

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and FORTINET, INC.,
Petitioners,

v.

INFOEXPRESS INC.,
Patent Owner.

IPR2024-00677
U.S. Patent No. 8,578,444

PATENT OWNER SUR-REPLY

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EXHIBIT LIST

Exhibit Number	Description
2001	Declaration of Dr. Eric Cole
2002	Curriculum Vitae of Dr. Eric Cole
2003	Declaration of Stacey C. Lum
2004	Diligence Calendar
2005	U.S. Provisional App. No. 60/505,582
2006	U.S. Provisional App. No. 60/513,080
2007	Declaration of Hugh Smith, Ph.D.
2008	Curriculum Vitae of Hugh Smith, Ph.D.
2009	Conception of the '444 Patent
2010	Constructive Reduction to Practice of the '444 Patent
2011	LAN Based Policy Enforcement Engineering Specification
2012	Metadata for Exhibit 2011
2013	CyberGatekeeper Policy Manager
2014	Metadata for Exhibit 2013
2015	Internal InfoExpress Correspondence
2016	Internal InfoExpress Correspondence
2017	Internal InfoExpress Correspondence
2018	Internal InfoExpress Correspondence
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2022	Correspondence with Globe Tech
2023	Email attachment to Exhibit 2022
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2025	Correspondence with Meetinghouse
2026	Draft Meetinghouse Agreement
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2032	Internal InfoExpress Correspondence
2033	Draft Meetinghouse Agreement
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2035	Draft Meetinghouse Agreement

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2036	Internal InfoExpress Correspondence
2037	Draft Meetinghouse Agreement
2038	Draft Meetinghouse Agreement
2039	Internal InfoExpress Correspondence
2040	Draft Meetinghouse Agreement
2041	Draft Meetinghouse Agreement
2042	Draft Meetinghouse Agreement
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2044	Internal InfoExpress Correspondence
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2048	Correspondence with Globe Tech
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2056	Draft Globe Tech Agreement
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2064	Draft Globe Tech Agreement
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2071	Correspondence with Globe Tech
2072	Network Device Configuration API Engineering Specification

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2073	Network Device Configuration API Engineering Specification
2074	Correspondence with Globe Tech
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2077	Correspondence with Globe Tech
2078	Correspondence with Globe Tech
2079	Email attachment to Exhibit 2078
2080	Correspondence with Globe Tech
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2108	Internal InfoExpress Correspondence
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2110	Correspondence with Globe Tech
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2112	Correspondence with Globe Tech
2113	Internal InfoExpress Correspondence
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2115	Email attachment to Exhibit 2114
2116	Correspondence with Globe Tech
2117	Internal InfoExpress Correspondence
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2161	Correspondence with J. Ong
2162	Correspondence with Globe Tech
2163	Correspondence with C. Tsai
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2200	Correspondence with J. Ong
2201	Cisco Switch Feature Support Matrix
2202	Correspondence with M. Banin
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2273	Correspondence between S. Lum, J. Ong, C. Tsai and A. Lee
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2281	Correspondence between T. Nakano and S. Lum
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2285	Correspondence between S. Lum and corporate counsel
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2327	Draft Patent Application
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2329	CyberGatekeeper Enforcement Modes
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2406	Correspondence with Globe Tech
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2410	Correspondence with Globe Tech
2411	Tim Greene, InfoExpress Simplifies Security Devices, NetworkWorld (Dec. 6, 2004), available at https://www.networkworld.com/article/875004/lan-waninfoexpress-simplifies-security-devices.html
2412	InfoExpress's Objections and Responses to Cisco's First Set of Interrogatories (Nos. 1-12), served in InfoExpress Inc. v. Cisco Systems, Inc., Case No. 4:23-cv-2698-YGR (N.D. Cal.).
2413	Cisco Systems, Inc., Network Admission Control White Paper (2004).
2414	Correspondence with Cisco
2415	Email attachment to EX2414
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2422	Correspondence with Cisco
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2424	Email Attachment to EX2423
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2427	Declaration of Aaron R. Striegel, PhD
2428	Intentionally Left Blank
2429	Declaration of Yuhshiw Alice Lee
2430	LAN Based Policy Enforcement Engineering Specification
2431	Metadata for EX2430
2432	LAN Based Policy Enforcement Engineering Specification
2433	Metadata for EX2432
2434	Internal InfoExpress Correspondence
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2436	Additional Metadata for EX2011

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2437	LAN Based Policy Enforcement Engineering Specification
2438	Metadata for EX2437
2439	Internal InfoExpress Correspondence
2440	Internal InfoExpress Correspondence
2441	Internal InfoExpress Correspondence
2442	Internal InfoExpress Correspondence
2443	Design Specifications
2444	Design Specifications
2445	RADIUS Protocol Spoofing Vulnerability (Blast-RADIUS) July 2024
2446	Tim Greene, Deceiving Ciscos NAC (April 3, 2007)
2447	Hasham Ud-Din Qazi, Comparative Study of Network Access Control Technologies
2448	Thumann and Rocher, Hacking the Cisco NAC Framework Blackhat USA 2007 Whitepaper
2449	Deposition of Henry Houh, December 4, 2024
2450	Dkt 121 – Claim Construction Order dated September 25, 2024 [InfoExpress, Inc. v, Cisco Systems, Inc. [4:23-cv-02698-YGR]
2451	Mobile Agent Deployment Guide
2452	Reference Manual
2453	Server User’s Guide
2454	CGX 2.3 – Standalone Guide
2455	CGX 2.2 Complete Guide
2456	CGX Appliance Specifications
2457	Solutions Guide
2458	Intentionally Left Blank
2459	CGX Access Deployment Guide
2460	Installation Guide v9.0
2461	About CGX
2462	CGX 1.0 Frequently Asked Questions
2463	CGX Access - Frequently Asked Questions
2464	CGX Access Guide
2465	Solutions Guide
2466	CGX 2.2 Complete Guide
2467	Solutions Guide
2468	Installing CGX
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2470	Correspondence with Cisco
2471	Internal InfoExpress Correspondence
2472	Cisco Announces Continued Momentum within Network Admission Control Industry Initiative
2473	Correspondence with Cisco
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2502	Protected Network, ScienceDirect Topics
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2505	Correspondence with Cisco
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2519	NAC2 Beta Deployment Guide
2520	Internal InfoExpress Correspondence
2521	U.S. Patent No. 5,987,611
2522	Request for Comment: 2865
2523	Internal InfoExpress Correspondence
2524	Winning with CyberGatekeeper from InfoExpress
2525	Tim Greene, Burning NAC questions – Part 2, Network World (Oct 17, 2007)
2526	Paul Roberts, Black Hat: NAC Solutions Vulnerable to Attack, ComputerWorld (Aug 3, 2006)
2527	Correspondence with Cisco
2528	Memorandum re: Product Announcement
2529	LAN Technology PowerPoint
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2531	Product Guidelines
2532	Technical File Information
2533	Project File
2534	Project File
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Exhibit Number	Description
2539	Project File
2540	Project File
2541	Technology Overview
2542	Policy Manager Reference Manual
2543	CGS Reference Manual
2544	LAN Enforcement Module Reference Manual
2545	EAP Enforcement Module Reference Manual
2546	8021X Authentication Procedures
2547	Internal InfoExpress Correspondence
2548	Correspondence with Cisco
2549	Cisco Release Notes
2550	Cisco Trust Agent Administrator Guide
2551	Internal InfoExpress Correspondence
2552	NAC AVP Specification
2553	NAC Architecture Overview
2554	HCAP
2555	Correspondence with GTI
2556	Engineering Specifications
2557	LAN Based Policy Enforcement Components
2558	LAN Based Policy Enforcement Engineering Specifications
2559	LAN Based Policy Enforcement Engineering Specifications
2560	LAN Based Policy Enforcement Components
2561	LAN Based Policy Enforcement Engineering Specifications
2562	LAN Based Policy Enforcement Engineering Specifications
2563	LAN Based Policy Enforcement Components
2564	Supplemental Declaration of Stacey Lum
2565	Supplemental Declaration of Dr. Eric Cole
2566	Tanenbaum Excerpts
2567	IEEE 802.1x (2001)
2568	InfoExpress's Objections and Responses to Cisco's Second Set of Interrogatories (4/11/2024)
2569	Intentionally Left Blank
2570	Intentionally Left Blank
2571	Intentionally Left Blank
2572	Intentionally Left Blank
2573	Deposition of Henry Houh, January 8, 2025

I. INTRODUCTION

Petitioner's Reply rehashes rejected issues and fails to engage with the majority of evidence showing Krantz and Herrmann are not prior art, and even if they were, there would be no motivation to combine them.

II. PETITIONER'S PRIOR-ART ARGUMENTS WERE REPEATEDLY REJECTED, AND ITS NEW ONES ARE PROCEDURALLY IMPROPER AND LACKING.

A. The Reply merely repeats Krantz "auditing" arguments which were serially rejected by the Board and Director (Claims 1, 5-7, 12, and 22).

The Petition relies *solely* on Krantz for the "method for auditing," "re-auditing," and "updated audit data" for claims [1.0] (Pet. 20-24), [22.0] and [22.8] (Pet. 86-88).¹ Petitioner agrees claims 5-7, 12, and 22 rise and fall with its Krantz "auditing" position. Reply at 10.

Krantz's authentication cannot be auditing. The Board and Director agree. IPR2025-00540, Paper No. 13 at 12-14; IPR2024-00678, Paper No. 14 at 15; IPR2025-00540, Paper No. 15; IPR2024-00678, Paper No. 16. Even Petitioner

¹ Krantz is the sole prior art reference. It is too late for Petitioner to advance new art combinations. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed.Cir. 2016) ("[W]e find no support for the PTO's position that the Board is free to adopt arguments on behalf of petitioners that could have been, but were not, raised by the petitioner during an IPR.").

agrees: “device auditing...is **decidedly distinct** from the separate ‘authentication’ of a ‘user.’” *InfoExpress Inc. v. Cisco Systems, Inc.*, Case No. 4:23-cv-02698-YGR, Dkt. 111 (N.D. Cal. Aug. 23, 2024). Between the Board and Director, Petitioner's Krantz “auditing” position has been rejected four times. The Reply has no answer for this. It just re-raises these already-rejected arguments:

Petitioner Reply Argument	Board / Director Rejection
“Accordingly, Krantz discloses authenticating a user of a device (‘auditing a device’) and collecting usernames and passwords (‘audit data’).” Reply at 2.	[Board rejection] “We agree with Patent Owner. The ’350 patent distinguishes between user authentication using a username and password and application of a security policy.” IPR2024-00540, Paper No. 13 at 12; <i>see</i> IPR2024-00678, Paper No. 14 at 13.
“Second, Krantz also discloses ‘auditing’ via machine/client device authentication through use of EAP messages .” Reply at 2.	[Board rejection] “ But Krantz teaches that EAP relates to the authentication of a user through ‘a User-Identifier’ to determine whether ‘a user of client 205 has an account with server 215.’ As noted above, however, according to the ’350 patent, user authentication and application of a security policy are separate processes.” IPR2024-00540, Paper No. 13 at 13 (quoting EX1105 ¶ 71). [Director rejecting Petitioner argument that]: “[T]he Petition includes evidence that demonstrates that Krantz audits... based on ‘audit data’ related to the device, such as operating system credentials, machine information, authentication protocols, and encryption protocols.” IPR2024-00540, Paper No.

	14 at 15 (request), Paper No. 15 (denial).
“Third, Krantz also discloses ‘configuration requirements’ as part of ‘auditing a device.’” Reply at 3. “For example, Krantz discloses that access to the network can be controlled by ‘configuration settings’ including supported types of encryption and authentication techniques.” <i>Id.</i>	“Petitioner first argues that Krantz teaches applying a security policy because Krantz discloses ‘that access to the network may be controlled by ‘configuration settings,’ which can include ‘supported types of encryption’ or ‘supported types of authentication,’ which can include an indication for EAP.... But Krantz teaches that EAP relates to the authentication of a user through ‘a User-Identifier’ to determine whether ‘a user of client 205 has an account with server 215.’” IPR2024-00540, Paper No. 13 at 13 IPR2024-00540, Paper No. 14 at 9-10, 14-15 (“configuration settings” argument; rejected in Paper No. 15). IPR2024-00678, Paper No. 15 at 3, 9-11 (same; rejected in Paper No 16).

No matter how many times Petitioner tries, Krantz does not teach “auditing.” Petitioner’s Reply for claim 22 [22.8]—which relies solely on Krantz—illustrates the contortion. Claim 22 recites: “updated audit data” and “re-auditing” the device. EX1201, cl. 22. The Reply tries to reconstrue Krantz’s “re-authentication” as meaning “re-auditing.” Reply at 10. No reasonable claim construction could make that true. Because claims 1, 5-7, 12, and 22 rise and fall on the Krantz “auditing” issue, they are not unpatentable.

B. Petitioner’s position on “configuring the access point” is incorrect. (Claims 2–7 and 22).

On Reply, Petitioner only presses two mappings.²

Mapping #2

On Reply, Petitioner belatedly changes its argument. The Petition argued exclusively that “configuring the access point” was met by Krantz’s tag headers. Pet. 62-63. But inserting tag headers into client data does not constitute “configuring the access point.” See POR at 18-20 (citing EX2565, ¶¶75-81).

Recognizing the tag-header weakness, Petitioner tries a new theory that Krantz’s “Server 215 can send commands to access point 209 to cause access point 209 to enable protocols and cause access point 209 to insert appropriate Tag Headers.” Reply at 4-5. Petitioner's shift from tag header insertion to enabling protocols for “configuring” is procedurally improper. *Wasica Finance v. Continental Automotive*, 853 F.3d 1272, 1286-87 (Fed. Cir. 2017); *Samsung Elecs. Co. v. Resonant Sys., Inc.*, IPR2023-00993, Paper No. 48 at 38-39 (PTAB Jan. 8, 2025).

Even the new “protocol” theory fails to establish the "configuring" limitation. Krantz specifies these “protocols” are SMTP or DHCP protocols. EX1205, ¶23

² Mapping #1 has been consistently rejected by the Board. *E.g.*, IPR2024-00539, Paper No. 13 at 15.

(“The access point may also enable communication using other currently blocked protocols, such as, for example, Simple Mail Transfer Protocol (‘SMTP’) and Dynamic Host Control Protocol (‘DHCP’).”). These protocols merely “enable communication.” They have nothing to do with “configuring the access point” to redirect data. EX2573 at 132:4–11 (“[A] user may open up a particular file and enter those things manually. Sometimes they can be done automatically through use of various protocols, *such as DHCP, which can provide both an address and a gateway address and other networking parameters* so that the -- a computer can automatically be configured.”), 138:7–17. Nothing in swapping out DHCP or SMTP “protocols” constitutes a “change in the instructions provided to a communication port of an access point so that data is transferred to VLAN C instead of VLAN B.” Reply at 4.

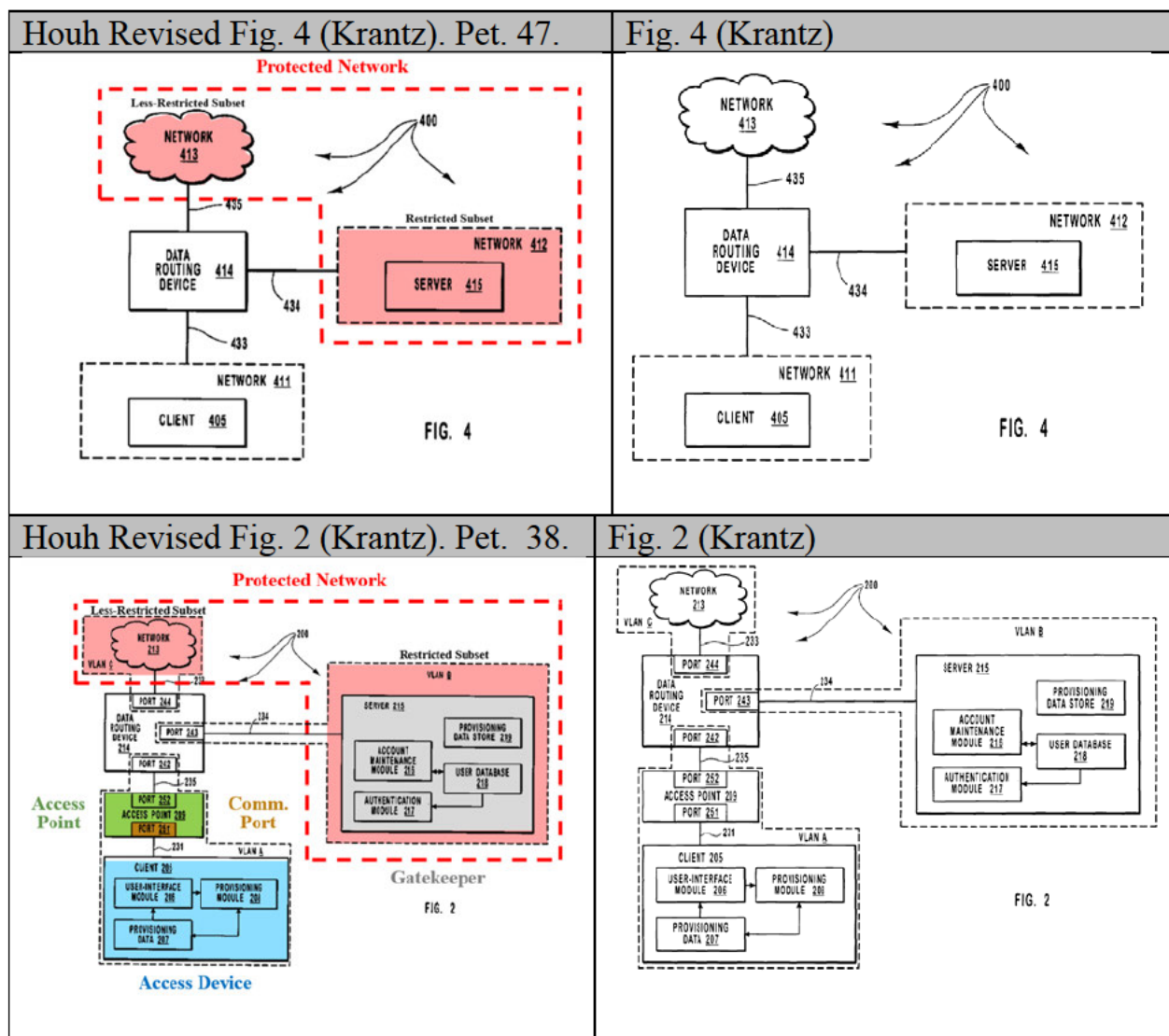
Mapping #3

Petitioner next argues one could combine the functionality of the Data Routing Device 214 and the Access Point 209 from Krantz in a single device. Reply at 6-7. As discussed for Mapping #2, regardless of whether Krantz’s Data Routing Device and Access Point are combined or separate, Petitioner relied on changing the Tag Header in the client data frame, which is not “configuring” of the access point.

C. Krantz does not disclose a “less restricted subset of the network.” (Claim 6, 22).

Petitioner tries to defend its freeform annotations of Krantz. Reply at 9. Regardless of Petitioner’s spin, Krantz undeniably lacks the "protected network" imagined by its expert, and certainly not as claimed in the 444 Patent.

InfoExpress provided in its POR the following tables juxtaposing Petitioner's renditions with Krantz's actual figures.



Rather than rely on what the Krantz figures depict in their original form, Houh groups disparate elements and adds a "protected network" label not found in Krantz. How Houh's edits are characterized is immaterial. The salient fact is, contrary to Petitioner, Krantz's unadulterated disclosures never state either of "Network 213" in combination with "Network 215" or "Network 413" in combination with "Network 412" is a "protected network."

Instead, Krantz expressly describes them as separate networks. Krantz states "FIG. 4 illustrates generally an example of network architecture 400 that can provide access to a **first network** while restricting access to a **second network**." EX1205, ¶¶30&50. Similarly, for Figure 2, Krantz states "data routing device 214 is connected to network 213, server 215 and access point 209 by corresponding logical communication links 233, 234, and 235 respectively." *Id.*, ¶60; EX2565, ¶¶88-89.

D. "Provisioning files" are not responsive to a security policy. (Claim 17).

As to claim 17's recitation of "bringing a software on the device up to date in response to applying the security policy," Petitioner cites Krantz's disclosure of "provisioning files." Reply at 10-11 (citing EX1205, ¶¶ 32,56,&78). But Petitioner's expert Houh explained Krantz's "provisioning" is directed to compatibility or "setting up" a system; they are not responsive to or related to any security policy. EX2573 at 130-31 (Houh: "Provisioning often refers to kind of **setting up a system** in a way for a particular device..."); *Id.* at 136-37 ([Houh] "... then there may be

some specific configuration required on a device as I -- an example that I described earlier about connecting say a Windows or UNIX device to an IP network where configuring it you have to -- **may include editing certain files, manually entering some data, or using the appropriate protocol that automatically gets certain parameters.**)."

This is not responsive to a security policy. To be sure, the Board already explained Krantz does not “teach[]the step of auditing the device in accordance with a security policy.” IPR2024-00540, Paper No. 13 at 13-14.

E. Petitioner has not refuted InfoExpress’s evidence showing no motivation to combine Krantz and Herrmann.

Petitioner responds to InfoExpress's arguments that a POSITA would not have combined Krantz and Herrmann to arrive at the claimed invention with little more than boilerplate recitations of the law and the unfounded claim InfoExpress is attacking the suitability of Krantz and Herrmann individually. Reply at 11-13.

InfoExpress explained in the POR why a POSITA would not have been motivated to combine Krantz and Herrmann. POR at 34-40. Petitioner largely does not dispute InfoExpress's assertions about the prior disclosures, and instead merely disagrees with InfoExpress's conclusion.

Regarding the disparate goals of Krantz and Herrmann, Petitioner doubles-down on the Krantz “auditing” argument. Reply at 11-12. As addressed, this was already rejected. Petitioner recasts InfoExpress's argument as premised on "user"

versus "client" (device) authorization—but this is a strawman. InfoExpress did not suggest a POSITA would not combine Krantz and Herrmann because Krantz was limited to "user" authentication, but rather because Krantz was limited to "authentication," period, and said nothing about auditing. POR at 32-34. Next, Petitioner asserts without any evidentiary support "authorization" somehow equates to device **auditing**. Reply at 12. The Board and the Director found otherwise in related proceedings. *E.g.*, IPR2024-00540, Paper No. 14 at 8, 9 (request); Paper No. 15 (rejection).

Regarding the technical incompatibility of the conceptual approaches of Krantz and Herrmann and Herrmann's (related) teaching away of combining a client-side system with Krantz's server-side system, Petitioner offers nothing but general disagreement. Petitioner provides no evidence to counter InfoExpress (including Cole's testimony) regarding how a POSITA would not have been motivated to combine server-side and client-side approaches due, *e.g.*, to differing capabilities and aims. POR at 38-40 (citing EX2565, ¶¶149-50). Petitioner's failure to refute Cole's explanation of technical barriers working against motivation to combine Krantz and Herrmann at the relevant time is particularly glaring in view of its expert's claim it would have been a simple matter to combine Krantz and Herrmann—a claim Dr. Houh does not support with evidence. EX1203, ¶52. Houh's *ipse dixit* declaration is insufficient. *TQ Delta, LLC v. Cisco Systems, Inc.*, 942 F.3d

1352, 1362-63 (Fed.Cir. 2019) (reversing Board's obviousness determination based on "conclusory statements and unspecific expert testimony" as "unsupported by substantial evidence").

Petitioner reliance on *Allied Erecting & Dismantling Co. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed.Cir. 2016) is inapposite. In *Allied*, design and structural changes necessary to combine the features of the cited references did not render the challenged claims nonobvious. The Board noted, however, a POSITA would have been motivated to maintain a simplified mounting and disassembly with side walls so jaws can be “disassemble[d] in a simple manner.” *Id.* *Allied* provides no guidance to the facts here, where it is unrebutted necessary modifications of Krantz vis-à-vis Herrmann would be far from simple. POR at 32; EX2565, ¶¶ 115-35. Cole's testimony regarding the differing capabilities and aims of server-side and client-side approaches that would cause a POSITA to not pursue the approach of the Challenged Claims renders them non-obvious, and Houh fails to provide any contrary evidence.

III. PETITIONER DOES NOT DISPUTE MUCH OF OBJECTIVE EVIDENCE OF NON-OBVIOUSNESS

Dozens of secondary-considerations exhibits show why Krantz and Herrmann cannot be combined. Petitioner only addresses two of them—EX2422 and EX2470:

Patent claim limitation	Supporting Evidence	Type(s)	Challenge Citation
“applying a security policy that includes at least one requirements pertaining to the audit data . . .” “wherein the request includes a request for audit data pertaining to an application” “wherein the received audit data includes information that concerns operating system of the device”	EX2420-2421	Copying	
	EX2422	Failure, praise	Pet. Reply at 17
	EX2423-2424	Failure, praise	
	EX2446	Failure	
	EX2447	Failure	
	EX2469	Failure	
	EX2470	Praise	Pet. Reply at 17
	EX2471	Failure, praise	
	EX2477-2478	Copying	
	EX2479; EX2480 at 6, 8; EX2481	Failure, praise	
	EX2482-2484, EX2489-2492	Failure, praise	
	EX2493-2495	Copying	
	EX2496–EX2501	Copying	
	EX2503–EX2507 inc. EX2504 at 9-11	Failure, praise, copying	
	EX2508–EX2517	Copying	
	EX2519	Copying	
	EX2526	Failure	
	EX2527	Failure, praise	
	EX2530-2540, EX2550-2554	Copying	
	EX2547	Failure, praise	
	EX2548	Failure	
“updated audit data” and “continuing to receive at the gatekeeper, from the agent, audit data pertaining to the device	EX2525	Failure	
	EX2447 at 96	Failure	
	EX2541 at 2, 14	Copying	
	EX2529 at 6	Copying	

after the configuring of the access point”	EX2496–2501	Failure, praise, copying	
	EX2519	Copying	

As shown, most of the evidence is undisputed including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. EX2527.

A. Nexus

Having no dispute to the nexus evidence,³ Petitioner conjures an “incorporation by reference” procedural issue. Reply at 15-16. But the POR consistently demonstrates *how* CG LAN practiced claim limitations, and *how* the technical documents supported that. *E.g.* POR at 48-49 (EX2478 showing the CG LAN “receiving audit data at a gatekeeper” and “applying a security policy.”), 49-

³ Nexus is typically shown by: (1) showing a specific product “embodies the claimed features and is coextensive with them,” or (2) “showing the objective evidence is the direct result of the unique characteristics of the claimed invention.” *Volvo Penta of the Ams., LLC v. Brunswick Corp.*, 84 F.4th 1202, 1201 (Fed.Cir. 2023) (cleaned up). InfoExpress demonstrated nexus both ways; Petitioner’s procedural challenge is only to the first.

52 (EX2480 showing “audit data” and “bringing a software on the device up to date”), 52–54 (Partner Solution Brief EX2482–24824 and EX2423–2424 showing same), 55-57 (VM demo of the CG LAN in EX2496–2501 showing “applying a security policy,” and “receiving ... updated audit data ... after configuring the access point”), 57–62 (PowerPoint in EX2504 showing applying a security policy).

The same is true for other technical documents showing CG LAN covered by InfoExpress’s other patents. *See* POR at 41: EX2451-EX2457 and EX2459-EX2468)). *E.g.*, EX2452 at 7-12 (“auditing a device” and “applying a security policy”); EX2455 at 206-11 (same), 243 (remediation), 263-270 (auditing); EX2459 at 155 (remediation).

In addition, Striegel’s expert testimony shows that CG LAN embodied the claims. POR at 44–45 (Striegel, ¶¶49-51) (“applying a security policy”), 49–51 (noted above and citing Striegel, ¶¶65-66), 52–54 (arguing how InfoExpress’s CG LAN practiced “applying a security policy,” “audit data,” including that pertaining to an “application” and/or “concerning an operating system,” and remediation; supported by Striegel ¶70), 55–58 (“applying a security policy” and (2) “receiving ... updated audit data ... after configuring the access point.”, and supported by Striegel, ¶¶67–69, 72-78). Additionally, Striegel’s analysis—contained within the POR—showed how these embodied claim elements were copied into Cisco’s CNAC2. POR at 62-65 (citing Striegel, ¶¶80-83, and analyzing EX2519).

Accordingly, InfoExpress's nexus arguments are proper. *PPC Broadband, Inc. v. Corning Optical Commcn's*, 815 F.3d 734, 746-47 (Fed.Cir. 2016) (deeming sufficient nexus arguments in *Corning Optical Commcn's v. PPC Broadband, Inc.*, IPR2013-00340, Paper No. 33 at 55 (PTAB March 26, 2014)).

Further, Petitioner never probed Striegel's nexus analysis. Nor do they point to any other evidence that rebuts his conclusions on CG LAN and its coextensiveness with its claims. Striegel, ¶¶43–44 & Appx. C (cited in POR at 41).

These undisputed facts establish nexus. *Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1073 (Fed.Cir. 2018).

B. Failure of others

[REDACTED] EX2422; EX2469; EX2446; EX2525; EX2526; EX2447 at 96 & 98 (citing EX2448); EX2427 at ¶¶50-56; EX2469. Rather, it tries to recast these failures as “long-felt need.” Reply at 15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *In re Cyclobenzaprine Hydrochloride*, 676 F. 3d 1063, 1083 (Fed.Cir. 2012) (long-felt need distinct from failure of others). These failures are the exact reasons why Herrmann could not be combined with Krantz's authentication.

Even if this was long-felt need, Petitioner’s sweeping time bar is wrong. Reply at 15. Evidence of long-felt need is appropriate even if it is after the filing date. *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317 (Fed.Cir. 2016) (considering post-dated evidence of long-felt need); *Monarch Knitting Machine Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 884 (Fed.Cir. 1998); *Cyclobenzaprine*, 676 F. 3d at 1079-80 n.7 (“Evidence of objective considerations *also may not be available until years after an application is filed.*”). Indeed, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] EX2472

C. Industry praise

Petitioner does not dispute [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is undisputed, tied to the claims, and confirms non-obviousness. *Volvo Penta*, 81 F.4th 1202, 1212-14 (Fed.Cir. 2023).

Petitioner challenges only two pieces of evidence. For EX2422, Petitioner claims the praise related to the prior art and was untethered to the patent claims. Reply at 17. This is wrong. “[A] nexus analysis need not be limited to a discussion

of only novel features. It is instead important to consider the invention as a whole, rather than on a limitation-by-limitation basis.” *Volvo Penta*, 81 F.4th at 1213 (cleaned up); *WBIP*, 829 F.3d at 1330 (“proof of nexus is not limited to only when objective evidence is tied to the supposedly new features”). Petitioner’s “untethering” is a symptom of taking facts out of context. The full statement is:

[REDACTED]

EX2422.

[REDACTED]

As for EX2470, [REDACTED]

[REDACTED]

D. Copying

Again, Petitioner sidesteps the evidence and rests on the Board's prior discovery findings. Reply at 16-17. But InfoExpress's POR contains new evidence showing:

-

-

-

-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *See above.*

Lastly, [REDACTED].

Reply at 17 (“[REDACTED]”).

[REDACTED]”); POR at 62-65. For the same reasons, [REDACTED]. *See InfoExpress Inc. v. Cisco Systems, Inc.*, Case No. 4:23-cv-2698, Dkt. 38, Exhibits FF–LL (N.D. Cal. Sept. 28, 2023).

Accordingly, this unrebutted evidence demonstrates non-obviousness.

IV. NEITHER REFERENCE CONSTITUTES PRIOR ART

Petitioner concede many antedating elements:

- EX2011 supports the Challenged Claims. Petitioners only challenge disclosure of positioning of the gatekeeper.
- [REDACTED] in EX2520.
- Petitioners have not served objections to admissibility of evidence.
- EX2006 is a constructive reduction.

Petitioners’ superficial challenges miss their ultimate burden of persuasion under *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375, 1378-79 (Fed.Cir. 2015).

Petitioners also assert that the conception and diligence arguments are improperly incorporated. Reply at 21, n.8. These arguments are properly outlined over 15 pages with appropriate references to evidence. POR at 66-81.

A. EX2011 Shows Possession of the Full Invention Including Positioning of Gatekeeper in “Restricted”/“Untrusted” Subset.

Petitioners do not point to a single element missing from EX2011. Rather, they point obliquely to concepts like “inline” (Reply at 22) and “bottleneck” (*id.*) and “configuring the gatekeeper within a ‘restricted subset.’”⁴ *Id.* Petitioners’ untethered attorney argument fails.

First, even if the claims recited “bottleneck” or avoiding “inline” architecture, an *ipsis verbis* disclosure is not required for possession. *Fujikawa v. Wattanasin*, 93 F.3d 1559 (Fed.Cir. 1996).

Second, EX2011 addresses bottleneck and inline problems through disclosure of an architecture [REDACTED]

[REDACTED]:

⁴ The ‘444 Patent does not claim a “restricted subset.”

Page	Quote (emphases added)
7	[REDACTED]
11	[REDACTED]

Third, Petitioners selectively isolate EX2011 Figure 3 to advance their “inline” theory. Reply at 24-25. But this constrained reading conflicts with EX2011.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As for the Reply's "configure the gatekeeper within a 'restricted subset' of the network" argument (Reply at 22-26), none of the '444 Patent claims have such a limitation. Regardless, Dr. Smith explains the "restricted subset" in EX2011:

[REDACTED]

Smith confirmed this during his deposition:

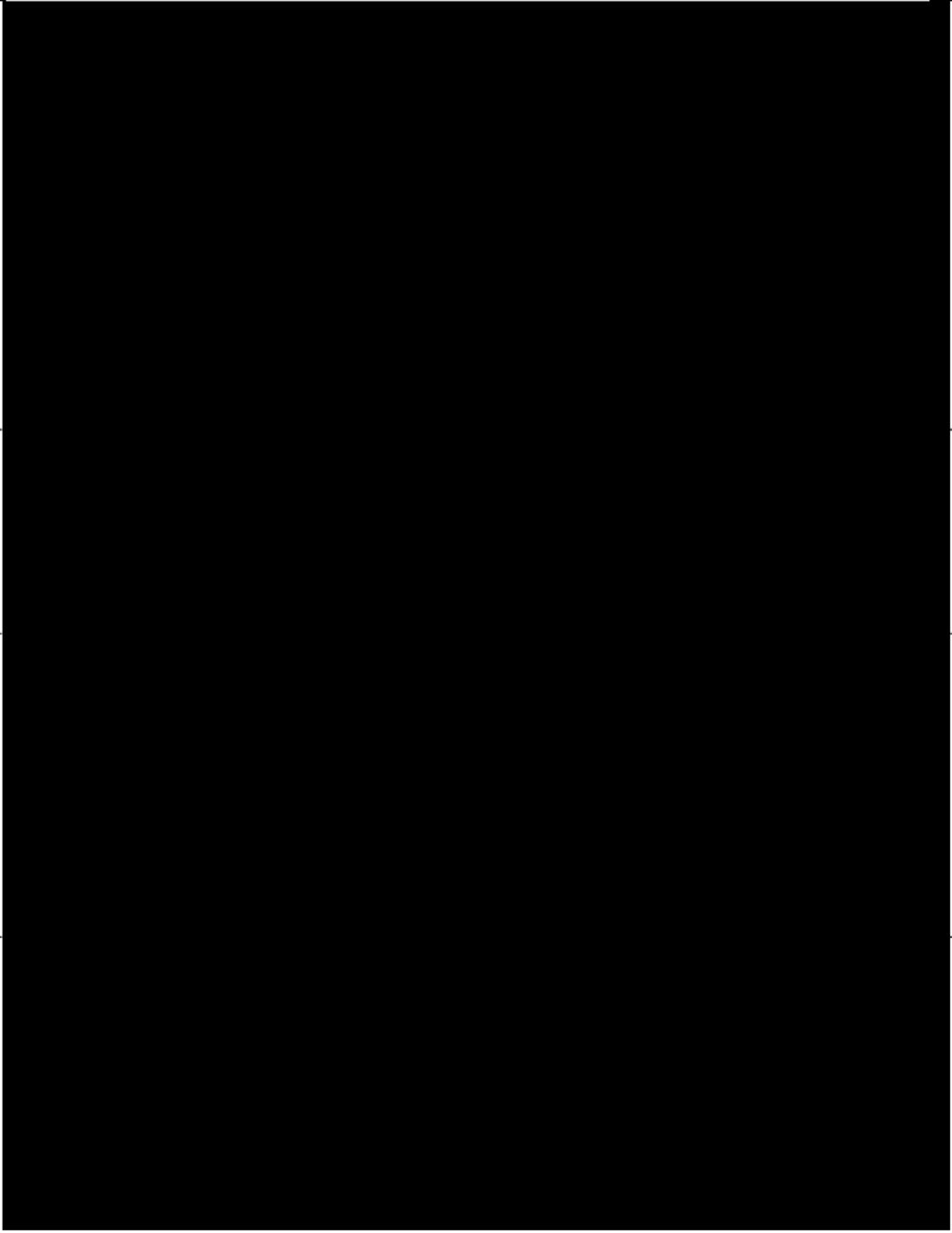
[REDACTED]

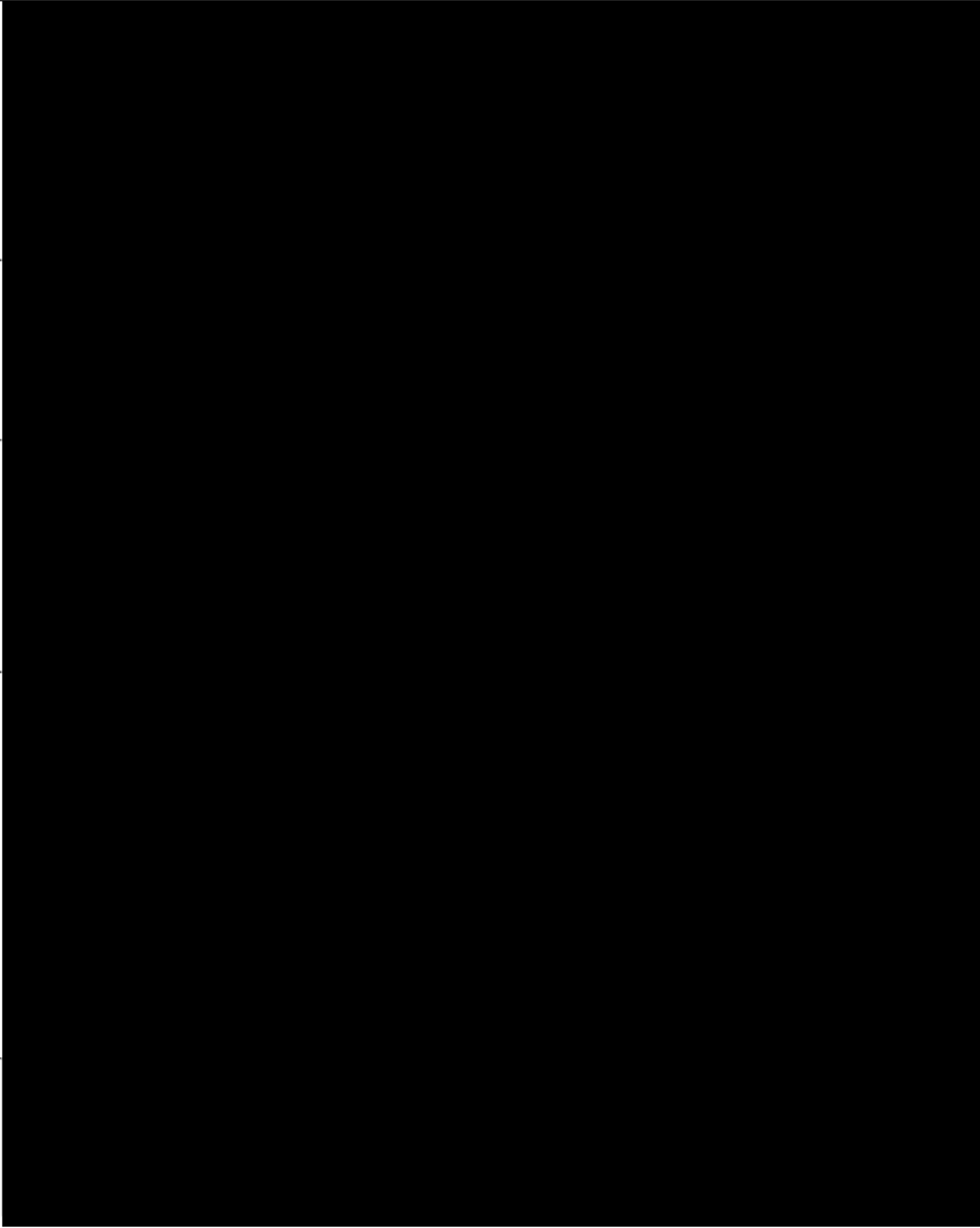
EX1226, 18:3-9.

Further, EX2011 is replete with disclosure of [REDACTED]

[REDACTED]

[REDACTED]:

EX2011	
3	
3.2.3	
3.4.3	
3.5.2	

3.5.3	
3.6.2	
3.6.3	
5.2.[1.]2	
5.2.3.3	

5.2.3.7	
5.2.3.8	

See also EX2007, ¶¶28-29. Petitioner is left only with attorney argument that cannot rebut Smith here. See *Icon Health and Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed.Cir. 2017).

B. Petitioners’ “Company Document” Argument Fails.

The evidence is unequivocal—[REDACTED].
E.g., EX2429; EX1225, 23:13-25. Petitioner’s challenge is essentially that EX2011 was saved on InfoExpress servers. Reply at 18. But the evidence confirms [REDACTED]
[REDACTED] And just because it was generated or kept by InfoExpress does not mean the ideas memorialized therein were not conceived by the inventors.

Petitioners’ case law is inapt. In fact, *New Idea* confirms inventions can occur within and inure to organizations. *New Idea Farm Equip. Corp. v. Sperry Corp.*, 916

F. 2d 1561, 1566 n.4 (Fed.Cir. 1990) (“[w]hen I refer to Hesston, I mean to include Mr. Burkhart and all his colleagues”).

C. [REDACTED]

[REDACTED]

[REDACTED]

First, this is legally irrelevant. Noninventors routinely contribute to documents describing an invention of a subset of coauthors. *In re Katz*, 687 F.2d 450 (C.C.P.A. 1982). Like *Katz*, the co-inventors here testified EX2011 described their collective invention. EX1002, 7-9; EX2429, ¶¶5&10; EX2564, ¶¶7,8,&22. . EX1223; EX1225.

Second, [REDACTED]

[REDACTED]

[REDACTED]

EX2017.

Third, the only evidence Petitioners muster concerns comment 18 in a later version of EX2011. Reply at 18. But [REDACTED]

[REDACTED]

D. [REDACTED]

In EX2231, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Further, Petitioners' argument on "Lum's subjective belief" (Reply at 20-21) fails in view of *Regents of the University of California v. Broad Institute, Inc.*, 2025 WL 1363125, *7 (Fed.Cir. May 12, 2025). There, the Federal Circuit vacated the Board's holding on conception (*Id.* at *8-*10) and reaffirmed conception is an immutable event occurring "when the idea is so clearly defined in the inventor's

mind that only ordinary skill would be necessary to reduce the invention to practice”. *Id.* at *7. Thus, conception occurred when the invention was described in a notebook, though reduction took months. *Id.* at *1-*4.

Like the notebook in *Regents*, EX2011 described each limitation of the claimed invention. [REDACTED]

[REDACTED]

[REDACTED]

Petitioner's “accidental anticipation” case law (Reply at 20-21) concerns whether or not the inventor knew he invented something at the time of alleged conception. *See, e.g., Invitrogen Corp. v. Clontech Laboratories, Inc.*, 429 F. 3d 1052, 1059 (Fed.Cir. 2005); *Mycogen Plant Sci. v. Monsanto Co.*, 243 F.3d 1316, 1335 (Fed.Cir. 2001). Unlike these cases, Lum and Lee followed the more-common practice of describing the invention, then building it.

E. InfoExpress Was Diligent.

Petitioners’ diligence qualms miss controlling thresholds from *Perfect Surgical*: “A patent owner need not prove the inventor *continuously* exercised reasonable diligence throughout the critical period; it must show there was *reasonably continuous* diligence. [...] periods of inactivity [...] do not automatically vanquish a [...] reasonable diligence.” *Perfect Surgical Techniques, Inc. v. Olympus America, Inc.* 841 F.3d 1004, 1009 (Fed.Cir. 2016) (emphasis in original).

Petitioner’s manufactured “gaps” in evidence (Reply at 20) are not gaps in diligence. Evidence merely “corroborates” inventor testimony that they worked consistently on the invention throughout the diligence period. EX2564, ¶23. *Monsanto Co. v. Mycogen Plant Science, Inc.*, 261 F.3d 1356, 1370 (Fed.Cir. 2001) (affirming diligence without daily entries). *I.e.*, a gap in “evidence” does not contradict [REDACTED]. *Id.*

Even if “gaps” in evidence from 2002-2003 controlled, Petitioner’s “gaps” are unremarkable. [REDACTED]

[REDACTED] Petitioner’s other cherry-picked weeks-long evidence “gaps” are shorter than those excused in *Monsanto* and *Perfect Surgical*. *Perfect Surgical* at 1009 (“For example, in *Monsanto*, we held that substantial evidence supported [...] finding that an inventor was reasonably diligent where there was no corroborating evidence of any activity for a series of months.”)

InfoExpress’s own diligence satisfies the *Perfect Surgical* standard. *In addition to* its own internal work, it *also* worked with [REDACTED] [REDACTED] toward reduction to practice. This third-party work was not mutually exclusive, *i.e.*, all occurred around the same time. Thus, even if [REDACTED] [REDACTED] (Reply at 26-27), this is not fatal because InfoExpress was working with [REDACTED] around that same time. Indeed, work with third

parties is sufficient for reduction to practice. *Burroughs Wellcome Co. v. Barr Laboratories, Inc.*, 40 F.3d 1223, 1230 (Fed.Cir. 1994) (testing by NIH was part of RTP and “inured to the benefit” of Burroughs).

All [REDACTED] evidence (EX2022-EX2024; EX2048-EX2197) is resolutely for the claimed invention.⁵ InfoExpress enlisted [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ Petitioner broadly tries to cast certain diligence evidence as unrelated [REDACTED] correspondence. Reply at 27. But Petitioner never challenges the actual substance of the evidence. Nor could it since the vast majority of evidence references the [REDACTED] project name that produced the invention. *See, e.g.*, EX2564, ¶¶21 EX2429, ¶¶16&19.

[REDACTED]

[REDACTED] and
unrebutted.

Petitioners do not challenge any of the [REDACTED] evidence. Rather, they merely speculate a single [REDACTED] proposal request negates diligence. *See* Reply at 30-31; EX2022; EX2023. [REDACTED]

[REDACTED]

[REDACTED]

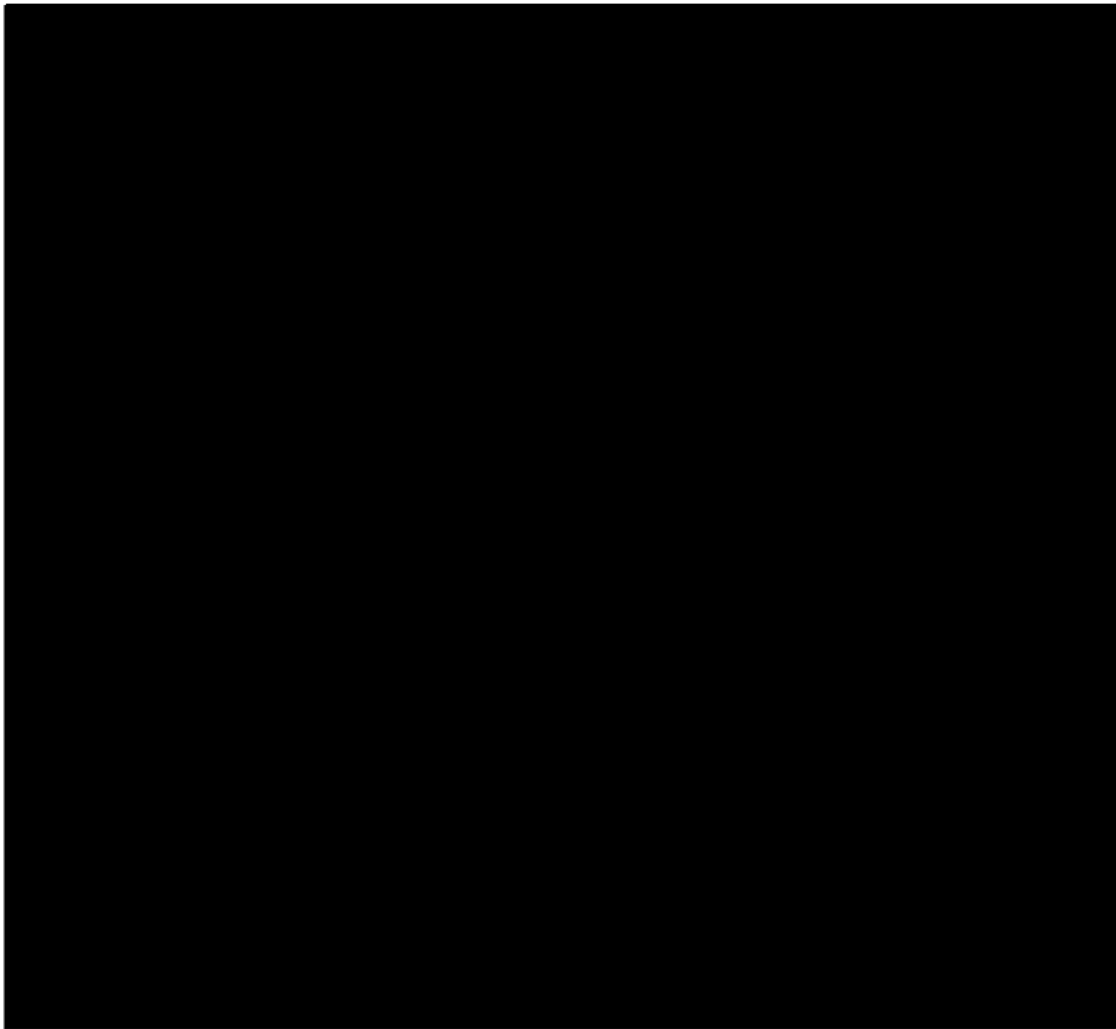
[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

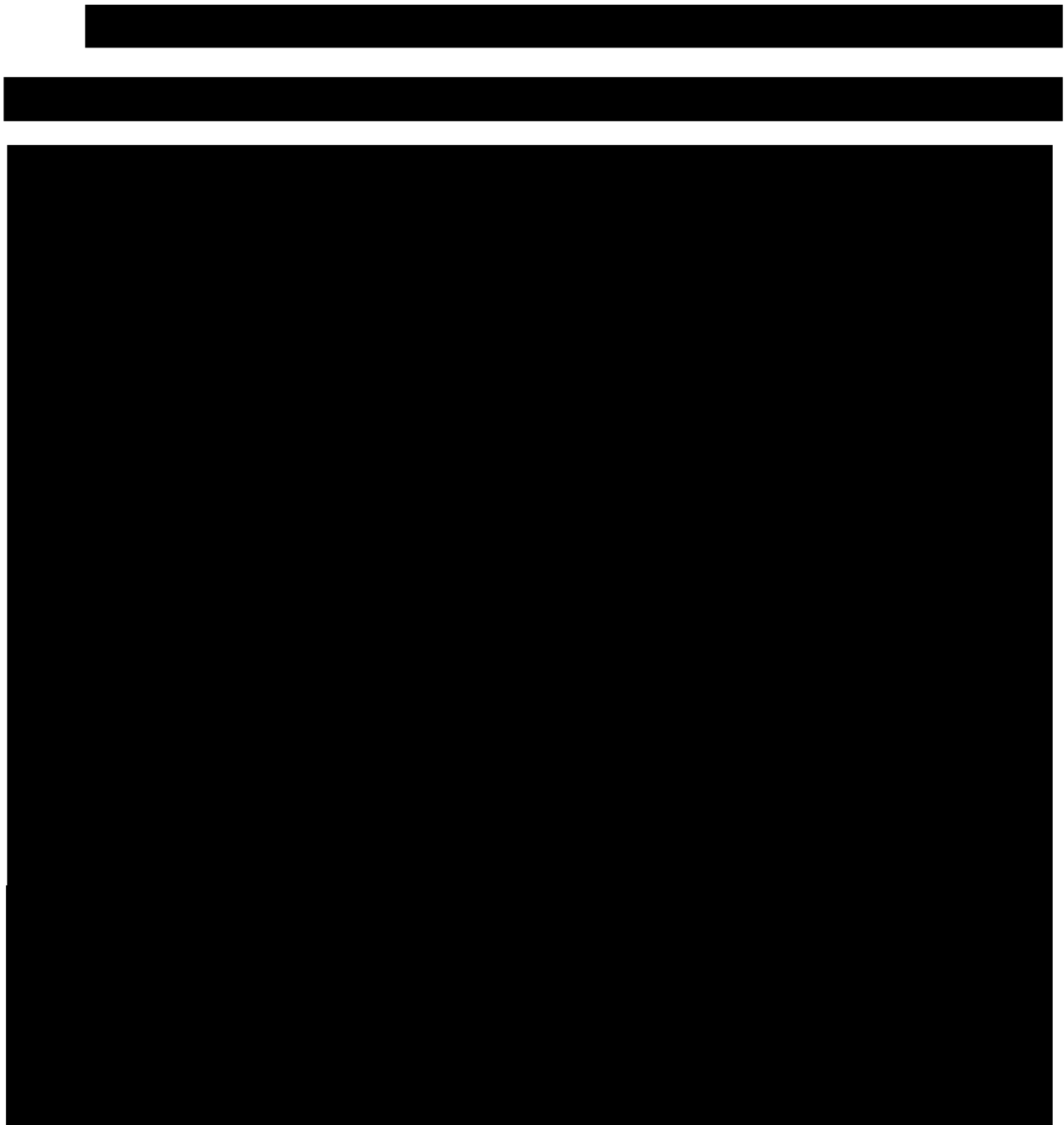
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[REDACTED]

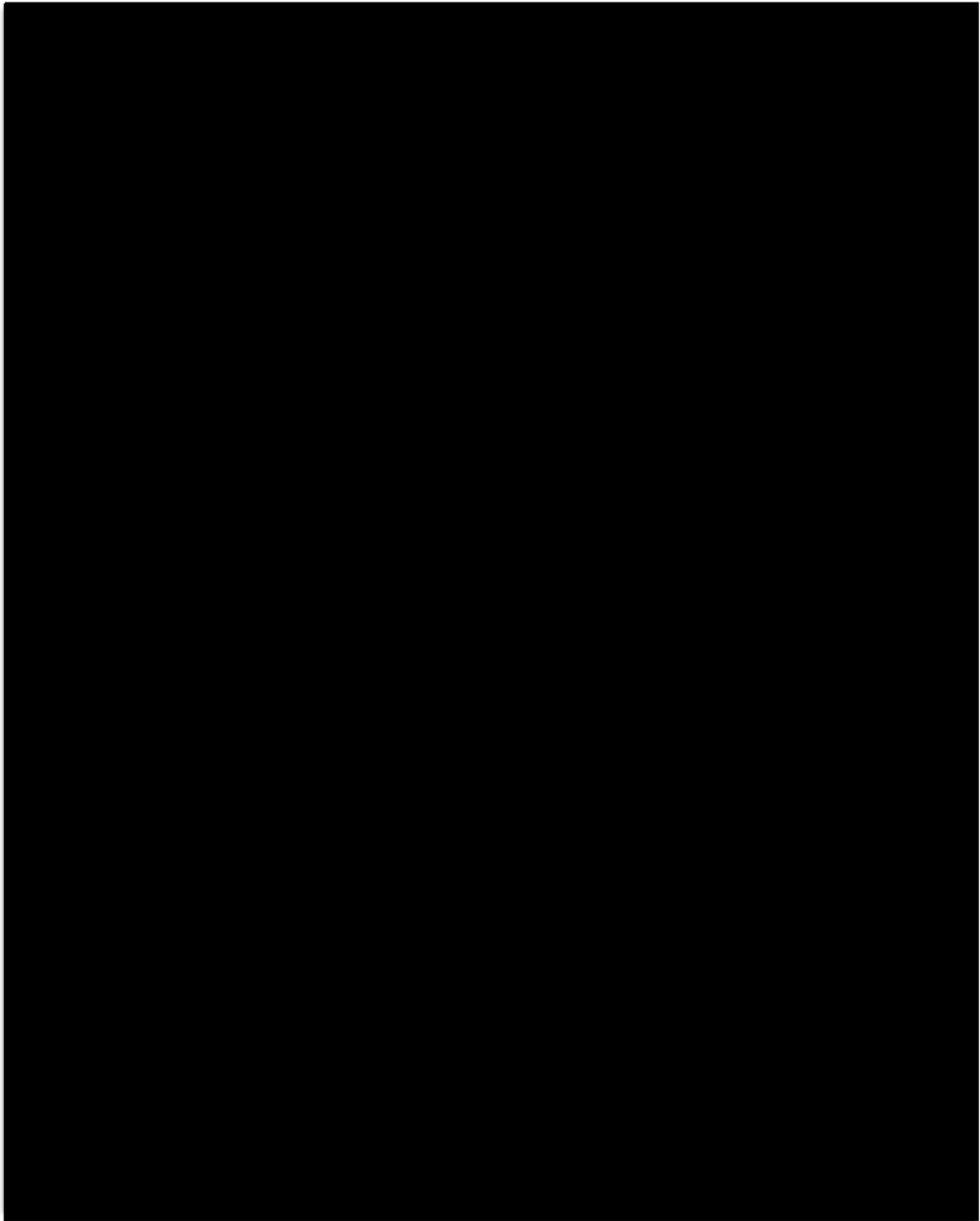


Id. (annotated).

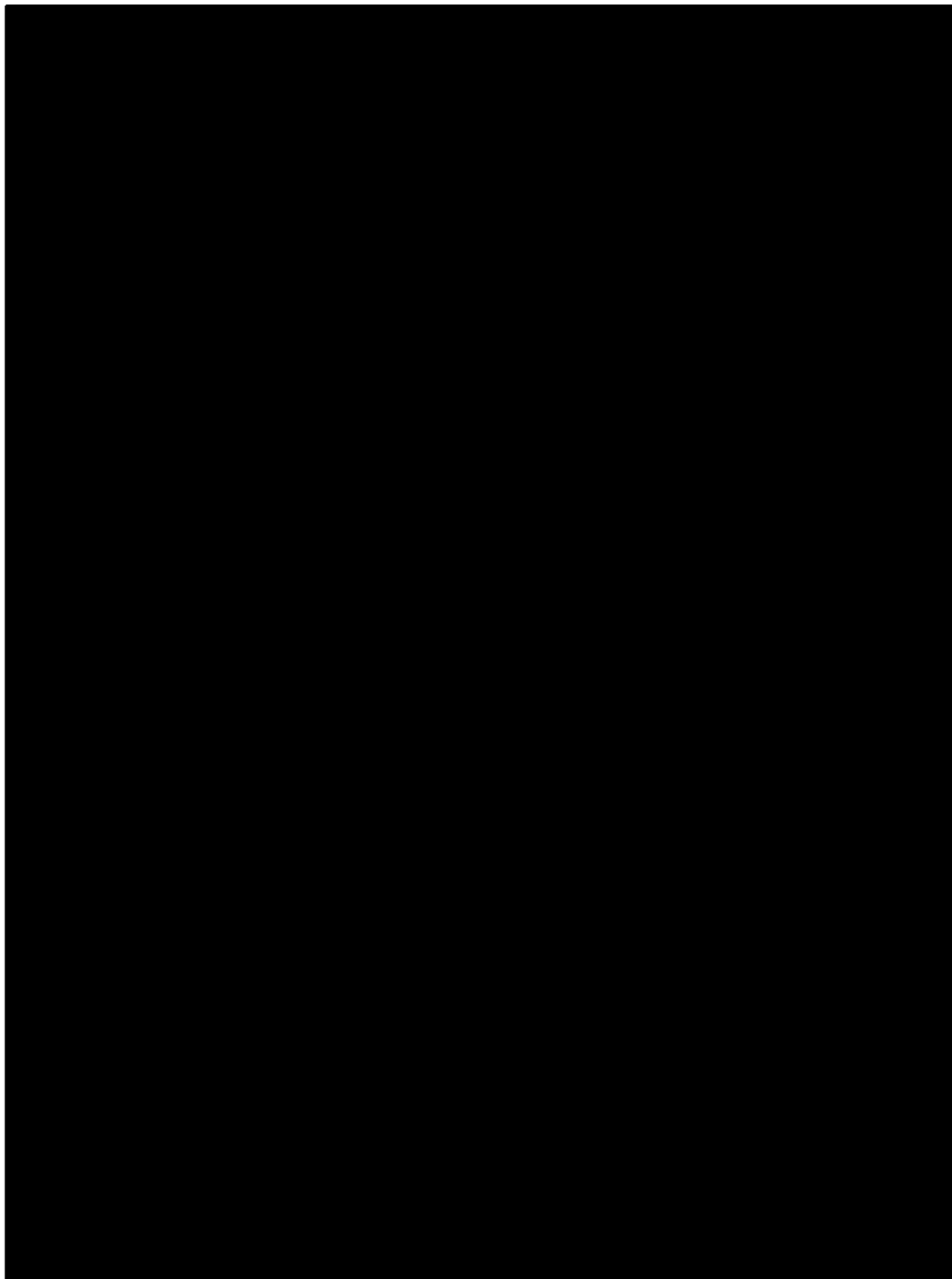




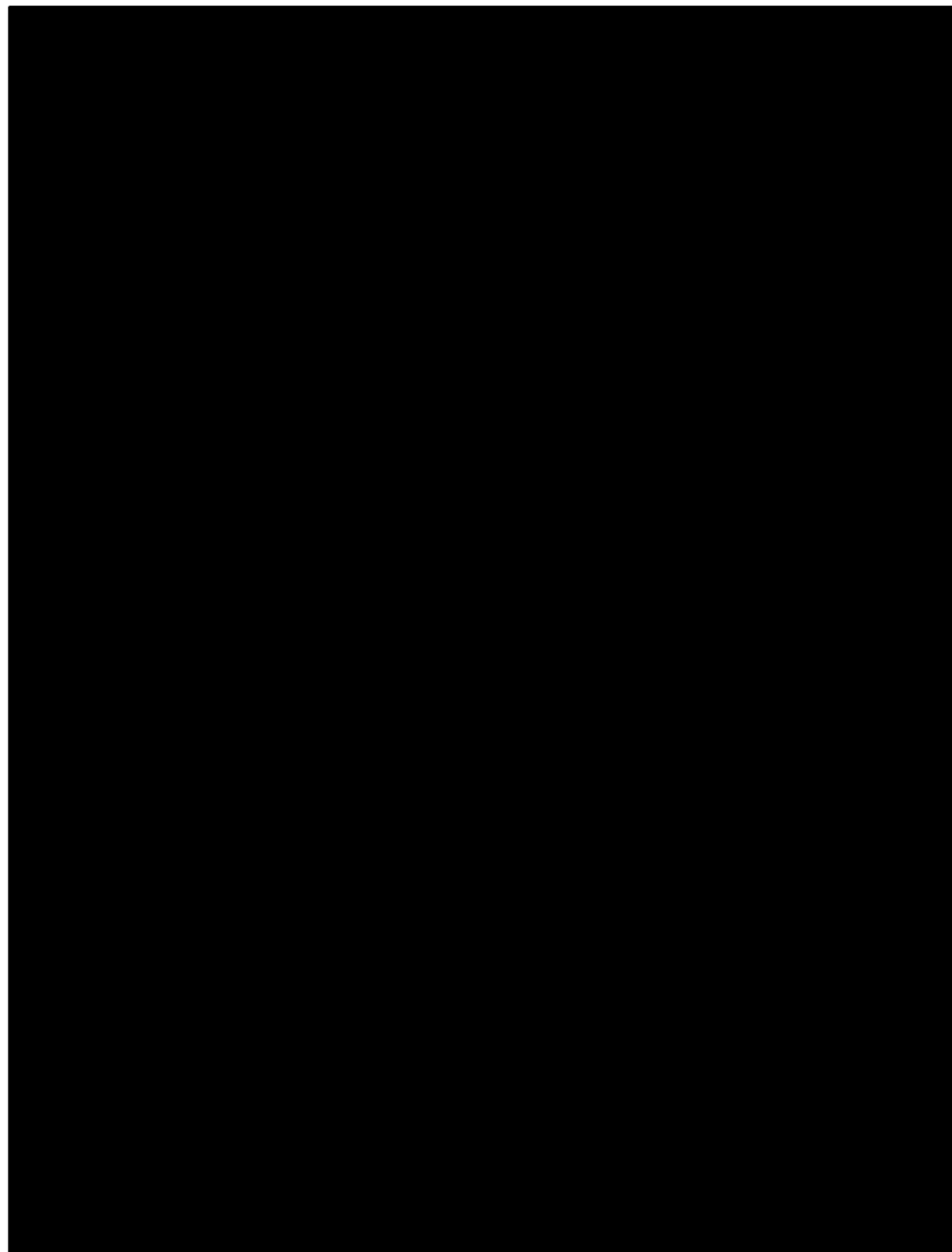
EX2114 (annotated). *Also* EX2131 (April report). `



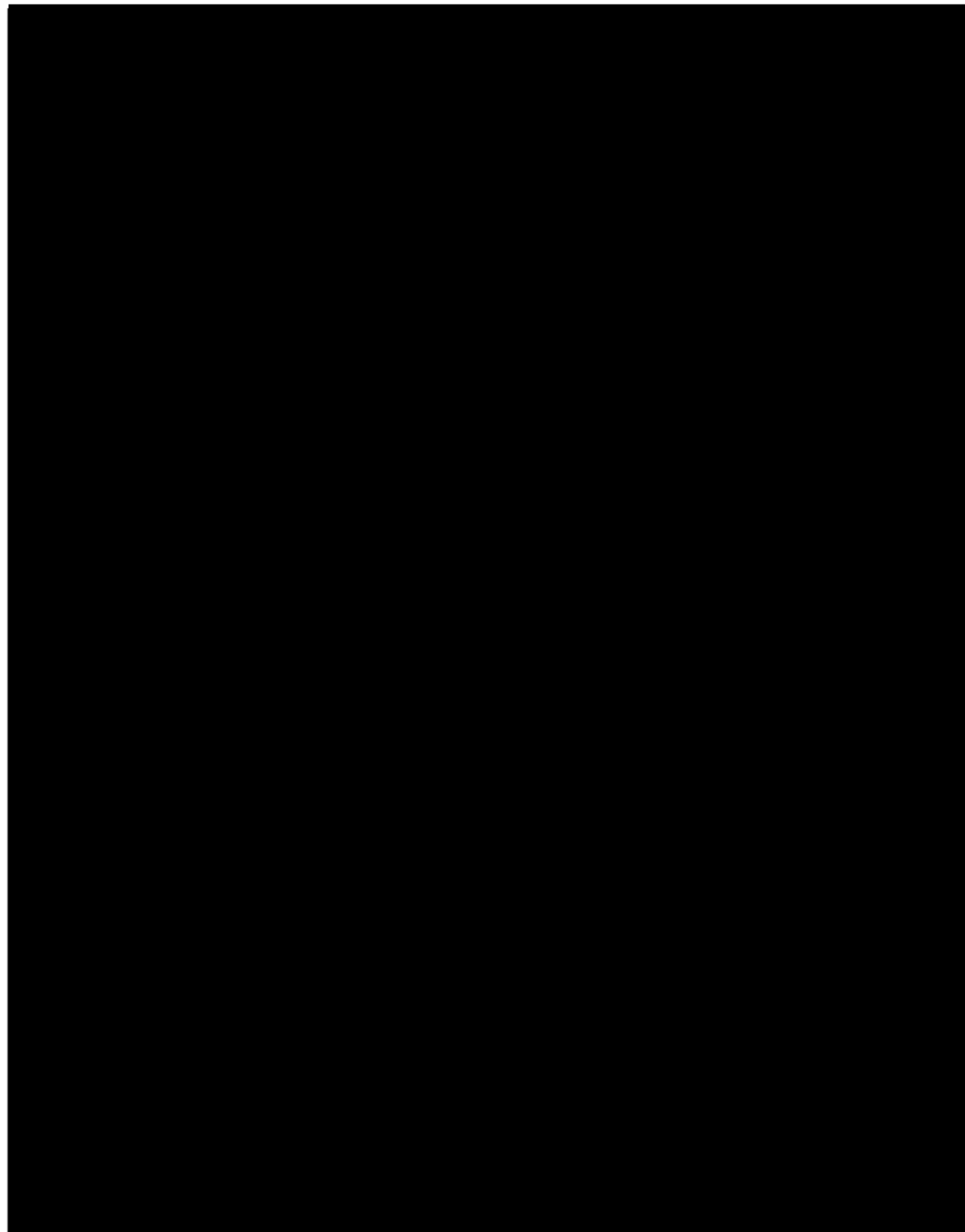
EX2197 (annotated).



EX2359 (annotated).



EX2405 (annotated)



EX2303 (annotated).

In parallel, InfoExpress [REDACTED]

[REDACTED] (EX2133; EX2142; EX2195) [REDACTED]

[REDACTED]. EX2558; EX2562.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. CONCLUSION

InfoExpress respectfully requests the Board find all Challenged Claims not unpatentable.

Respectfully submitted,

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Certification of Word Count Under 37 C.F.R. § 42.6(d)

The undersigned hereby certifies that the foregoing complies with the type-volume limitation in 37 C.F.R. § 42.24(b)(1). According to the word-processing system's word count, the document contains 5,580 words, excluding the parts of the brief exempted by 37 C.F.R § 42.24(b).

Date: **June 4, 2025**

/Brian R. Landry/
Reg. No. 62,074

Certification of Service Under 37 C.F.R. § 42.6(e)(4)

The undersigned hereby certifies that the foregoing was served in its entirety by filing through the Patent Trial and Appeal Board P-TACTS, as well as providing a courtesy copy via e-mail to the attorneys of record.

Date: **June 4, 2025**

/Brian R. Landry/
Reg. No. 62,074