

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and FORTINET, INC.,
Petitioner,

v.

INFOEXPRESS INC.,
Patent Owner.

IPR2024-00679
U.S. Patent No. 7,523,484

PETITIONER'S NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§ 141, 142 and 319 and 37 C.F.R. §§ 90.2 and 90.3, Petitioners Cisco Systems, Inc. and Fortinet, Inc. (“Petitioner”) hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board (“the Board”) entered October 20, 2025, (Paper 56), the Order Denying Petitioner’s Request for Director Review of the Final Written Decision entered December 19, 2025 (Paper 61), and from all underlying findings, determinations, orders, decisions, rulings, and opinions regarding U.S. Patent No. 7,523,484 (“the ’484 Patent”) at issue in Case No. IPR2024-00679.

The issues on appeal, pursuant to 37 C.F.R. § 90.2(a)(3)(ii) include, but are not limited to: the Board’s determination that *Krantz*¹ and *Herrmann*² are not prior art to the ’484 Patent; the Board’s determination that Patent Owner conceived of the alleged invention recited in claims 28, 38-39, 41-43, 53, 56-59, 61-63, and 65-68 of the ’484 Patent before the earliest effective filing dates of *Krantz* and *Herrmann* and thereafter exercised reasonably continuous diligence in reducing the alleged invention to practice; the Board’s determination that Patent Owner met its burden of producing evidence that the inventors conceived of the alleged invention recited in claims 28, 38-39, 41-43, 53, 56-59, 61-63, and 65-68 of the ’484 Patent

¹ U.S. Pat. Pub. No. 2004/0111520 A1 (“*Krantz*”).

² U.S. Pat. Pub. No. 2004/0107360 A1 (“*Herrmann*”).

before the earliest effective filing dates of *Krantz* and *Herrmann*; the Board's determination that Patent Owner met its burden of producing evidence that Patent Owner exercised reasonably continuous diligence in reducing the alleged invention to practice recited in claims 28, 38-39, 41-43, 53, 56-59, 61-63, and 65-68 of the '484 Patent; whether the Board abused its discretion and violated Petitioner's procedural rights in permitting Patent Owner to incorporate its conception and diligence arguments by reference in its briefing; the Board's consideration of the expert testimony, prior art, and other evidence in the record; and the Board's factual findings, conclusions of law, or other determinations supporting or related to those issues, as well as other issues decided adversely to Petitioner in any orders, decisions, rulings, and opinions in IPR2024-00679 involving the '484 Patent.

This Notice of Appeal is timely under 37 C.F.R. §§ 90.3(a)(1) and (b)(1).

In accordance with Fed. Cir. R. 15 and its Practice Note, Patent Owner attaches to this Notice of Appeal a copy of the Final Written Decision referenced above from which review sought (Attachment A), and the Order Denying Petitioner's Request for Director Review of the Final Written Decision (Attachment B).

Copies of Petitioner's Notice of Appeal are being filed simultaneously with the Director of the United States Patent and Trademark Office, the Patent Trial and Appeal Board, and the United States Court of Appeals for the Federal Circuit.

Dated: January 27, 2026

Respectfully submitted,

/Scott M. Border/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(a), I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's PTACT-S system, a true and correct original version of the foregoing Petitioner's Notice of Appeal is being filed via Email on January 27, 2026, with the Director of the U.S. Patent and Trademark Office at efileSO@uspto.gov.

Pursuant to 37 C.F.R. 90.2(a)(2) and Federal Circuit Rule 15(a)(1), and Rule 52(a), (e), I hereby certify that a true and correct copy of the foregoing Petitioner's Notice of Appeal is being filed in the United States Court of Appeals for the Federal Circuit using the Court's CM/ECF filing system on January 27, 2026, and the filing fee is being paid electronically using pay.gov.

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on this 27th day of January, 2026, I caused to be served a true and correct copy of the foregoing by electronic mail on the following:

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Dated: January 27, 2026

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ATTACHMENT A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC. and FORTINET, INC.,
Petitioner,

v.

INFOEXPRESS INC.,
Patent Owner.

IPR2024-00679
Patent 7,523,484 B2

Before CHRISTOPHER M. KAISER, JOHN A. HUDALLA, and
AARON W. MOORE, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. *Background and Summary*

Cisco Systems, Inc. and Fortinet, Inc. (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 28, 38, 39, 41–43, 53, 56–59, 61–63, and 65–68 (“the challenged claims”) of U.S. Patent No. 7,523,484 B2 (Ex. 1501, “the ’484 patent”). InfoExpress Inc. (“Patent Owner” or “InfoExpress”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”). With our authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 12), and Patent Owner filed a Preliminary Sur-reply (Paper 13). We determined that the information presented established a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims, so we instituted *inter partes* review of all challenged claims based on all the grounds identified in the Petition. Paper 14 (“Inst. Dec.”).

Following institution of *inter partes* review, Patent Owner filed a Response to the Petition (Paper 21, “PO Resp.”), Petitioner filed a Reply to the Response (Paper 36, “Reply”), and Patent Owner filed a Sur-reply (Paper 40). An oral hearing with was held on July 17, 2025, and transcripts of the public portion (Paper 51) and sealed portion (Paper 52) of the hearing are included in the record.

We have authority to determine whether Petitioner has established by a preponderance of the evidence that any of the challenged claims is unpatentable. 35 U.S.C. §§ 6(b), 316(c). For the reasons set forth below, upon considering the briefing and the evidence of record, we determine that Petitioner has not shown the unpatentability of any challenged claim.

B. Real Parties-in-Interest

Petitioner identifies Cisco Systems, Inc. and Fortinet, Inc. as the real parties-in-interest. Pet. 1. Patent Owner identifies InfoExpress Inc. as the real party in interest. Paper 6, 2.

C. Related Matters

The parties identify the following related court proceedings:

InfoExpress Inc. v. Cisco Systems, Inc., Case No. 4:23-cv-02698-YGR (N.D. Cal.); and

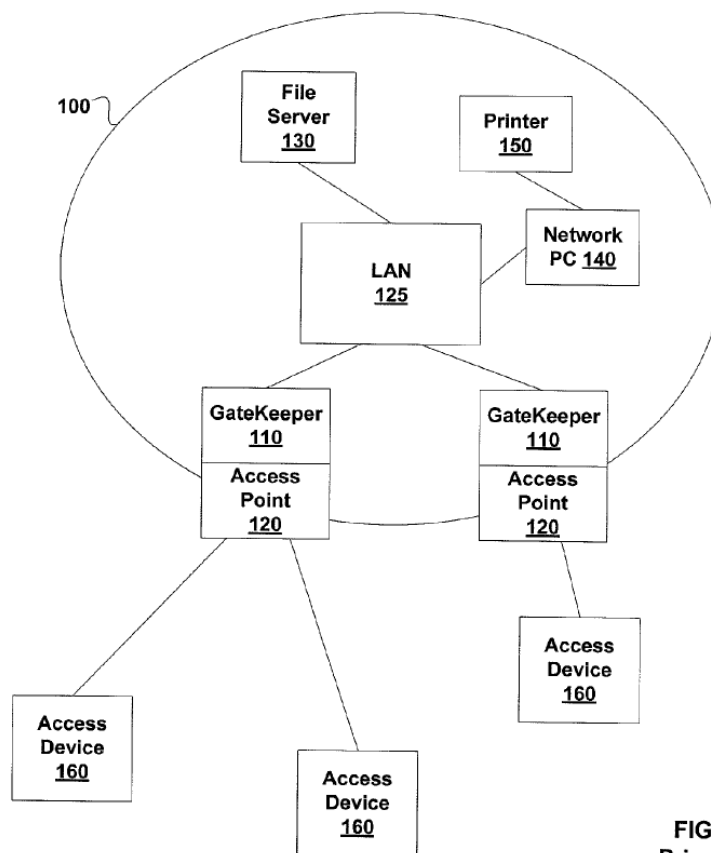
InfoExpress Inc. v. Fortinet, Inc., Case No. 4:23-cv-04389-YGR (N.D. Cal.).

Pet. 1; Paper 6, 2. In addition, the '484 patent is also being challenged concurrently in IPR2024-00675. Paper 4; Paper 6, 2.

D. The '484 Patent

The '484 patent is titled “Systems and Methods of Controlling Network Access” and issued on April 21, 2009. Ex. 1501, codes (45), (54). It is directed to “[a] new approach to network security.” *Id.* at code (57).

The '484 patent describes “[s]everal approaches to controlling external access to computing networks” that serve the goals of “limiting access to authorized users and assuring that computing devices employed by these users do not include malicious computing code.” *Id.* at 1:22–26. “A first level of access control is achieved by requiring authentication of a user.” *Id.* at 1:31–32. “A greater level of access control may be achieved by including a gatekeeper between the secure network and the access device.” *Id.* at 1:53–55. Figure 1 of the '484 patent depicts such a gatekeeper and is reproduced below.

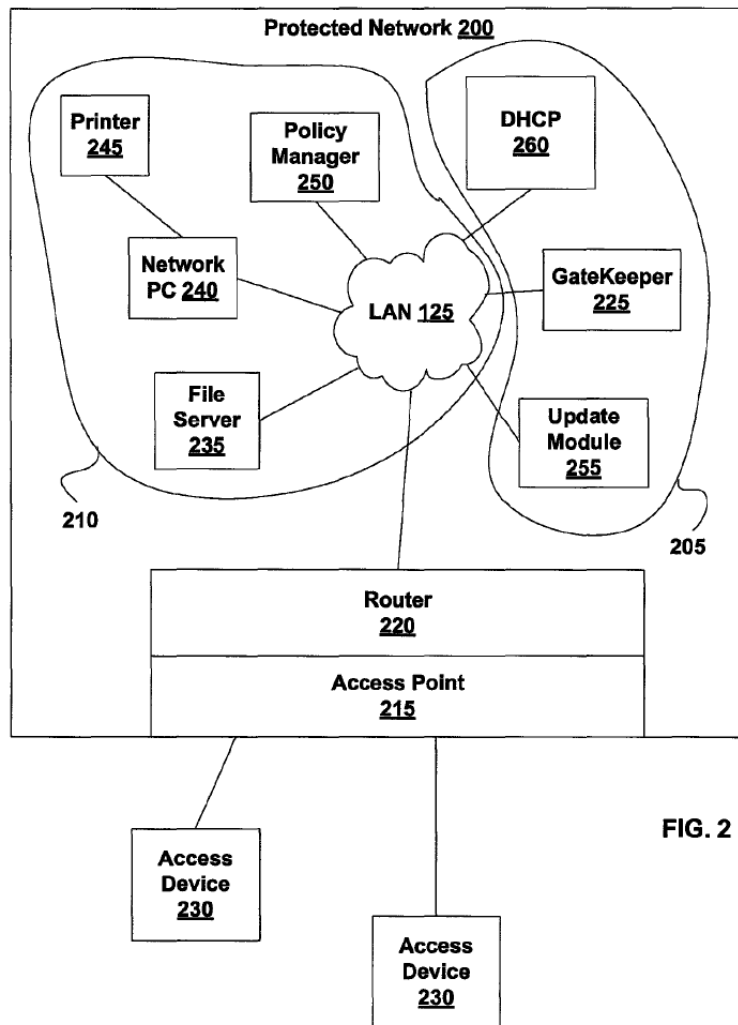


Id. at Fig. 1. In Figure 1, access devices 160 communicate with access points 120, each of which connects with LAN 125 within secure network 100 through gatekeeper 110. *Id.* at 1:57–2:13. “A disadvantage of the use of GateKeeper 110, as practiced in the prior art, is that all communications between Access Device 160 and LAN 125 pass through GateKeeper 110,” which “can be a significant burden.” *Id.* at 2:26–31.

The '484 patent seeks to remove this disadvantage using “a protected network physically or logically divided into a restricted subset and one or more less-restricted subsets.” *Id.* at 2:48–50. “Requests from an access device for access to the less-restricted subset are first passed to the restricted subset,” and the gatekeeper is “then used to apply security policies to the access device and if [the] security policies are satisfied, the access device is

granted access to a less-restricted subset of the protected network.” *Id.* at 2:52–56. “To grant access, the gatekeeper sends commands to the access point in order to reconfigure a communication port to which the access device is connected.” *Id.* at 3:20–22. “The reconfiguration typically includes reassigning the communication port from the restricted VLAN to the less-restricted VLAN.” *Id.* at 3:22–25.

Figure 2 of the ’484 patent depicts “a protected network, according to various embodiments of the invention.” *Id.* at 4:66–67. That figure is reproduced below.



Id. at Fig. 2. “Protected Network 200 is either physically or logically divided into a Restricted Subset 205 and a Less-Restricted Subset 210.” *Id.* at 5:52–54. Access devices 230 can connect to the protected network “through an Access Point 215 . . . and an optional Router 220.” *Id.* at 5:55–57. “[T]his access is under the control of a GateKeeper 225,” which is located within restricted subset 205 and which “is configured to enforce a security policy against” the access device. *Id.* at 5:57–60, Fig. 2.

E. Illustrative Claim

Petitioner challenges claims 28, 38, 39, 41–43, 53, 56–59, 61–63, and 65–68 of the ’484 patent. Claims 28, 41, 56, and 57 are independent. Claim 28 is illustrative; it is reproduced below.

28. A method of granting access to a protected network, the method comprising:

receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point, the communication port configured for communicating between the access device and a restricted subset of the protected network, the restricted subset including a gatekeeper;

applying a security policy to the access device, responsive to the request;

reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied; and

communicating between the gatekeeper and an agent executing on the access device to monitor security status of the access device after reconfiguring the

communication port for communicating between the access device and the less-restricted subset.

Ex. 1501, 17:63–18:16.

F. Asserted Ground of Unpatentability

Petitioner asserts, and we instituted review on, the following ground of unpatentability (Pet. 3, 20–85):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
28, 38, 39, 41–43, 53, 56–59, 61–63, 65–68	103	Krantz, ¹ Herrmann ²

In support of its unpatentability arguments, Petitioner relies on the declarations of Henry Houh, Ph.D. (Ex. 1503; Ex. 1528). Patent Owner relies on the declarations of Dr. Eric Cole (Ex. 2001; Ex. 2565), Hugh Smith, Ph.D. (Ex. 2007), and Aaron R. Striegel, Ph.D. (Ex. 2427). There is also fact witness testimony from Yushiw Alice Lee (Ex. 2429) and Stacey C. Lum (Ex. 2003; Ex. 2564), the named inventors of the '484 patent. The parties additionally filed transcripts of the depositions of Dr. Houh (Ex. 2449), Dr. Cole (Ex. 1522), Mr. Lum (Ex. 1523), Ms. Lee (Ex. 1525), and Dr. Smith (Ex. 1526).

II. ANALYSIS

A. Legal Standards

In an *inter partes* review, “a patent challenger has the burden of producing evidence to support a conclusion of unpatentability under § 102 or § 103.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1375–76 (Fed.

¹ US 2004/0111520 A1, published June 10, 2004 (Ex. 1505).

² US 2004/0107360 A1, published June 3, 2004 (Ex. 1506).

Cir. 2016) (citing *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1379 (Fed. Cir. 2015)). To prove unpatentability in an *inter partes* review, the petitioner must prove the prior-art status of the references on which its petition relies. 35 U.S.C. §§ 311(b) (petition must be based on “prior art consisting of patents or printed publications”), 312(a) (requiring petition to identify “with particularity” “the grounds on which the challenge to each claim is based” and “the evidence that supports the grounds for the challenge to each claim”), 316(e) (imposing on petitioner “the burden of proving a proposition of unpatentability by a preponderance of the evidence”).

One way in which a petitioner may fail to show that the references it asserts are prior art actually are prior art is if those references are antedated by the actions of the patent owner. “[W]hen a patent owner attempts to antedate an asserted prior art reference, the patent owner assumes a temporary burden of production.” *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1371 (Fed. Cir. 2023). “To antedate (or establish priority) of an invention, a party must show either an earlier reduction to practice, or an earlier conception followed by a diligent reduction to practice.” *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359, 1365 (Fed. Cir. 2001). “The filing of a patent application serves as conception and constructive reduction to practice of the subject matter described in the application.” *Hyatt v. Boone*, 146 F.3d 1348, 1352 (Fed. Cir. 1998); *Frazer v. Schlegel*, 498 F.3d 1283, 1288 (Fed. Cir. 2007). “Reasonable diligence must be shown throughout the entire critical period, which begins just prior to the competing reference’s effective date and ends on the date of the invention's reduction to practice.” *Arctic Cat Inc. v. GEP Power Prods.*,

Inc., 919 F.3d 1320, 1331 (Fed. Circ. 2019). However, the “diligence need not be perfectly continuous—only reasonably continuous.” *Id.*

B. Level of Ordinary Skill in the Art

The level of ordinary skill in the pertinent art at the time of the invention is a factor in how we construe patent claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). It is also one of the factors we consider when determining whether a patent claim is obvious over the prior art. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18.

Factors pertinent to a determination of the level of ordinary skill in the art include “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Envtl. Designs, Ltd. v. Union Oil Co. of Cal.*, 713 F.2d 693, 696–697 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed. Cir. 1983)). “Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case.” *Id.*

Petitioner contends that one of ordinary skill in the art “would have had a bachelor’s degree in computer science, computer engineering, or an equivalent, and two years of relevant experience in networking and network security, and related fields.” Pet. 4. Petitioner also asserts that “[l]ack of professional experience can be remedied by additional education, and vice versa.” *Id.* Patent Owner argues that “[t]he parties’ positions on [the level of ordinary skill in the art] are similar” but that “[‘]at least three years of experience in networking operating systems and cybersecurity’ or ‘a

master’s degree in one of the foregoing and at least two years of experience . . . ’ is appropriate.” PO Resp. 2–3. According to Patent Owner, “this difference in the amount of experience would [not] affect the outcome” of this proceeding. *Id.* at 3. Accordingly, we adopt Petitioner’s assessment of the level of ordinary skill in the art, which is consistent with the ’484 patent and the asserted prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

C. Claim Construction

We apply the same claim construction standard used in the federal courts—in other words, the claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b), which is articulated in *Phillips*. *See* 37 C.F.R. § 42.100(b). Under the *Phillips* standard, the “words of a claim ‘are generally given their ordinary and customary meaning,’” which “is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips*, 415 F.3d at 1312–13.

Petitioner argues that “a [person of ordinary skill in the art] would find the challenged claims unpatentable under any interpretation consistent with their plain and ordinary meaning in the context of the [’484 patent],” so we “need not expressly construe the claim terms.” Pet. 7. Patent Owner proposes constructions for both “protected network” and “reconfiguring the communication port.” PO Resp. 10–11.

We determine that we need not expressly construe any claim terms in order to resolve the issues presented in this proceeding. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required

to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Overview of Krantz

Krantz is a U.S. patent application titled “Increasing the Level of Automation when Provisioning a Computer System to Access a Network.” Ex. 1505, code (54). Krantz “relates to configuring computer systems to appropriately communicate on a network, and more specifically, to automatically providing a computer system with appropriate information such that the computer system can be provisioned to communicate on a network.” *Id.* ¶ 2. Figure 2 of Krantz is reproduced below.

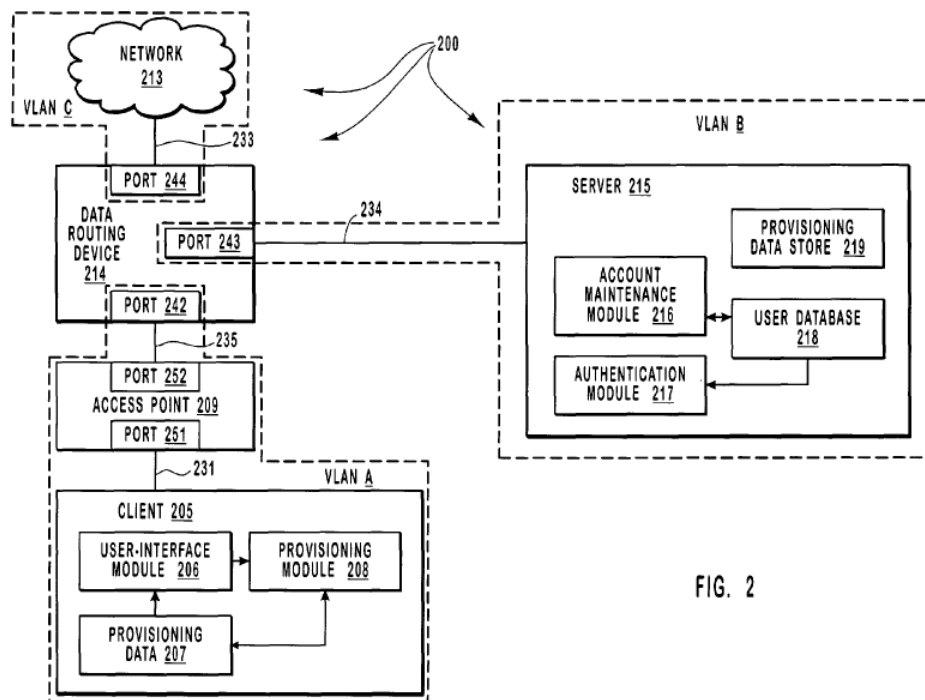


FIG. 2

Id. at Fig. 2. Figure 2 “illustrates an example of a network architecture that can facilitate increasing the level of automation when provisioning a client.” *Id.* ¶ 28. In Figure 2, “[d]ata can be transferred between access po[in]t 209

and client 205 through port 251. Likewise, data can be transferred between access point 209 and data routing device 214 through port 252.” *Id.* ¶ 63. “Data routing device 214 can be configured to transfer both tagged data frames and untagged data frames between the VLANs depicted in FIG. 2.” *Id.* ¶ 60.

E. Overview of Herrmann

Herrmann is a U.S. patent application titled “System and Methodology for Policy Enforcement.” Ex. 1506, code (54). Herrmann “relates generally to information processing and, more particularly, to systems and methods for policy enforcement on computer systems connected to one or more networks.” *Id.* ¶ 3. According to Herrmann, “if a client device connected to a network . . . is infected with a virus or worm, it may infect other machines on the same network,” making it important to “ensur[e] that devices connected to the network are running current anti-virus programs.” *Id.* ¶ 12. To do so, Herrmann teaches a system in which a client device attempts to access a network and information is collected “from the client device” so that the system can “determin[e] whether to authenticate the client device for access to the network based, at least in part, upon the collected information.” *Id.*, code (57).

F. Prior-Art Status of Krantz and Herrmann

Petitioner contends that Krantz qualifies as prior art under 35 U.S.C. § 102(e) based on its filing date of December 6, 2002. Pet. 7; *see also* Ex. 1505, code (22). Petitioner further contends that Herrmann qualifies as prior art under 35 U.S.C. § 102(e) based on its filing date of March 13, 2003. Pet. 9; *see also* Ex. 1506, code (22). Patent Owner argues that neither Krantz nor Herrmann “constitutes prior art because the inventors conceived

of the invention before the effective dates [of those references] and exercised reasonably continuous diligence in reducing the inventions to practice.” PO Resp. 63–83; *see* Sur-reply 20–38. Petitioner disagrees that the evidence of record sufficiently shows that the inventors of the ’484 patent conceived of the invention before the earliest effective filing date of Krantz or Herrmann, as well as that the inventors exercised reasonably continuous diligence in reducing that invention to practice. Reply 21–39. We now consider the parties’ arguments related to Patent Owner’s attempt to antedate Krantz and Herrmann.

1. Conception

Patent Owner argues that the evidence of record establishes that the inventors³ of the ’484 patent conceived of the invention no later than November 14, 2002. PO Resp. 64–69 & n.15. Patent Owner cites emails from Mr. Lum to others at InfoExpress dated October 7, 2002, as allegedly evidencing a “groundbreaking” idea of “includ[ing] the implementation of auditing support functionality over authentication protocols such as 802.1x.” *Id.* at 69 (quoting Exs. 2015, 2016); *see also* Ex. 2003 ¶ 8 (Lum testimony regarding same). According to Mr. Lum’s testimony, the idea described in the emails “would form the basis for InfoExpress’s CyberGatekeeper LAN product (‘CG LAN Product’) which was described in EX2011 dated

³ The named inventors are Stacey C. Lum and Yuhshiow Alice Lee. Ex. 1501, code (75). Mr. Lum is the founder and CEO of InfoExpress. Ex. 2003 ¶ 4. Ms. Lee worked at InfoExpress during the time frames relevant to this case. *See* Ex. 2429 ¶¶ 3, 6.

November 14, 2002, and subsequent versions thereof.”⁴ Ex. 2003 ¶ 8; *see also id.* ¶¶ 9–21 (Mr. Lum’s testimony about development of the invention between the time of the October 7, 2002, emails and the drafting of Exhibit 2011). Patent Owner also contends that, on November 14, 2002, co-inventor Ms. Lee e-mailed Exhibit 2011 to others within InfoExpress, thus “demonstrating that the claimed inventions were conceived of by then.” PO Resp. 65 (citing Ex. 2012; Ex. 2429 ¶ 13; Ex. 2520; Ex. 2564 ¶ 12).

We note first that the parties agree that the earliest effective filing date of Krantz is December 6, 2002, and that the earliest effective filing date of Herrmann is March 13, 2003. Pet. 7, 9; PO Resp. 64. Thus, Patent Owner’s asserted conception date for the inventions in the ’484 patent, November 14, 2002, is earlier than the earliest effective filing dates of Krantz and Herrmann. Petitioner argues that Patent Owner fails to establish conception of the invention of the ’484 patent by the inventors thereof before the earliest effective filing date of either Krantz or Herrmann. Reply 19–27. We now consider Petitioner’s arguments and the question of whether Patent Owner’s evidence corroborates the earlier conception of each challenged claim.

a) Authorship of Exhibit 2011

Petitioner argues that the evidence of record does not show that the Exhibit 2011, on which Patent Owner relies to corroborate the named inventors’ testimony of conception, was written by the inventors of the ’484 patent. Reply 19–21. We disagree.

⁴ Exhibit 2011 is titled “CyberGatekeeper LAN Based Policy Enforcement Engineering Specification” and dated November 14, 2002. We refer to this document herein by its exhibit number to differentiate it from other versions of the same document in the record.

Ms. Lee testifies that she drafted Exhibit 2011 “at the instruction of Mr. Lum” and that Exhibit 2011 “reflected the ideas of Mr. Lum and me.” Ex. 2429 ¶ 10; *see also* Ex. 2564 ¶ 22 (similar testimony from Mr. Lum). Although the record includes evidence of others, including non-inventor Cary Tsai, being involved in revising later versions of the same specification (*see* Ex. 1525, 30:5–11; Ex. 2018; Ex. 2019; Ex. 2444, 3, 5, 6, 8), none of this evidence contradicts the sworn testimony of Ms. Lee that she authored the original version of the engineering specification at Exhibit 2011 at the behest of Mr. Lum, and that it reflected their ideas. *See* Ex. 2429 ¶ 10. Nor does Petitioner dispute that Ms. Lee emailed Exhibit 2011 to her InfoExpress colleagues on November 14, 2002. *See id.* ¶ 13; Ex. 2435; Ex. 2520. Accordingly, we find that Ms. Lee authored Exhibit 2011 by November 14, 2002, based on Mr. Lum’s ideas and her ideas.

b) Whether the Evidence of Record Corroborates the Inventors’ Testimony Regarding Conception for Each of the Challenged Claims

Patent Owner argues that the evidence of record corroborates conception of each challenged claim of the ’484 patent, based on an analysis by Dr. Smith. PO Resp. 65–69; Sur-reply 21–26 (both citing, *inter alia*, Exs. 2007 (Smith Decl.), 2009 (Claim Chart by Dr. Smith)). That evidence includes Exhibit 2011 and, for some of the challenged claims, Exhibit 2013,⁵ which “reflect[s] background knowledge of [the inventors of the ’484

⁵ Exhibit 2013 is an InfoExpress product manual titled “CyberGatekeeper Policy Manager” that bears a 2001 copyright notice. We refer to this document herein by its exhibit number.

patent], and document[s] [their] knowledge of various details of auditing an access device.” Ex. 2003 ¶ 11.

Petitioner argues that Patent Owner’s cited evidence fails to “include every feature of the claimed invention.” Reply 22–27. In particular, Petitioner argues that Exhibit 2011 does not disclose “configuring the gatekeeper within, rather than inline with, the protected network . . . so that network traffic ‘can pass from the access device to the less-restricted subset of the network without needing to pass through the gatekeeper.’” *Id.* at 23 (quoting Ex. 2007, 13). Patent Owner argues to the contrary. Sur-reply 21–25. A preponderance of the evidence supports Patent Owner’s view. Exhibit 2011 discloses that, for “LAN/Port-Filtering User[s],” the network switch begins in a state in which “everyone can only access to the untrusted network” but that, “[i]f CGAgent passes the audit, [the CyberGatekeeper server] programs the switch to add CGAgent’s MAC address to the ‘allow’ list in the switch so the CGAgent can access to the trusted network.” Ex. 2011, 9. Thus, the data passes from the access device through CGAgent to the network switch, and then directly to the trusted network without any need to pass through the CyberGatekeeper server. Similarly, for “VPN/Remote Access User[s],” Exhibit 2011 teaches “add[ing] CGAgent’s IP and port number into CGS’s bypass/filter table,” suggesting that data from a VPN user bypasses the CyberGatekeeper server, and, for “LAN/802.1X User[s],” the specification discloses “send[ing] the ACCESS-ACCEPT message to the switch so the CGAgent can access to systems behind the switch.” *Id.* In addition, according to Dr. Smith, because “the access point can restrict access to the ‘less-restricted’/‘trusted’ network until the audit is completed, an access device would not be able to communicate

with the CGS . . . if the CGS was located within the ‘less-restricted’/‘trusted’ network.” Ex. 2007 ¶ 29(d) (citing Ex. 2011, 7); *see also* Ex. 1526, 18:3–9 (Dr. Smith testifying that “the restricted subset . . . is where the gatekeeper is”). The location of the CGS within the restricted or untrusted network means that data passing from the access device to the less-restricted or trusted network does not pass through the CGS.

We now discuss whether the evidence of record corroborates the inventors’ testimony of conception for each challenged claim, with a particular focus on Petitioner’s arguments.

(1) Claim 28

The preamble of claim 28 recites “[a] method of granting access to a protected network.” Ex. 1501, 17:63–64. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a method of granting access to a protected network. Ex. 2011, 4 (“In today’s computing environment, users can access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line . . . CyberGatekeer will provide LAN based policy enforcement in the new release.”). This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 28 recites “receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point.” Ex. 1501, 17:65–18:1. Patent Owner alleges that evidence of record establishes that

the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “request received through a communication port of an access point.” Ex. 2011, 5. This request occurs when “users . . . access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line.” *Id.* at 4. Thus, Exhibit 2011 discloses receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 28 recites “the communication port configured for communicating between the access device and a restricted subset of the protected network.” Ex. 1501, 18:1–3. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that “everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the communication port is configured for communicating between the access device and a restricted subset of the protected network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 28 recites “the restricted subset including a gatekeeper.” Ex. 1501, 18:3–4. Patent Owner alleges that evidence of record establishes

that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “CyberGatekeeper” that restricts access “so everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the gatekeeper is located in the restricted subset. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 28 recites “applying a security policy to the access device, responsive to the request.” Ex. 1501, 18:5–6. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit.” Ex. 2011, 8. Thus, Exhibit 2011 discloses applying a security policy to the access device, responsive to the request. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 28 recites “reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied.” Ex. 1501, 18:7–11. Patent

Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the remote device passes the audit, the CyberGatekeeper “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group.” Ex. 2011, 9. As noted above, Petitioner argues that Exhibit 2011 fails to disclose the data passing between the access device and the less-restricted subset without passing the data through the gatekeeper, but we find otherwise. Ex. 2011, 9. Thus, Exhibit 2011 discloses reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 28 recites “communicating between the gatekeeper and an agent executing on the access device to monitor security status of the access device after reconfiguring the communication port for communicating between the access device and the less-restricted subset.” Ex. 1501, 18:12–16. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that CGAgent and CyberGatekeeper server continue to communicate during a monitoring phase after the network switch is reconfigured and that, “[i]f CGAgent’s audited environment changes” in such a way that “CGAgent

fail[s] the audit,” CyberGatekeeper server configures the switch to block or drop packets from the access device. Ex. 2011, 13. Thus, Exhibit 2011 discloses communicating between the gatekeeper and an agent executing on the access device to monitor security status of the access device after reconfiguring the communication port for communicating between the access device and the less-restricted subset. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(2) Claim 38

Claim 38 depends from claim 28 and recites “further including updating the access device if requirements of the security policy are not satisfied.” Ex. 1501, 18:42–44. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the audit fails, “CGAgent [may] download all necessary software or data in order to pass the audit.” Ex. 2011, 9. Thus, Exhibit 2011 discloses updating the access device if requirements of the security policy are not satisfied. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(3) Claim 39

Claim 39 depends from claim 28 and recites that “the security policy includes an audit of the access device.” Ex. 1501, 18:45–46. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either

Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit.” Ex. 2011, 8. Thus, Exhibit 2011 discloses that the security policy includes an audit of the access device. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(4) Claim 41

The preamble of claim 41 recites “[a] method of granting access to a protected network.” Ex. 1501, 19:1. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a method of granting access to a protected network. Ex. 2011, 4 (“In today’s computing environment, users can access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line . . . CyberGatekeeper will provide LAN based policy enforcement in the new release.”). This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 41 recites “receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point.” Ex. 1501, 19:3–6. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the

effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “request received through a communication port of an access point.” Ex. 2011, 5. This request occurs when “users . . . access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line.” *Id.* at 4. Thus, Exhibit 2011 discloses receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 41 recites “the communication port configured for communicating between the access device and a restricted subset of the protected network.” Ex. 1501, 19:6–8. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that “everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the communication port is configured for communicating between the access device and a restricted subset of the protected network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 41 recites “the restricted subset including a gatekeeper.” Ex. 1501, 19:8–9. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before

the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “CyberGatekeeper” that restricts access “so everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the gatekeeper is located in the restricted subset. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 41 recites “applying a security policy to the access device, responsive to the request.” Ex. 1501, 19:10–11. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit.” Ex. 2011, 8. Thus, Exhibit 2011 discloses applying a security policy to the access device, responsive to the request. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 41 recites “reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied.” Ex. 1501, 19:12–16. Patent Owner alleges that evidence of record establishes that the inventors of

the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the remote device passes the audit, the CyberGatekeeper “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group.” Ex. 2011, 9. In addition, it discloses that the CyberGatekeeper “will periodically broadcast on the DMZ segment to indicate any LAN users on a switch which has VLAN or Port Filtering capability should audit on that address.” *Id.* at 7. As noted above, Petitioner argues that Exhibit 2011 fails to disclose the data passing between the access device and the less-restricted subset without passing the data through the gatekeeper, but we find otherwise. Ex. 2011, 9. Thus, Exhibit 2011 discloses reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 41 recites “updating the access device if requirements of the security policy are not satisfied.” Ex. 1501, 19:17–18. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the audit fails, “CGAgent [may] download all necessary software or data in order to pass the audit.” Ex. 2011, 9. Thus, Exhibit 2011 discloses updating the access device if requirements of the security policy are not satisfied. This corroborates

Lum's and Lee's testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(5) Claim 42

Claim 42 depends from claim 41 and recites that “the security policy includes an audit of the access device.” Ex. 1501, 19:19–20. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when “the user's PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit.” Ex. 2011, 8. Thus, Exhibit 2011 discloses that the security policy includes an audit of the access device. This corroborates Lum's and Lee's testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(6) Claim 43

Claim 43 depends from claim 41 and recites “further including communicating between the gatekeeper and an agent executing on the access device to obtain system data from the access device, and wherein applying the security policy includes using the system data to determine if the access device satisfies the requirements of the security policy.” Ex. 1501, 19:21–26. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that the CyberGatekeeper grants “[a]ccess to the corporate network . . . only after the

client system passes an audit (meet[s] the configuration standards defined by corporate administration).” Ex. 2011, 6. This audit is carried out by an agent on the access device. *Id.* at 8 (when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit”). Thus, Exhibit 2011 discloses communicating between the gatekeeper and an agent executing on the access device to obtain system data from the access device, and wherein applying the security policy includes using the system data to determine if the access device satisfies the requirements of the security policy. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(7) Claim 53

Claim 53 depends from claim 41 and recites “further including authenticating a user of the access device.” Ex. 1501, 19:50–51. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses using Extensible Authentication Protocol for authenticating users. Ex. 2011, 6, 7, Fig. 2. Thus, Exhibit 2011 teaches authenticating a user of the access device. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(8) Claim 56

The preamble of claim 56 recites “[a] method of granting access to a protected network.” Ex. 1501, 19:59. Patent Owner alleges that evidence of

record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a method of granting access to a protected network. Ex. 2011, 4 (“In today’s computing environment, users can access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line . . . CyberGatekeeper will provide LAN based policy enforcement in the new release.”). This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 56 recites “receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point.” Ex. 1501, 19:61–64. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “request received through a communication port of an access point.” Ex. 2011, 5. This request occurs when “users . . . access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line.” *Id.* at 4. Thus, Exhibit 2011 discloses receiving a request for access to a less-restricted subset of the protected network from an access device, the request being received through a communication port of an access point. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 56 recites “the communication port configured for communicating between the access device and a restricted subset of the protected network.” Ex. 1501, 19:64–66. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that “everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the communication port is configured for communicating between the access device and a restricted subset of the protected network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 56 recites “the restricted subset including a gatekeeper.” Ex. 1501, 19:66–67. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “CyberGatekeeper” that restricts access “so everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the gatekeeper is located in the restricted subset. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 56 recites “the restricted subset . . . being characterized by an access control list, the access to the restricted subset of the protected

network being responsive to a VLAN configured to communicate with the protected network subject to the access control list.” Ex. 1501, 19:66–20:4. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the audit passes for a “VLAN User,” CyberGatekeeper server “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group,” that “CGAgent will close connection and be assigned a new IP address,” and that “CGAgent uses this new IP address to communicate with CGS after Audit Pass in the Monitor mode.” Ex. 2011, 9. Thus, Exhibit 2011 discloses that access to the restricted subset of the protected network is responsive to a VLAN configured to communicate with the protected network subject to the access control list. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 56 recites “applying a security policy to the access device, responsive to the request.” Ex. 1501, 20:5–6. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit.” Ex. 2011, 8. Thus, Exhibit 2011 discloses applying a security policy to the access device, responsive to the request.

This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 56 recites “reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied.” Ex. 1501, 20:7–11. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the remote device passes the audit, the CyberGatekeeper “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group.” Ex. 2011, 9. In addition, it discloses that the CyberGatekeeper “will periodically broadcast on the DMZ segment to indicate any LAN users on a switch which has VLAN or Port Filtering capability should audit on that address.” *Id.* at 7. As noted above, Petitioner argues that Exhibit 2011 fails to disclose the data passing between the access device and the less-restricted subset without passing the data through the gatekeeper, but we find otherwise. Ex. 2011, 9. Thus, Exhibit 2011 discloses reconfiguring the communication port for communicating data between the access device and the less-restricted subset of the protected network without passing the data through the gatekeeper, if requirements of the security policy are satisfied. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(9) Claim 57

The preamble of claim 57 recites “[a] method of granting access to a protected network.” Ex. 1501, 20:12. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a method of granting access to a protected network. Ex. 2011, 4 (“In today’s computing environment, users can access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line . . . CyberGatekeeper will provide LAN based policy enforcement in the new release.”). This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 57 recites “receiving a first communication from an access device at a communication port.” Ex. 1501, 20:14–15. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “request received through a communication port of an access point.” Ex. 2011, 5. This request occurs when “users . . . access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line.” *Id.* at 4. Thus, Exhibit 2011 discloses receiving a first communication from an access device at a communication port. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 57 recites “the communication port being configured to pass the first communication to a restricted subset of the protected network.” Ex. 1501, 20:15–17. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that “everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the communication port is configured to pass the first communication to a restricted subset of the protected network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 57 recites “the restricted subset including a gatekeeper.” Ex. 1501, 20:17–18. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “CyberGatekeeper” that restricts access “so everyone [who] connects to the switch can only access . . . the untrusted network.” Ex. 2011, 7. Thus, Exhibit 2011 discloses that the gatekeeper is located in the restricted subset. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 57 recites that the gatekeeper is “configured to enforce a security policy for access to a less-restricted subset of the protected network.” Ex. 1501, 20:18–20. Patent Owner alleges that evidence of

record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit.” Ex. 2011, 8. Exhibit 2011 also discloses that, when the remote device passes the audit, the CyberGatekeeper “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group.” *Id.* at 9. Thus, Exhibit 2011 discloses a gatekeeper that is configured to enforce a security policy for access to a less-restricted subset of the protected network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

Claim 57 recites “receiving a command from the gatekeeper, the command being responsive to the received first communication and being configured to reconfigure the communication port to communicate data to the less-restricted subset of the protected network,” “configuring the communication port to communicate data to the less-restricted subset of the protected network rather than merely the restricted subset of the protected network, responsive to the received command,” and “receiving a second communication from the access device at the communication port, the communication port now being configured to pass the second communication to the less-restricted subset of the protected network.” Ex. 1501, 20:21–33. Patent Owner alleges that evidence of record establishes that the inventors of the '484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–

69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that, when the remote device passes the audit, the CyberGatekeeper “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group.” Ex. 2011, 9. In addition, it discloses that the CyberGatekeeper “will periodically broadcast on the DMZ segment to indicate any LAN users on a switch which has VLAN or Port Filtering capability should audit on that address.” *Id.* at 7. Thus, Exhibit 2011 discloses receiving a command from the gatekeeper, the command being responsive to the received first communication and being configured to reconfigure the communication port to communicate data to the less-restricted subset of the protected network, configuring the communication port to communicate data to the less-restricted subset of the protected network rather than merely the restricted subset of the protected network, responsive to the received command, and receiving a second communication from the access device at the communication port, the communication port now being configured to pass the second communication to the less-restricted subset of the protected network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(10) Claim 58

Claim 58 depends from claim 57 and recites that “configuring the communication port includes associating the communication port with a VLAN.” Ex. 1501, 20:34–36. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses

that, when the remote device passes the audit, the CyberGatekeeper “changes the VLAN group for the port from the untrusted VLAN to the original VLAN group.” Ex. 2011, 9. In addition, it discloses that the CyberGatekeeper “will periodically broadcast on the DMZ segment to indicate any LAN users on a switch which has VLAN or Port Filtering capability should audit on that address.” *Id.* at 7. Thus, Exhibit 2011 discloses configuring the communication port includes associating the communication port with a VLAN. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(11) Claim 59

Claim 59 depends from claim 57 and recites that “the communication port is limited to communicating with the restricted subset of the protected network by an access control list, when the first communication is received.” Ex. 1501, 20:37–40. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses a “request received through a communication port of an access point.” Ex. 2011, 5. This request occurs when “users . . . access the corporate network from their systems on the LAN or remotely access the corporate network over the VPN or dialup line.” *Id.* at 4. Exhibit 2011 also discloses a “CyberGatekeeper” that restricts access “so everyone [who] connects to the switch can only access . . . the untrusted network.” *Id.* at 7. Exhibit 2011 discloses that, when the audit passes for a “VLAN User,” CyberGatekeeper server “changes the VLAN group for the port from the

untrusted VLAN to the original VLAN group,” that “CGAgent will close connection and be assigned a new IP address,” and that “CGAgent uses this new IP address to communicate with CGS after Audit Pass in the Monitor mode.” *Id.* at 9. Thus, Exhibit 2011 discloses that the communication port is limited to communicating with the restricted subset of the protected network by an access control list, when the first communication is received. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(12) Claim 61

Claim 61 depends from claim 59 and recites that “the communication port is coupled with a network switch.” Ex. 1501, 20:45–46. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 equates a network “Access Point” with a “Switch.” Ex. 2011, 7, Fig. 2. Thus, Exhibit 2011 discloses that the communication port is coupled with a network switch. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(13) Claim 62

Claim 62 depends from claim 59 and recites that “the communication port is coupled with a wireless access point.” Ex. 1501, 20:47–48. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011;

Ex. 2429; Ex. 2564). Exhibit 2011 teaches the use of a “wireless network” and a “wireless AP.” Ex. 2011, 5, 19. Thus, Exhibit 2011 discloses that the communication port is coupled with a wireless access point. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(14) Claim 63

Claim 63 depends from claim 59 and recites that “the communication port is coupled with a remote access virtual private network.” Ex. 1501, 20:49–50. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 teaches the use of the described system with a “VPN/Remote Access User.” Ex. 2011, 2, 8–10. Thus, Exhibit 2011 discloses that the communication port is coupled with a remote access virtual private network. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(15) Claim 65

Claim 65 depends from claim 57 and recites “further including authenticating a user of the access device.” Ex. 1501, 20:53–54. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses using Extensible Authentication Protocol for authenticating users. Ex. 2011, 6, 7, Fig. 2. Thus, Exhibit 2011 teaches authenticating a user of the access device. This

corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(16) Claim 66

Claim 66 depends from claim 65 and recites “further including obtaining system data from the access device, and wherein applying the security policy includes using the system data to determine if the access device satisfies the requirements of the security policy.” Ex. 1501, 20:55–59. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that the CyberGatekeeper grants “[a]ccess to the corporate network . . . only after the client system passes an audit (meet[s] the configuration standards defined by corporate administration).” Ex. 2011, 6. Thus, Exhibit 2011 discloses obtaining system data from the access device, and wherein applying the security policy includes using the system data to determine if the access device satisfies the requirements of the security policy. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(17) Claim 67

Claim 67 depends from claim 66 and recites that “the system data includes antivirus software version data.” Ex. 1501, 20:60–61. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564); Ex. 2009, 44–47. Exhibit 2013 reports details of the

CyberGatekeeper Policy Manager, a version of CyberGatekeeper that pre-existed and informed the inventors' preparation of Exhibit 2011. *See* Ex. 2011, 4 (“Currently CyberGatekeeper is a remote policy enforcer to ensure users remotely accessing the corporate network over the VPN or dialup lines are allowed to access the corporate network only when their systems meet the minimum configuration standards defined by corporate administrators.”). According to Exhibit 2013, one “minimum configuration requirement[]” that can be imposed on “the remote system” before it is “granted access to the company network” may be the presence of “Antivirus” software. Ex. 2013, 14–15. Thus, Exhibits 2011 and 2013 disclose that the system data includes antivirus software version data. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

(18) Claim 68

Claim 68 depends from claim 57 and recites “further including communicating between the gatekeeper and an agent executing on the access device to obtain system data from the access device, and wherein applying the security policy includes using the system data to determine if the access device satisfies the requirements of the security policy.” Ex. 1501, 20:62–67. Patent Owner alleges that evidence of record establishes that the inventors of the ’484 patent conceived of this subject matter before the effective date of either Krantz or Herrmann. PO Resp. 65–69 (citing Ex. 2009; Ex. 2011; Ex. 2429; Ex. 2564). Exhibit 2011 discloses that the CyberGatekeeper grants “[a]ccess to the corporate network . . . only after the client system passes an audit (meet[s] the configuration standards defined by corporate administration).” Ex. 2011, 6. This audit is carried out by an

agent on the access device. *Id.* at 8 (when “the user’s PC connects to the switch,” and following confirmation of “ID/Username/Password,” the CyberGatekeeper “withholds the ACCESS-ACCEPT message and asks CGAgent to start [an] audit”). Thus, Exhibit 2011 discloses communicating between the gatekeeper and an agent executing on the access device to obtain system data from the access device, and wherein applying the security policy includes using the system data to determine if the access device satisfies the requirements of the security policy. This corroborates Lum’s and Lee’s testimony that they conceived of the invention before the effective date of Krantz or Herrmann. Ex. 2429 ¶ 5; Ex. 2564 ¶ 7.

c) Alleged Admission of No Novelty

Petitioner argues that Mr. Lum admitted that, at least as late as March 25, 2003, he had not conceived of any invention that “he thought was novel.” Reply 21–23. According to Petitioner, Mr. Lum’s admission “precludes the November 14, 2002 conception date.” *Id.* We disagree.

Petitioner’s argument is premised on Mr. Lum’s email to a patent attorney on March 25, 2003, in which he stated that he was “fairly sure what [he] originally wanted to patent ha[d] prior art.” Ex. 2231. Although the parties put forth arguments about whether Mr. Lum’s statement pertained to the inventions of the ’484 patent—as opposed to other of Patent Owner’s products—we need not decide that issue.

Instead, “[c]onception is defined as ‘the formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention, as it is hereafter to be applied in practice,’” and “[c]onception is complete . . . 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,

without extensive research or experimentation.”” *Regents of the Univ. of Cal. v. Broad Inst., Inc.*, 136 F.4th 1367, 1378 (Fed. Cir. 2025) (quoting *Burroughs Wellcome Co. v. Barr Lab’ys, Inc.*, 40 F.3d 1223, 1228 (Fed. Cir. 1994)). Thus, even if Mr. Lum had some patentability concerns about the inventions disclosed in the ’484 patent, that circumstance does not undermine the fact that he and Ms. Lee conceived of the inventions by November 14, 2002, as evidenced by Exhibits 2011 and 2013. Furthermore, as discussed above, the evidence of record establishes that the inventors of the ’484 patent had formed their inventive ideas by November 14, 2002, regardless of any subjective belief they may have had at that time, or at a later time, about potentially relevant prior art.

d) Conclusion with Respect to Conception

For the reasons discussed above, we determine that the inventors of the ’484 patent conceived of the invention of the challenged claims before the earliest effective filing date of either Krantz or Herrmann.

2. Reduction to Practice

“The filing of a patent application serves as . . . constructive reduction to practice of the subject matter described in the application.” *Hyatt v. Boone*, 146 F.3d 1348, 1352 (Fed. Cir. 1998). Here, the application that gave rise to the ’484 patent claims the benefit of a provisional application filed on October 21, 2003. Ex. 1501, code (60). Patent Owner asserts that the filing of this provisional application constituted constructive reduction to practice of the invention of the ’484 patent. PO Resp. 81–83. This assertion is supported by evidence of record. Ex. 2006, 19; Ex. 2007 ¶ 31; Ex. 2010, 1–12. Given that Petitioner does not dispute the assertion that the filing of the provisional application constituted constructive reduction to practice,

Reply 19–30, we determine that that Patent Owner reduced the invention of the '484 patent to practice no later than October 21, 2003.

3. *Diligence*

“[P]riority of invention goes to the first party to reduce an invention to practice unless the other party can show that it was the first to conceive the invention and that it exercised reasonable diligence in later reducing that invention to practice.” *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1577 (Fed. Cir. 1996) (internal quotation omitted). “The time period for which diligence must be shown by the party first to conceive is from a date just prior to the other party’s conception to the date of reduction to practice by the party first to conceive.” *Monsanto Co. v. Mycogen Plant Sci., Inc.*, 261 F.3d 1356, 1363 (Fed. Cir. 2001) (cleaned up). “A patent owner need not prove the inventor *continuously* exercised reasonable diligence throughout the critical period; it must show there was *reasonably continuous* diligence.” *Perfect Surgical Techniques, Inc. v. Olympus Am., Inc.*, 841 F.3d 1004, 1009 (Fed. Cir. 2016); *see also* 35 U.S.C. § 102(g) (requiring “the reasonable diligence of one who was first to conceive and last to reduce to practice”).

In this case, Petitioner asserts that Krantz’s earliest effective filing date is December 6, 2002, and that Herrmann’s earliest effective filing date is March 13, 2003.⁶ Pet. 7, 9. As discussed above, Patent Owner reduced the invention to practice on October 21, 2003. Thus, Patent Owner’s antedating theory must establish diligence from a time just before

⁶ As noted by Patent Owner (PO Resp. 64–65 n.15), Petitioner does not attempt to establish an earlier effective filing date for Herrmann under 35 U.S.C. § 102(e) based on the earlier provisional application in Herrmann’s priority chain.

December 6, 2002, to the time of the inventors' alleged constructive reduction to practice via the filing of U.S. Provisional Patent Application No. 60/513,080 on October 21, 2003. To support its assertions of inventor diligence, Patent Owner puts forth testimony from inventor Stacey Lum. Ex. 2003 ¶¶ 23–66; Ex. 2564 ¶¶ 23–66.⁷ Patent Owner also puts forth a multitude of corroborating exhibits that are keyed to a “diligence calendar” (Ex. 2004) covering the critical period. We now consider Patent Owner's evidence of diligence.

a) Internal Work at InfoExpress

As discussed below, InfoExpress allegedly engaged others to help it reduce the invention to practice. Notwithstanding, Mr. Lum testifies that InfoExpress retained the responsibility for:

- a. defining the overall architecture for the software including specifying the function calls supported and invoked and data structures passed between software components (*e.g.*, the agent, the gatekeeper, the enforcement components, the policy manager); and
- b. developing:
 - i. the agent (which included RADIUS and EAP functionality as well as auditing); and
 - ii. the overall server software, which:
 - iii. received audit information,
 - iv. applied a defined security policy, and
 - v. instructed the enforcement component (*e.g.*, an [REDACTED] [REDACTED] to grant or deny access.

⁷ We note that the sections regarding diligence in Mr. Lum's two declarations are substantially the same.

Ex. 2003 ¶ 48; Ex. 2564 ¶ 48.

In particular, Patent Owner argues that “InfoExpress experimented and tested functionality of existing network switches” in December 2002 to see how the invention could be implemented using network switches. PO Resp. 71 (citing, *inter alia*, Exs. 2198, 2276–2279; Ex. 2564 ¶ 49). Patent Owner also cites testing of Cisco switches “to evaluate potential authentication and 802.1X functionality for use with gatekeeper” in February 2003. *Id.* at 72–73 (citing Exs. 2200, 2201).

Petitioner does not dispute Patent Owner’s evidence about internal development of the invention at InfoExpress in December 2002 and February 2003. We credit this evidence of diligence because it is supported by Mr. Lum’s testimony (Ex. 2003 ¶¶ 49–51; Ex. 2564 ¶¶ 49–51) and internal emails (Exs. 2198, 2200, 2201, 2276–2279). Notwithstanding, as discussed below, the bulk of Patent Owner’s corroborating evidence regarding diligence relates to InfoExpress’s interactions with outsiders.

b) Work by Contract Programmer Max Banin

Patent Owner additionally cites emails memorializing work performed by its contract programmer, Max Banin, on a “client-side program to provide information to gatekeeper,” “client authentication and device auditing,” and “programming for editing ‘security policies.’” *Id.* at 75–78, 80 (citing Exs. 2202–2210, 2302); *see also* Ex. 2003 ¶¶ 52–53; Ex. 2564 ¶¶ 52–53 (Mr. Lum’s testimony regarding same). Petitioner argues that this evidence is not directly related to reducing the invention to practice, but does not specifically dispute Patent Owner’s characterizations of the evidence presented. Reply 29. We have reviewed the evidence and find that it relates to programming of “a client component to provide audit data in conjunction

with claimed invention” at the behest of Mr. Lum in March through June 2003. Ex. 2003 ¶¶ 52–53; Ex. 2564 ¶¶ 52–53 (both citing Exs. 2202–2204, 2206–2210). Contemporaneous emails corroborate Mr. Lum’s testimony about InfoExpress’s employment of Mr. Banin for this purpose. *See, e.g.*, Exs. 2202–2209. Thus, we credit this evidence as relating to the diligent reduction to practice of the invention.

c) Engagement of Globe Tech, Inc. (GTI)

According to Patent Owner, “InfoExpress and GTI worked together on ‘implementing the claimed invention using Simple Network Messaging Protocol (SNMP) to communicate with and control access points such as switches provided by manufacturers such as Cisco.’” Sur-reply 31 (citing Ex. 2564 ¶ 37). Patent Owner further explains that “[t]he use of SMNP to reconfigure network switches was specified within InfoExpress and our partner as NDCA (Network Device Configuration API).” *Id.* (quoting Ex. 2564 ¶ 21). Patent Owner adduces evidence of correspondence between InfoExpress and GTI including specifications, agreements, and status reports for this work. *See, e.g.*, PO Resp. 71–81 (summarizing evidence); Ex. 2003 ¶¶ 37–46 (Mr. Lum’s testimony regarding same); Ex. 2564 ¶¶ 37–46 (same); Sur-reply 29–39 (highlighting same).

Petitioner argues that GTI’s work is not “directly related” to reducing the invention to practice. Reply 29 (citing *Naber v. Cricchi*, 567 F.2d 382, 385 (CCPA 1977)). Petitioner argues that InfoExpress’s relationship with GTI predates the conception of the invention insofar as “Lum had engaged with GTI for software development services” and “to serve as ‘an offshore software development center’ assisting with InfoExpress’s projects

generally.” *Id.* (quoting Ex. 2022). According to Petitioner, this shows that “[n]ot all [of] GTI’s work **necessarily** related to reduction to practice.” *Id.*

Petitioner also highlights Patent Owner’s statement about certain work by GTI in January and March 2003 “**eventually relating** to the reconfiguring of the access point.” *Id.* at 29–30 (emphasis by Petitioner) (quoting PO Resp. 71, 75). Petitioner says such work is insufficient to prove diligence, and, as such, Petitioner argues that we should disregard this evidence. *Id.*

Although Petitioner is correct that InfoExpress’s relationship with GTI predates the invention (*see, e.g.*, Ex. 2022), this fact does not undermine the extensive evidence put forth by Patent Owner. In particular, this evidence details InfoExpress’s engagement of GTI for a SNMP implementation of the invention to communicate with and control access points. *See, e.g.*, Exs. 2048–2055 (emails showing initial sharing of project specification with GTI and GTI’s responsive comments), 2067–2074, 2195–2196, 2283 (correspondence with GTI regarding updated specifications), 2129–2130, 2197, 2296–2301, 2303, 2314, 2359, 2384, 2399 (examples of a GTI status reports and GTI-generated source code).⁸ The evidence, which is un rebutted, spans the time frame from January 2003 to September 2003. *See* PO Resp. 71–81. We credit this extensive evidence as showing diligence during the relevant time frame regardless of whether InfoExpress had a preexisting relationship with GTI.

⁸ We note that GTI employee [REDACTED] was assigned an infoexpress.com e-mail address while GTI worked with InfoExpress, thus making it appear that some of his emails arose from within InfoExpress. *See* Ex. 2003 ¶ 40.

We do not ascribe significance to the phrasing of Patent Owner’s statements about a “port-configuration solution *eventually relating* to the reconfiguring of the access point.” *See* PO Resp. 71, 75 (emphasis added). Instead, we agree with Patent Owner (*see* Sur-reply 31) that the evidence cited by Patent Owner in support of those statements directly relates to configuration of access points, which is a claimed feature of the invention. *See, e.g.*, Ex. 1501, 8:13–23, 18:7–11.

d) Negotiations with [REDACTED]

Patent Owner cites evidence from December 2002 through February 2003 related to InfoExpress’s negotiations with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] PO Resp. 71–73 (citing Exs. 2025–2046, 2281, 2282); *see also* Ex. 2003 ¶¶ 28–34; Ex. 2564 ¶¶ 28–34 (Mr. Lum’s testimony regarding same).

Petitioner argues that Patent Owner’s agreement with [REDACTED] never materialized, so Patent Owner’s [REDACTED] evidence “relates only to licensing negotiations and compensation, not technical development.” Reply 29 (citing Exs. 2026–2051). Petitioner also argues that “[t]he [REDACTED] evidence (EX2026-EX2051) concerns Lum’s attempt to outsource certain software development of the ‘CGAgent,’ a component already used in the existing Remote/VPN versions of the CyberGatekeeper.” *Id.* (citing Ex. 1523, 20:4–5; Exs. 2025, 2276–2280). Thus, according to Petitioner, this evidence “is either not ‘directly related’ to reduction to practice, or related purely to refining the prior art CGAgent to ‘the most marketable and profitable form,’ and should be disregarded.” *Id.* (quoting

Griffith v. Kanamaru, 816 F.2d 624, 627 (Fed. Cir. 1987); *Naber*, 567 F.2d at 385).

Although Patent Owner’s negotiation with [REDACTED] “dragged [] out for about 3 months” (Ex. 2036, 1) and did not result in an agreement, we nonetheless accord some weight to the [REDACTED] evidence as demonstrating diligence. The [REDACTED] evidence relates to a “potential solution” for reducing the invention to practice in the form of “an agent and/or 802.1X supplicant to be part of the LAN Product” that “would potentially provide a manner for authenticating access devices that sought to join the protected network as well as provide audit data about the access device.” Ex. 2003 ¶ 28; Ex. 2564 ¶ 28 (both citing Ex. 2018, 1). An email from Mr. Lum to a [REDACTED] representative dated December 3, 2002, details how the 802.1X supplicant would have been implemented. *See* Ex. 2025. We further note how the series of draft agreements between [REDACTED] and InfoExpress included an “Exhibit G” that included technical details of the 802.1X supplicant. *See, e.g.*, Ex. 2046, 20–39; *see also* Ex. 2003 ¶¶ 31–32; Ex. 2564 ¶¶ 31–32 (Mr. Lum’s testimony regarding the draft agreements from January and February 2003). These details were still being finalized in late February 2003. *See* Ex. 2036, 1 ([REDACTED] representative assigning Mr. Lum an “[a]ction item” to “[f]inalize specification on Exhibit G”). These facts are consistent with Mr. Lum’s testimony that the [REDACTED] negotiations were related to developing a portion of the invention. *See* Ex. 1523, 44:10–14. Thus, we credit the evidence related to the [REDACTED] negotiations as reflecting one avenue by which the inventors were seeking to reduce the invention to practice.

e) Interactions with Patent Attorneys

Mr. Lum engaged patent counsel in January 2003 (*see* PO Resp. 72 (citing Ex. 2212)) and sent counsel a partial record of invention in February 2003 (*see* Exs. 2218, 2224, 2225), but did not begin work in earnest with counsel on a patent application until July 2003 (*see id.* at 78 (citing Exs. 2233, 2235–2241, 2243–2245)). *See also* Ex. 2003 ¶¶ 54–61; Ex. 2564 ¶¶ 54–61 (Mr. Lum’s testimony regarding same). His work with counsel continued in September and October 2003 (*see* PO Resp. 80–81 (citing Exs. 2246, 2252–2254, 2256–2265, 2327–2330)), which resulted in the filing of two provisional patent applications (*see* Exs. 2005–2006). *See also* Ex. 2003 ¶¶ 62–66; Ex. 2564 ¶¶ 62–66 (Mr. Lum’s testimony regarding same). Patent Owner relies on the filing date of the latter application (U.S. Provisional Patent Application No. 60/513,080, Ex. 2006) as its constructive reduction to practice date. *See* PO Resp. 69, 81–83.

Petitioner notes that patent counsel contacted Mr. Lum in March 2003, to which he responded that what he “originally wanted to patent ha[d] prior art.” Reply 27 (citing Exs. 2231, 2232). Petitioner also cites Mr. Lum’s deposition testimony stating that the March 2003 correspondence with counsel related to a product called CyberArmor, not the invention here. *Id.* at 28 (quoting Ex. 1523, 56:15–19). Petitioner additionally notes that Mr. Lum did not further interact with counsel until July 2003, which Petitioner characterizes as an unreasonable three-month delay. *Id.* at 27–28.

We agree with Petitioner that Mr. Lum’s deposition testimony undermines Patent Owner’s application of his correspondence with counsel in February and March 2003 toward diligent reduction to practice.

Accordingly, we take the suggestion of Patent Owner’s counsel at the oral hearing to discount evidence related to CyberArmor, and we instead focus on Mr. Lum’s interactions with counsel from July 2003 until the time of constructive reduction to practice. *See* Paper 52, 119:2–120:7. We credit the cited correspondence from July 2003 onward as showing diligence and consider it with the other evidence of diligence discussed herein. *See, e.g.*, Exs. 2233, 2235–2241, 2243–2246, 2252–2254, 2256–2265, 2327–2330.

f) Petitioner’s Other Arguments Regarding Diligence

Petitioner argues that certain lapses in Patent Owner’s evidence of diligence, which include gaps of up to 22 days, “amount to an unreasonable delay in reducing the invention to practice.” Reply 30. Yet we agree with Patent Owner (Sur-reply 29) that that Patent Owner need only prove “*reasonably continuous* diligence.” *Perfect Surgical*, 841 F.3d at 1009. As detailed above, we find that Patent Owner has established a reasonably continuous cadence of activity leading to the reduction of the invention to practice. We do not find the gaps to be unreasonable, and we note that the longest gap—22 days—occurred over the end-of-year holiday period.

Echoing its arguments regarding Mr. Lum’s earlier interactions with patent counsel discussed above (*see supra* § II.F.3.e), Petitioner argues that we should not rely on entries in Patent Owner’s “diligence calendar” because Mr. Lum never reviewed it to distinguish which items did or did not relate to the patented invention. Reply 28. We already have discounted some evidence based on Mr. Lum’s testimony because it did not relate to the patented invention. *See supra* § II.F.3.e. We are not aware of this situation arising with other evidence proffered by Patent Owner, so we decline to disregard Patent Owner’s diligence calendar on that basis.

g) Conclusion Regarding Diligence

With limited exceptions as discussed above, Patent Owner has put forth persuasive evidence of the inventors' diligent reduction to practice throughout the critical period, as is indicated in Patent Owner's diligence calendar. *See* Ex. 2004. This supports the testimony of Mr. Lum regarding diligence throughout the critical period. *See* Ex. 2003 ¶¶ 23–66; Ex. 2564 ¶¶ 23–66. Thus, we find that the inventors exercised reasonable diligence in reducing their invention to practice.

4. Conclusion Regarding the Prior-Art Status of Krantz and Herrmann

Patent Owner has shown persuasively that the inventors of the '484 patent conceived of the inventions of the '484 patent before the earliest effective filing dates of Krantz and Herrmann. Patent Owner also has persuasively shown that the inventors exercised reasonable diligence in reducing their inventions to practice. Thus, we determine that Krantz and Herrmann do not qualify as prior art to the claims of the '484 patent under 35 U.S.C. § 102(e).

III. CONCLUSION

For the reasons set forth above, we determine that Petitioner has not established by a preponderance of the evidence that either Krantz or Herrmann is prior art to the claims of the '484 patent. Because each of Petitioner's asserted grounds of unpatentability depends on the prior-art status of at least one of these references, we determine that Petitioner has not shown the unpatentability of any claim of the '484 patent.

In summary:

NON-PUBLIC VERSION — PROTECTIVE ORDER MATERIAL

IPR2024-00679

Patent 7,523,484 B2

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
28, 38, 39, 41– 43, 53, 56–59, 61–63, 65–68	103	Krantz, Herrmann		28, 38, 39, 41–43, 53, 56–59, 61–63, 65–68
Overall Outcome				28, 38, 39, 41–43, 53, 56–59, 61–63, 65–68

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner has not shown that any claim of the '484 patent is unpatentable; and

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

NON-PUBLIC VERSION — PROTECTIVE ORDER MATERIAL

IPR2024-00679

Patent 7,523,484 B2

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ATTACHMENT B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

CISCO SYSTEMS, INC. and FORTINET, INC.,
Petitioner,

v.

INFOEXPRESS INC.,
Patent Owner.

IPR2024-00539 (Patent 8,051,460 B2)
IPR2024-00675 (Patent 7,523,484 B2)
IPR2024-00676 (Patent 8,677,450 B2)
IPR2024-00677 (Patent 8,578,444 B2)
IPR2024-00679 (Patent 7,523,484 B2)¹

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

¹ This order applies to each of the above-listed proceedings.

IPR2024-00539 (Patent 8,051,460 B2)
IPR2024-00675 (Patent 7,523,484 B2)
IPR2024-00676 (Patent 8,677,450 B2)
IPR2024-00677 (Patent 8,578,444 B2)
IPR2024-00679 (Patent 7,523,484 B2)

The Office received a request for Director Review of the Final Written Decision in each of the above-captioned cases and an authorized response to each request. *See* Papers 61, 63.²

Having considered the requests and responses, it is:

ORDERED that the requests for Director Review are denied.

² Citations are to the record in IPR2024-00539. The parties filed similar papers in IPR2024-00675, IPR2024-00676, IPR2024-00677, IPR2024-00679.

IPR2024-00539 (Patent 8,051,460 B2)
IPR2024-00675 (Patent 7,523,484 B2)
IPR2024-00676 (Patent 8,677,450 B2)
IPR2024-00677 (Patent 8,578,444 B2)
IPR2024-00679 (Patent 7,523,484 B2)

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