide patent portfolio.” Ex. 2012, 88. No information is provided about the relevant details of this license—e.g., how many patents comprise the portfolio, the relative contributions of the patents in the portfolio to the value of the license—such that we could discern whether Keysight took the license “out of recognition and acceptance of the subject matter claimed” in the ’713 Patent. *See In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). In fact, the record evidence indicates that this license was taken to settle litigation (Ex. 2012, 88), which diminishes its probative value as an indicator of non-obviousness. *See GPAC*, 57 F.3d at 1580. As such, we find that Patent Owner has not provided sufficient evidence to establish the requisite nexus between the Keysight license and the ’713 Patent. *See id*.

6. Conclusion as to Obviousness

As discussed above, Petitioner has shown by a preponderance of the evidence that Sourcefire teaches each limitation of each challenged claim.

We further determine that Petitioner's showing that the claims are taught by Sourcefire is very strong, particularly in comparison to Patent Owner's showing with respect to the asserted secondary considerations of obviousness. As discussed above, we find that Patent Owner has not established the requisite nexus between the challenged claims and *any* of the asserted secondary considerations. As such, we are unable to accord them any substantial weight. *See Fox Factory*, 944 F.3d at 1373. Therefore, in weighing the totality of the evidence of record and the strength of the parties' showings on the inquiries underlying the question of obviousness, we conclude that Petitioner has met its overall burden of proving by a preponderance of the evidence that each of the challenged claims would have been obvious in view of Sourcefire.

E. Motions to Exclude

1. Petitioner's Motion to Exclude (Paper 29, "Pet. Mot.")

Petitioner moves to exclude Exhibits 2003, 2005–2007, 2011–2013, and 2016. Pet. Mot. 2. Exhibits 2003 and 2005 did not form the basis for any aspect of this Decision. As such, Petitioner's Motion with respect to those exhibits is moot.

For Exhibit 2016, the Rogers Declaration, Petitioner asserts that it should be excluded under Rules 401, 402, 403, and 602 of the Federal Rules of Evidence. Pet. Mot. 10–11. We agree with Patent Owner that exclusion is unwarranted. Paper 33, 4–5. Mr. Rogers testifies in the Declaration about his position at Centripetal, his responsibilities ("overseeing all operations of the business"), and his familiarity with Centripetal's licensing practices. Ex. 2016 ¶ 3. We are satisfied that this testimony establishes sufficient personal knowledge of the subject matter of his testimony, which concerns

Centripetal's customers and its RuleGATE product. *See generally* Ex. 2016. Thus, we deny Petitioner's objection under Rule 602. With regard to Rules 401, 402, and 403, we note that Patent Owner relies on Exhibit 2016 to support its arguments for commercial success, which specifically note the alleged success of the RuleGATE product. PO Resp. 52. Although the Rogers Declaration addresses a different patent than the '713 Patent, its testimony regarding the RuleGATE product and Centripetal's customers generally meets the threshold for relevance, and its purported shortcomings as evidence go to its persuasive weight rather than its admissibility. We also discern no risk of unfair prejudice. Thus, Petitioner's objection under Rules 401, 402, and 403 also are denied.

With respect to Exhibits 2005–2007 and 2011–2013, Petitioner argues they should be excluded under Rules 401, 402, 403, 901, and as hearsay (under Rule 802). Pet. Mot. 7–9. We are not persuaded. Each of these exhibits is cited by Patent Owner as evidence supporting its arguments regarding secondary considerations of non-obviousness, including as evidence of industry praise and the existence of a relevant license. *See* PO Resp. 46–53. Although they may not identify the '713 Patent specifically (Pet. Mot. 7), we determine that they meet the threshold for relevance nonetheless, and we discern no risk of unfair prejudice, confusion, or waste of time. Regarding authentication, we note that the Declaration of Jeffrey H. Price (Ex. 2017) provides evidence of the source of each of these exhibits, and we find that this information along with the distinctive characteristics of the exhibits themselves (including dates, titles, publication names, etc.)

provide the necessary basis for authentication.[10] With respect to Petitioner's hearsay objections, we conclude first that Exhibits 2007 and 2011 are not hearsay because they are not relied on for the truth of the matters asserted. *See* Fed. R. Evid. 801(c). These exhibits are cited only as evidence of industry praise; their relevance lies in that they include statements from the industry allegedly praising Centripetal's invention, not in whether that praise is true or accurate. *See* PO Resp. 51. For the remaining exhibits, we deny Petitioner's hearsay objection under Rule 807 because we conclude that the totality of the circumstances provides sufficient indicia of trustworthiness—for example, these exhibits are contemporaneous documents by third parties produced for purposes that indicate their statements are likely reliable (e.g., Keysight's official Annual Report (Ex. 2012))—and these exhibits generally are highly probative on the points underlying Patent Owner's secondary considerations allegations (e.g., industry praise) compared to different evidence reasonably available to Patent Owner.

For the above reasons, we are not persuaded that any of these exhibits should be excluded and, thus, we deny Petitioner's Motion to Exclude.

2. Patent Owner's Motion to Exclude (Paper 30, "PO Mot.")

Patent Owner moves to exclude Exhibits 1010, 1011, 1013–1039, and 1044. PO Mot. 1. With the exception of Exhibit 1034, none of the other exhibits formed the basis for any aspect of this Decision. Thus, Patent Owner's Motion is moot as to those exhibits.

[10] We further note that Exhibits 2007 and 2011 are printed material purporting to be from news sources, which are self-authenticating under Rule 902(6).

For Exhibit 1034, Patent Owner objects on the basis of Rule 901. *Id*. We agree with Petitioner, however, that the distinctive characteristics of Exhibit 1034—e.g., the BusinessWire logo and trademarks, URL, date, and general appearance of the document—provide the necessary basis for authentication. *See* Paper 31, 7. We further agree that Exhibit 1034 is sufficiently akin to a newspaper or periodical article such that the exhibit is self-authenticating under Rule 902(6). *See id.* at 7–8.

For the above reasons, we are not persuaded that any of these exhibits should be excluded and, thus, we deny Patent Owner's Motion to Exclude.

CONCLUSION[11]

For the foregoing reasons, Petitioner has shown by a preponderance of the evidence that the challenged claims of the '713 Patent are unpatentable, as summarized in the following table:

Claims	**35 U.S.C. §**	**Reference(s)**	**Claims Shown Unpatentable**	**Claims Not Shown Unpatentable**
1–20	103(a)	Sourcefire	1–20	
Overall Outcome			1–20	

[11] Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. *See* 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the challenged claims of the ’713 Patent are held unpatentable as obvious under 35 U.S.C. § 103(a) in view of Sourcefire;

FURTHER ORDERED that Petitioner’s Motion to Exclude (Paper 29) is *denied* as set forth above;

FURTHER ORDERED that Patent Owner’s Motion to Exclude (Paper 30) is *denied* as set forth above;

FURTHER ORDERED that, because this is a final written decision, parties to the proceeding seeking judicial review of this Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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