

EXHIBIT 5

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conflict between the private IPv4 address assigned to the remote IPv4 node by its remote IPv4 network, and an assigned IPv4 address.” *Id.* at 3:20-25. Thubert-967 teaches that this configuration permits the private IPv4 nodes in different networks to communicate “across an IPv6 network without the necessity of tunneling protocols” *Id.* at 3:27-28.

8.7 Wainner

106. “Wainner” is a US Patent Application (Pub. No. 2007/0239891) to Wainner et al. titled “Method and Apparatus for Point-to-Multipoint Distribution Using Pseudowires.” CISCO-MON-EDT-00033472. The document lists a purported filing date of April 6, 2006. Luca Martini, whose deposition I have reviewed, is one of the named inventors.

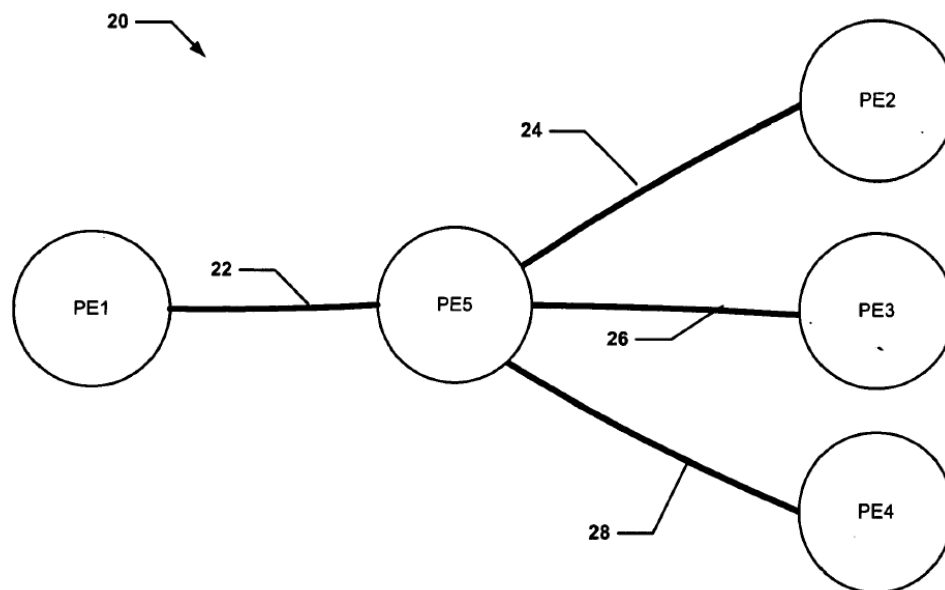
107. Wainner purports to solve a problem of prior multicast distribution methods that required “the transport provider to interact with the services plane.” *Id.* at 0004. It solves this by setting up one pseudo wire between the ingress router and the intermediate router, and setting up one pseudowire between the intermediate router and each egress router:

[0006] In a particular embodiment of a method for providing point-to-multipoint multihop distribution using Pseudowires (PWs), the method includes receiving data at a switching provider edge (S-PE) router from an upstream originating provider edge (O-PE) router by way of a first PW, the first PW having a head-end coupled to the O-PE and a tail end coupled to the S-PE. The method also includes replicating the data received by the S-PE to at least one receiver provider edge (R-PE) router by way of a respective PW for each of the at least one R-PE, each of the respective PW between the S-PE and the R-PE having a head end coupled to the SPE and a tail end coupled to the R-PE.

Id. at 0006.

108. This configuration is shown, for example, in Figure 2:

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Id. at Fig. 2.

109. Each black line depicted in Figure 2 (numbered 22, 24, 26, and 28) represents one single pseudowire. *Id.* at 0023. The same is true of Figures 3, 4, and 5. *Id.* at 0025-27. *See also* Martini Deposition at 34:19-35:13.

110. Contrary to Dr. Jeffay’s opinion (*see, e.g.*, Jeffay Report ¶ 1323), Wainner does not disclose any multi-segment pseudowires. This term does not appear in Wainner, and the concept of multi-segment pseudowires is never mentioned or even alluded to. Likewise, Wainner does not disclose the concept of shared links. Each connection between routers in Wainner consists of at most one pseudowire, and there are no links shared by more than one pseudowire.

8.8 P2MP Draft

111. The document that Dr. Jeffay refers to as “P2MP Draft” is a Microsoft Word document titled “Use Cases and signaling requirements for Point-to-Multipoint VPWS.” CISCO-MON-EDT-00032418. Dr. Jeffay alleges that this document was attached to an email sent from Luca Martini to Frederic Jounay on February 20, 2007.

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11.2 Wainner Does Not Anticipate the Asserted Claims

764. Dr. Jeffay opines that Wainner anticipates asserted claims 1 and 6 of the ’775 Patent. Jeffay Report at ¶¶ 1380-1407.

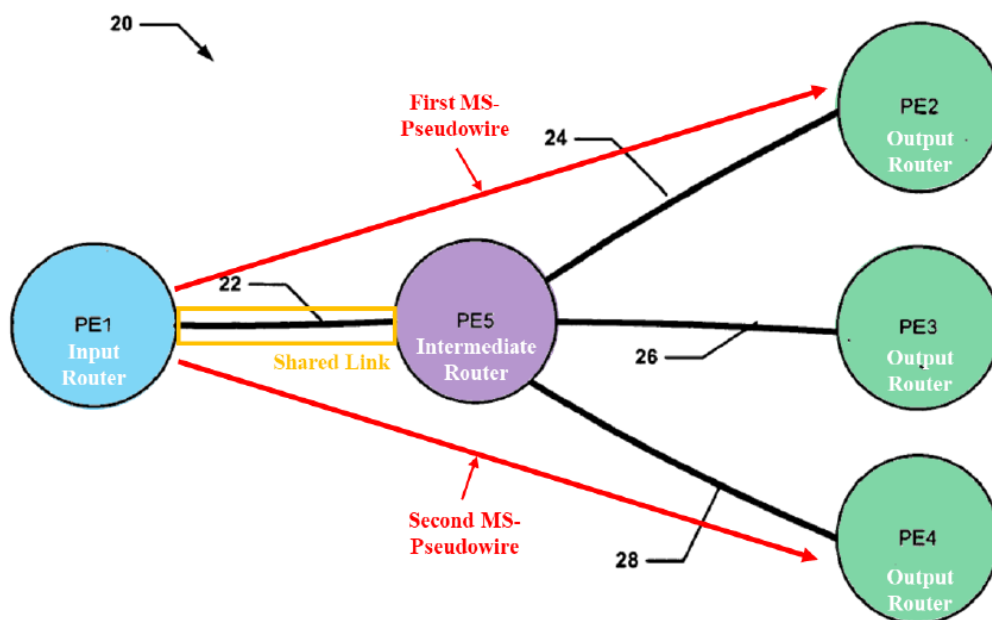
765. I respectfully disagree with Dr. Jeffay. Wainner does not anticipate or render obvious any asserted claim.

11.2.1 Missing Limitations

766. Wainner fails to disclose many limitations of ’775 Patent claims 1 and 6.

767. *First*, Wainner does not disclose “setting up at least two pseudo-wires able to broadcast a data stream.” ’775 cls. 1 and 6.

768. Although Wainner does disclose pseudowires, it does not disclose the “two pseudowires” that Dr. Jeffay argues are present. Dr. Jeffay says “a POSITA would have understood that the P2MP pseudowire in Figure 2 is set up using multiple multi-segment (MS) pseudowires, including (1) a first MS pseudowire connecting the input router PE1 and the output router PE2 and (2) a second MS pseudowire connecting the input router PE1 and the output router PE4.” Jeffay Report at ¶ 1384. Dr. Jeffay also supplies the following version of Figure 2 of Wainner, which he has modified and annotated:



Id. at ¶ 1383.

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779. As I explained above, Wainner does not disclose any multi-segment pseudowires, and it therefore does not disclose the multi-segment pseudowire that Dr. Jeffay alleges is the “second pseudo-wire.”

780. As I explained above, each pseudowire in Wainner consists of a single “hop” connecting an ingress or egress router to the intermediate router. None of the pseudowires comprise more than one link, and none of the pseudowires go all the way from an input router to a first output router.

781. Because Wainner does not disclose first and second pseudowires as recited in ’775 claims 1 and 6, it also does not disclose a “first link being shared by the first and second pseudo-wires.”

782. However, just for the sake of discussion, let us assume it is true that PW 22 is shared between two MS-PWs as Dr. Jeffay claims. Even if this were true (it is not), in order for a link to be “shared” by two pseudo-wires, there must be two pseudowires traversing that link. Dr. Jeffay only identifies one pseudowire (PW 22) that allegedly traverses the link between PE1 and PE5. *See also* Martini Deposition at 34:19-22 (“Q. The line marked 22 is one pseudowire; is that true? It's not more than one? A. It's one, that's correct.”). As such, even if there were MS-PWs present in Wainner (which there are not), the link between PE1 and PE5 would still only include one pseudowire 22, and that link is not shared by any other pseudowires.

11.3 P2MP Draft Does Not Anticipate the Asserted Claims

783. Dr. Jeffay opines that P2MP Draft anticipates asserted claims 1 and 6 of the ’775 Patent. Jeffay Report at ¶¶ 1408-64. He alleges that “P2MP Draft qualifies as prior art under at least 35 U.S.C. §§ 102(a) and (b).” *Id.* at ¶ 1324.

784. I respectfully disagree with Dr. Jeffay. P2MP Draft does not qualify as prior art to the ’775 Patent, and even if it did, it would not anticipate or render obvious any asserted claim. First, P2MP Draft does not qualify as prior art because Dr. Jeffay has not adequately identified it.

785. I understand that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in **a single prior art reference.**”