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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner

IPR2024-00863 (Patent 11,663,031 B2)
IPR2024-00864 (Patent 11,663,032 B2)
IPR2024-00865 (Patent 11,693,685 B2)

Record of Oral hearing
Held September 15, 2025

Before MICHAEL R. ZECHER, DANIEL J. GALLIGAN, and
GARTH D. BAER, *Administrative Patent Judges*.

NON-PUBLIC VERSION – PROTECTIVE ORDER MATERIAL

IPR2024-00863 (Patent 11,663,031 B2)
IPR2024-00864 (Patent 11,663,032 B2)
IPR2024-00865 (Patent 11,693,685 B2)

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P R O C E E D I N G S

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JUDGE BAER: Hello, everyone. This is going to be our hearing for IPR2024863, 2024864, and 2024865. I'm Judge Baer. With me is Judge Zecher, and Judge Galligan is here as well.

Let's go ahead and get the parties' appearances if we could, please. Who do we have for Petitioner?

MR. ARGENTI: Good morning, Your Honors.

MR. ARGENTI: Good morning, Your Honors. Matt Argenti on behalf of Petitioner, Wiz, Inc. With me today are Wes Derryberry and Joe Baillargeon, and that's it. It's just outside Counsel. As we understand, this is a closed hearing.

JUDGE BAER: Thank you Mr. Argenti. Will you be arguing?

MR. ARGENTI: I will, Your Honor.

JUDGE BAER: Great. Thank you. And for Patent Owner, please?

MR. DAVIS: Good morning, Your Honors. Blake Davis from Latham & Watkins for Patent Owner, Orca. Also with me from Latham & Watkins is Nicole Bruner and Raghav Bajaj. And then also with me from Weil Gotshal is Doug Lumish.

JUDGE BAER: Great. Thank you, Mr. Davis. I know Ms. Bruner will be presenting as well. I assume you'll be arguing as well?

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1 MR. DAVIS: That's right. And then Mr. Lumish will be handling
2 part of the argument as well.

3 JUDGE BAER: Great. And as you addressed, this is a closed
4 hearing. Just to make sure, is everybody from Petitioner's side is covered by
5 the protective order; is that correct?

6 MR. ARGENTI: That's correct, Your Honor.

7 JUDGE BAER: And Patent Owner, everybody's covered by the
8 protective order?

9 MR. DAVIS: That's correct. Yes, sir.

10 JUDGE BAER: Great. Thank you. It's good to have you all here.
11 We appreciate you coming. We set forth the procedure for the hearing in
12 our hearing order, so we'll be following that. The parties will each have 120
13 minutes a side, and in addition, as I mentioned, we do have a LEAP
14 practitioner, so we'll give Patent Owner an additional 15 minutes for that as
15 well. We'll probably take a break for lunch at some point, so be aware of
16 that. We'll address that when the time comes.

17 We do have the full record in front of us, so -- but if you would, to
18 facilitate the record and to help us know where we are, if you're referring to
19 a slide or an exhibit number, if you'd make that explicit, that would be great.
20 Also, if you're referring to a paper number from the cases, since we have
21 three cases, if you would -- if you can, mention what case you're talking
22 about, that would be helpful.

23 As I said, we've got some confidential information, so what we'll

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1 probably do -- what we're going to do is we're going to -- we will enter the
2 transcript as is, as confidential, and then we'll have the parties, if you would
3 provide us with a redacted version so we can have that. That would be great.
4 Also, we do have a housekeeping matter on the confidential and redacted
5 versions that Judge Zecher would like to address.

6 JUDGE ZECHER: Yeah. So I think it's Paper 37 in the 863 case,
7 but that's basically the paper where we granted the motion to amend for the
8 Patent Owner Response and entered the protective order. In that paper, we
9 asked you to file a redacted version of the Patent Owner Response, which
10 you did. So we need a couple more redacted versions of certain papers in
11 these records, so I'm going to go ahead and list them for each case. We will
12 provide the parties with a two week or 10 business day window to file these
13 redacted versions. If you need more time, please let us know.

14 But let me start with the 863 case. So we need a redacted version
15 of the Petitioner Reply; that's Paper 42. We need a redacted version of the
16 Patent Owner's Sur-reply; that's Paper 60. We need a redacted version of all
17 the papers associated with the Motions to Exclude; that's Papers 52, 56, and
18 57. And then, the last but not least, we need redacted versions of the
19 demonstrative; so that's Paper 66 and 68.

20 Let's turn to the 864 case. The substantive papers there are the
21 Petitioner Reply, Paper 43. We need a redacted version of that. Paper 61,
22 that's the Patent Owner Sur-reply. We also need redacted versions of the
23 papers associated with the Motion to Exclude. That's Papers 53, 57, and 58.

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1 And then, last but not least, the demonstratives. Once again, that's Paper 66
2 and 68.

3 Turning to the 865 case, the subsequent papers there are the
4 Petitioner Reply, Paper 42. We need a redacted version of that. A redacted
5 version of the Patent Owner Sur-reply; that's Paper 60. We also have the
6 papers with the Motion to Exclude; that's Papers 52, 56, and 57. And then
7 we need redacted versions of the demonstratives; those are Papers 65 and 67.

8 I think that covers all the substantive papers. We didn't go through
9 each exhibit. I know we had you file some redacted versions for a few
10 declarations, but if there's something like that in the record that requires a
11 public version with redactions, please consider that as well. There's just so
12 many exhibits here it was hard for us to identify those, so we wanted to at
13 least give you a list of the substantive papers.

14 JUDGE BAER: Okay. I think that's all of the housekeeping
15 matters we have. Before we start, Mr. Argenti, any questions for us before
16 we get started?

17 MR. ARGENTI: No, Your Honor.

18 JUDGE BAER: Counsel for Patent Owner, any questions before
19 we get going?

20 MR. DAVIS: No, Your Honor.

21 JUDGE BAER: Okay. With that, we will start.

22 Mr. Argenti, you have 120 minutes of total time. Would you like
23 to reserve some time for rebuttal?

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1 MR. ARGENTI: Yes, please. If we could have 20 minutes, Your
2 Honor.

3 JUDGE BAER: Great. That will be 100 minutes. I'm going to
4 give you 21 because my clock is limited to 99 minutes, but if you need to go
5 over it, that's just fine. We'll set a reminder. So let me put that time on the
6 clock. And when you're ready, you may begin.

7 MR. ARGENTI: Your Honors, we have printed copies of our
8 demonstratives. If that would be helpful, I can hand them out before I get
9 going?

10 JUDGE BAER: Sure.

11 MR. DAVIS: Your Honors, would you like to have copies of ours
12 as well?

13 JUDGE BAER: Sure, let's go ahead and do that now. Yeah.

14 MR. DAVIS: Thank you very much. Appreciate you.

15 JUDGE BAER: Thank you.

16 MR. DAVIS: You guys want a copy?

17 MR. ARGENTI: Sure. Thank you. All set?

18 Good morning again, Your Honors. My name is Matt Argenti on
19 behalf of Petitioner, Wiz, Inc. We're going to discuss three IPRs today, as
20 you've already stated, those involve three related patents. Each of the '031,
21 '032, and '685 Patents is directed to analyzing a snapshot of a virtual disk of
22 a virtual machine, to detect vulnerabilities and report them as alerts. I may
23 refer to virtual machine as VM today, it's shorthand that can be helpful. The

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1 claims also recite using Cloud APIs to carry this out. There are other claim
2 elements that are unique to each one of the specific patents, but those are the
3 common requirements across all three.

4 Turning to Slide 2, the Veselov reference discloses those elements.
5 Veselov describes a system strikingly similar to what's described and
6 claimed in the challenge claims. Each of our grounds across the three IPRs
7 starts with Veselov and demonstratives that reference discloses most of
8 what's claimed, to the extent that the claims have additional requirements,
9 like analyzing an inactive machine in the '031 Patent or prioritizing alerts in
10 the '032 and '685 Patents. Our petitions explain why that would've been
11 obvious in view of Veselov, plus additional references that describe known,
12 routine aspects of cybersecurity systems at the time.

13 I'm going to address the '031 Patent first, and then I'll turn to the
14 other two. And secondary considerations applies to all three, so I'll save that
15 for the end.

16 So I'm going to turn to Slide 5 now. There are two claim
17 construction disputes for the '031 Patent. First, as you can see on this slide,
18 our petition applies a construction of analyzing the at least one snapshot that
19 encompasses direct analysis of a snapshot, such as analyzing it as a data file.
20 The construction also encompasses analyzing a virtual machine that is
21 instantiated from a snapshot. The second aspect of this construction is based
22 on Orca's arguments in the District Court case. This was our understanding
23 of Orca's own interpretation of the term. And as you can see here, we've

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1 explained that Veselov describes both types of analysis.

2 Orca came back and argued that the second part of the construction

3 is wrong, that the term doesn't encompass instantiating a VM, analyzing a

4 VM instantiated from a snapshot. But turning to Slide 6, deposition is full of

5 inconsistencies. For example, even after we filed our IPRs, they continued

6 to argue before the District Court that the term is not limited to directly

7 analyzing the snapshot itself, it extends to indirect analysis in their view.

8 They've never explained why instantiating a VM from a snapshot isn't in

9 direct analysis of that snapshot. Their IPR expert, Dr. Kaeli, also admitted

10 during his cross-examination, as we see here, that the specification has an

11 example in which the security system instantiates a copy of the VM for

12 analysis. He said that is an example of a technique for analyzing a snapshot.

13 So the claim construction position is at odds with their positions elsewhere

14 and their own expert. At the end of the day, though, it doesn't matter

15 because they admit that Veselov does, in fact, disclose analyzing a snapshot

16 as a data file. So there's no dispute that that's within the scope of the claims.

17 Turning to Slide 7 in the second claim construction dispute.

18 Element 1.5 requires either taking a snapshot or requesting a snapshot. As

19 we see here, only the requesting clause says that the snapshot must be of a

20 virtual machine at rest. The taking clause doesn't have that requirement, so

21 on its face, it encompasses taking a snapshot of an active virtual machine.

22 That's consistent with the specification, which describes taking snapshots of

23 virtual machines before they go inactive or when they're at rest. We see that

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1 here on the slide. Patent owner's argument that the taking clause also
2 requires a VM at rest is also at odds with the prosecution history, where the
3 claim originally had expressed language with that requirement. And they
4 removed it after failing to convince the examiner that that was a
5 distinguishing feature over priority. So the claim doesn't require taking a
6 snapshot of a virtual machine at rest, but again, regardless, are obviously
7 showing accounts for both interpretations.

8 Now, turning to the prior art in Slide 8, we start with Veselov. As
9 I've explained, and as you see here, Veselov discloses performing security
10 assessments on snapshots of virtual machines or their components. Looking
11 at Figure 1, the computing resource service provider is a cloud environment.
12 Patent Owner's expert admitted that. And as we see, the cloud environment,
13 the scanning service that runs the security assessment, and the user interface,
14 all communicate with each other via API.

15 As we see on the left, Veselov says that the snapshot can be all the
16 data needed to recreate the virtual machine, or it can be a copy of the state of
17 memory, or it can be the state of any virtual or physical devices allocated to
18 the virtual machine. So it can be all of the virtual machine or just one or
19 more of its components. Specifically, including logical storage volumes like
20 virtual disks.

21 And with that snapshot, Veselov says you can run any suitable
22 security assessment in order to get the same results that the security system
23 would have received if it ran the security assessment on the VM itself. In

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1 the '031 grounds, Veselov is combined with Price. Price discloses analyzing
2 images of virtual machines connected -- sorry, collected while the machine
3 is offline or at rest. And it also discloses analyzing those images while the
4 virtual machine is offline. So both collection and analysis.

5 JUDGE BAER: Mr. Argenti, is there any -- inactive, at rest,
6 offline, I don't think there's any dispute on the parties that those things are
7 synonymous; am I correct about that? Is there any dispute around those
8 terms? The difference between inactive, at rest, offline; is any of that
9 disputed?

10 MR. ARGENTI: I wouldn't go so far as to concede that they are
11 synonymous, but it -- the meaning of them and any distinction between them
12 is not disputed as a basis of dispute with respect to our grounds.

13 JUDGE BAER: Thank you.

14 MR. ARGENTI: So as our expert, Dr. Stavrou, explains,
15 Veselov's snapshot analysis doesn't depend on the state of the virtual
16 machine. It could be active, it could be inactive. Price is more specific
17 about offline analysis and its benefits, and it uses similar techniques as
18 Veselov. Turning to Slide 10, as Dr. Stavrou explains, a POSA would be
19 motivated to combine the teachings to achieve multiple benefits. There's the
20 security benefit of preventing further damage that could happen if a
21 compromised VM runs. Analyzing an inactive virtual machine can prevent
22 damage before it starts actively running. And we see here, Dr. Stavrou
23 provided corroborating evidence showing that this benefit was known.

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1 And further, analyzing a snapshot of a VM while it is inactive can
2 avoid delay in cost of activating it just to run that analysis. Patent owner
3 does not dispute that the majority of virtual machines are inactive most of
4 the time. So by analyzing them in that inactive state, you're not only
5 preventing them from spreading damage, but also avoiding the time and
6 effort and associated expense of activating them just to run the analysis.
7 Patent Owner also does not dispute that these benefits would apply if you
8 apply the teachings to Veselov, that you get the resulting benefits.

9 So turning to Slide 11, so what does Patent Owner argue? They
10 say the Veselov teaches away from analyzing an inactive virtual machine
11 because it explains a benefit of snapshot analysis is that you don't need to
12 run an agent on the virtual machine, which can impact performance and
13 increased computing costs. Which, fair enough, Veselov does talk about
14 that benefit. But it never limits itself to only analyzing active virtual
15 machines, and our combination doesn't eliminate that benefit. We aren't
16 proposing to shut down virtual machines specifically to take snapshots and
17 run the analysis. Rather, it makes sense to do the analysis whether the
18 virtual machine is active or inactive.

19 And we showed, again, that POSAs would expect many of the
20 VMs in a system like Veselov's to be inactive most of the time. Dr. Kaeli
21 did not dispute that, as we see here. Veselov is not telling a POSA to only
22 run the snapshot analysis during the limited time that the VM is active. You
23 will not find that in the reference.

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1 Turning to Slide 12, Patent Owner also argues that we haven't
2 shown offline VM snapshotting in analysis were routine. That is not a
3 requirement to show obviousness based on Veselov and Price. But in any
4 event, we have shown it. We see here some of the ample corroboration that
5 Dr. Stavrou provides on this point.

6 Turning to Slide 13, in their efforts to overcome the combination,
7 Patent Owner resorts to attacking strawmen. They argue that incorporating
8 Price's agent-based monitoring of online virtual machines would be
9 undesirable in Veselov's context, but our combination applies Price's
10 teachings regarding offline analysis, not using agents when the virtual
11 machine is online. They argue that a POSA would not have been motivated
12 to shut down Veselov's virtual machines to take a snapshot. But as I just
13 explained, we apply crisis teachings to virtual machines that a POSA would
14 expect to already be shut down.

15 JUDGE BAER: Mr. Argenti, you used the term agent-based, and I
16 believe the other term, the opposite of that, is agentless scanning. Can you
17 explain a little more what you mean by agent-based versus agentless
18 scanning?

19 MR. ARGENTI: That's a good question, Your Honor. So agent-
20 based is using an agent. It's installing a software application or some
21 software on the thing that's going to be assessed. You think about installing
22 a McAfee antivirus scanner on a computer. It runs and it's searching what's
23 going on on the computer. It's actively monitoring it. Agentless scanning is

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1 a little bit more convoluted, I guess I would say, because they argue that
2 their claims cover agentless scanning, but the claims never actually say
3 anything about the absence of an agent. They don't recite an agent. That's
4 true. But I don't think they preclude an agent either. I mean, their own
5 product now uses agents.

6 So agentless is kind of a shorthand that they've introduced to the
7 case to refer to what they do. I think they're using the term and we've -- we
8 use it in the same way in view of their arguments to refer to analysis that
9 doesn't require an agent. But again, I don't think that's commensurate with
10 the scope of the claims. Using the term agentless implies the lack of an
11 agent, and their claims don't require the lack of an agent. They simply don't
12 recite the lack of an agent. So -- but what they're talking about is using
13 something like a snapshot, a copy of the data on that virtual disk. As
14 opposed to installing software on the virtual machine to analyze it, they're
15 taking a snapshot, a copy of it, and they're analyzing it somewhere else.

16 And so for example, what I was just referring to here where
17 Veselov says, "Agents can add complexity. It can add to the computing
18 cost." That's because you're adding software that's running on the thing that
19 you're trying to assess. So you still need to do that assessment. You're just
20 doing it somewhere other than active software running on the VM.

21 JUDGE BAER: So in your view, the agentless versus agent
22 scanning is about whether you install something on the machine to be
23 scanned; is that correct?

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1 MR. ARGENTI: I think that's a fair assessment, yeah. Again,
2 with the caveat that it gets confusing when you look then at the claims and
3 the claims don't recite a negative limitation about the absence of an agent.
4 But yeah, I think at a basic level, that's the issue is, is there software installed
5 that's actively running on the subject, the target resource? Or is the -- or is
6 information being removed from the target resource to analyze it somewhere
7 else?

8 JUDGE BAER: And then my next question would be, and it's fine
9 if you want to answer this now or take a little time and address it later, what
10 evidence would you cite in support for your definition that the key
11 distinction of agentless versus agent scanning is about an installation on the
12 machine to be scanned? And again, it's fine if you want to take a little time
13 to address that question, but I would like any evidence you have in support
14 of the definition or the key distinction that you just articulated.

15 JUDGE ZECHER: Can I add to that?

16 JUDGE BAER: Sure.

17 JUDGE ZECHER: So at least in '865 case, if we look at Exhibit
18 2026, it does talk about this agentless analysis approach, and it has two
19 fundamental principles, the first being privileged access to customers' cloud
20 environment via APIs and snapshot scanning.

21 So is it these APIs and snapshot scanning that really embody an
22 agentless approach and does that kind of get to how you view it?

23 MR. ARGENTI: I think those are examples of an agentless

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1 approach, but they're not required for an agentless approach.

2 JUDGE ZECHER: Okay. But do you think that that's what Patent
3 Owner's latching onto to tie their -- the -- what is covered by the scope of
4 their claims to their secondary considerations or their indicia of non-
5 obviousness?

6 MR. ARGENTI: I think absolutely, the Patent Owner is latching
7 onto to just the concept of agentless scanning as tying their evidence to the
8 claims. And again, it's not something that's actually recited.

9 JUDGE ZECHER: But it would be the APIs and the snapshot
10 scanning of the claims that would be the latch, right?

11 MR. ARGENTI: You know, that's probably a better question for
12 them, Your Honor.

13 JUDGE ZECHER: Okay.

14 MR. ARGENTI: We've pointed out they actually haven't made
15 their case about what they're tying between the objective indicia evidence
16 and the claims, so that's a nexus argument. We're going to get into that, I'm
17 sure, in great detail. They've failed to even make an initial argument about a
18 nexus case. So it's not for me to pin down particular limitations that they are
19 relying on. I don't think they've made their case out.

20 JUDGE ZECHER: We're just trying to throw the --

21 MR. ARGENTI: Yeah. So back to the original question from
22 Judge Baer in terms of what evidence we would point to as to this
23 distinction. And again, I want to be very careful that this doesn't bleed over

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1 into the secondary considerations issue where I think it's a lot blurrier, and
2 whether the evidence is related to the claims is a key distinction in dispute
3 here. Veselov itself makes that distinction, right? It does talk about running
4 agents versus not running agents. So I think --

5 JUDGE BAER: Does Veselov use the term agents?

6 MR. ARGENTI: Yeah. Yeah. It does. I'm not sure if we have it
7 on our slide here. We can certainly get you a cite for that. If it would be
8 helpful to have a cite talking about using agents versus an approach that can
9 be accomplished without using agents, we can get that for you.

10 JUDGE BAER: So -- okay. I guess in relation to Figure 3,
11 Veselov talks about a security agent program 330. Is that -- would you
12 consider that?

13 MR. ARGENTI: That would be one example. Although when
14 you look at the written description, it's clear that when it's talking about it,
15 Veselov's using those in a way to describe alternatives. So it says that this
16 could be accomplished with an agent or without an agent. You can also
17 perform -- so that might be a point of confusion here. You can also perform
18 the analysis with an agent, but not an agent that's installed on the VM, so
19 that could be a point of confusion. I think when we're talking about agent-
20 based analysis, we're talking about using an agent that's installed on the
21 subject VM. What are you trying to actively -- what are you trying to figure
22 out if there's anything -- any vulnerabilities, anything going on? You can
23 install an agent there.

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1 What Veselov out says is, you can take a snapshot of that VM or
2 any of its components. You can take a snapshot of its virtual disk. Then
3 you can take -- move -- pull that snapshot out. You can analyze the snapshot
4 itself. And it gives a few ways to analyze it, one of which is using an agent.
5 It says you can spin it up as a VM, a second duplicate VM, and you can run
6 an agent on that.

7 So in terms of, is that an agentless approach, agentless is not a term
8 that's recited in the claims, so I think it might be going down the wrong path
9 if we're trying to figure out if that's an agentless approach. And using that as
10 a shorthand for what the claims are about, we've argued in our briefing that
11 that's not really an accurate way to look at this. But it does talk about that, if
12 that was one of the points of confusion.

13 JUDGE BAER: But when you use the term agentless, what you
14 mean is when you don't install software on the device to be scanned, that's
15 what you mean when you're using that term; is that correct?

16 MR. ARGENTI: Yeah. That's accurate. And that could be, as
17 Veselov discloses, just analyzing the snapshot, spinning it up as a VM, and
18 analyzing it in any number of known ways. But yes, agentless -- and again,
19 that's a shorthand that was introduced by the Patent Owner, I believe,
20 although we may have used that in our petition when referring to some of
21 the other prior art as a way of showing that what's going on in the challenged
22 patents is also found in the prior art.

23 JUDGE BAER: And to be clear, I don't take issue with you using

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1 the term. I just want to know what you mean when you say that term, so
2 that's --

3 MR. ARGENTI: I think it's an accurate characterization, right?
4 You see that term used in the prior art, for example, in the Ammons
5 reference, which is Exhibit 1040. That's another one that explicitly uses
6 agentless. It's in the title of that patent. So it was something that was out
7 there, this idea of being able to monitor a resource, a virtual machine or
8 some other resource, without installing software on that resource.

9 JUDGE BAER: Thank you.

10 MR. ARGENTI: Okay. I'm going to turn to Slide 14 now. Patent
11 Owner's other argument against the combination of Veselov and Price is that
12 Price is somehow in opposite to Veselov because it describes analyzing
13 images rather than snapshots. But their argument begins and ends at saying
14 snapshots and images aren't the same thing. That is not a basis for saying
15 that Price's teachings are in inapplicable to Veselov.

16 Regardless, the record shows that snapshots and images are much
17 more closely related than Patent Owner will admit. Veselov and Price
18 describe their snapshots and images as containing many of the same type of
19 information, including files and file information, installed software and
20 patch information, and configurations. We see examples of that here on
21 Slide 14. They also describe performing equivalent analysis on the
22 snapshots and images, mounting each as an allocated storage device and
23 reading its data.

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1 JUDGE ZECHER: Mr. Argenti, what I was reading through this
2 argument and I guess I was struggling with it. After reading Veselov, even
3 the abstract says the snapshot can be an image of a logical volume. So what
4 is the difference, if any, between an image and a snapshot?

5 MR. ARGENTI: I think it's not clearly defined in the record. It's
6 clear that they are related concepts. And I agree that Veselov itself uses the
7 terms somewhat interchangeably. However, other evidence, for example,
8 some of the AWS evidence that came in late during trial stage, does indicate
9 an actual difference between a snapshot and an image. But again, it's not so
10 big as Patent Owner argues. Some of the AWS exhibits talk about using a
11 snapshot to then generate an image.

12 So the definition that Patent Owner has put forth, or the distinction
13 between them as I understand it, again, it might be a better question for
14 them, is that a snapshot is a record of a point in time, whereas an image is
15 something that you can use on its own to boot up a virtual disk. But the
16 record shows that those are very, very similar ideas.

17 As to the AWS example specifically, that's just one example. I
18 think what we see in Veselov and the other evidence of record is that these
19 terms have slightly different meanings maybe from system to system, from
20 cloud system to cloud system. I don't think there's any universal definition.
21 Nobody's offered one here. But what can't be denied is that they're very
22 similar, related concepts.

23 JUDGE ZECHER: So you -- effectively, what I hear you saying is

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1 that teachings that would apply to a snapshot would also apply to an image?

2 MR. ARGENTI: That's correct.

3 JUDGE ZECHER: Okay.

4 MR. ARGENTI: So turning to Slide 15, the Patent Owner also
5 argues that we failed to provide a motivation to combine different
6 embodiments of Veselov, so not Veselov plus Price, but they're saying we
7 were mixing and matching in Veselov. In their view, one embodiment to
8 Veselov may disclose a cloud environment and APIs and another
9 embodiment discloses snapshot analysis, but nothing discloses it altogether.
10 That's their argument.

11 There are a few problems with this. First, they focus on Veselov's
12 Figures 3A, 3B, and 5A, 5B, but ignore the broad disclosures elsewhere. As
13 we see on this slide, Veselov says that all of its embodiments can operate in
14 a Figure 1 environment, which is a cloud environment using APIs. There's
15 no dispute about that. It also says that its Figure 2 process, which can
16 involve mounting a snapshot like a storage device for analysis, can be
17 performed by the cloud API using system in Figure 1 and that mounting a
18 storage snapshot disclosure for Figure 2 is a column 10, lines 1 through 14
19 of Veselov. So Veselov broadly describes what Patent Owner concedes is
20 snapshot analysis in combination with a cloud environment and APIs.

21 Turning to Slide 16. Patent Owner is also wrong that Figures 3A-
22 B, 5A-B are completely distinct and siloed off from each other. They argue
23 that only Figure 3A-B has a cloud environment and APIs. But as we pointed

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1 out the Figure 5A-B description begins by talking about its commonalities
2 with Figure 3A-B including many components in common. Patent owner
3 argues that the computing resource service provider is conspicuously absent
4 from that list of components in common. But the paragraph there says that
5 the virtual computing environment in Figure 5 is implemented the same way
6 as in Figure 3, which is in a computing resource service provider, a cloud
7 environment.

8 And the paragraph says that the virtual computing environment
9 interacts with, for example, the user device in the same way, which is via
10 APIs. As if that wasn't clear enough, the Figure 5 discussion goes on to
11 expressly describe the computing resource service provider as an undepicted
12 aspect of the figure. So again, the cloud API and snapshot analysis that they
13 admit, the analysis, are found in the same audience.

14 JUDGE BAER: Could you just articulate that last argument
15 again where Veselov articulates that computing resource provider 300 is
16 included but not depicted?

17 MR. ARGENTI: Sure. So if we look -- there's really two points
18 here. If we look at the excerpt on the left, which is from column 16, lines 56
19 to 67. In the middle, we've highlighted that the virtual computing
20 environment 504 is one of the elements that's specifically addressed. And it
21 says that those are implemented -- that it says their implementation and
22 interactions are the same as described above for the associated components.
23 And that includes the computing environment of Figure 3. So by disclosing

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1 that it's implemented the same way, it's implemented in a cloud
2 environment, which is disclosed in Figure 3.

3 And then the second point is, if there was any doubt, the second
4 point is on the lower right of Slide 16, where the Figure 5 discussion goes
5 on. This is two columns later. Figure 5 discussion goes on and talks about a
6 computing resource service provider that's not shown. It's specifically
7 talking about a security module or a security service (not shown) of the
8 computing resource service provider, but there is -- there can be no doubt
9 that the computing resource service provider is disclosed as a part of Figure
10 5 there.

11 And if there is any doubt, Your Honor, so I would refer you back
12 to what I discussed on the previous slide, which is the broad disclosures for
13 Figure 1 and Figure 2, which themselves talk about mounting the snapshot,
14 the undisputed aspect, the alternative of the analysis that satisfies the claims.
15 I'm going to skip Slide 17. I'm going to move to Slide 18. Turning to the
16 alleged missing limitations. First element 1.2 requires using cloud APIs to
17 identify virtual disks of a virtual machine.

18 Patent owner argues Veselov does not disclose identifying virtual
19 disks, only identifying virtual machines. But we explained it on petition that
20 even when the assessment is of the entire virtual machine, a scanning service
21 determines what virtual disks to include in the snapshot. And in any event,
22 Patent Owner's premise that Veselov is limited to requesting assessment of a
23 virtual machine as a whole rather than virtual disks is false. Veselov is

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1 explicit, but an assessment request from a user or scheduling service can be
2 specific to a logical volume attached to a virtual machine. You see that, for
3 example, column 8, line 62 through column 9, line 8.

4 Veselov also describes taking -- tailoring a snapshot to contain
5 particular data elements. For example, for a particular type of analysis that's
6 desired. As Dr. Stavrou explains, for the scanning service to do that, it
7 suggests the use of common disk identification techniques. That is, for
8 example, discussed in Paragraph 128 of his declaration citing Exhibits 1051
9 and 1053 as corroborating evidence. And in fact, we have shown that if you
10 wanted to take a snapshot in AWS at this time and Veselov is an Amazon
11 patent, the CreateSnapshot API call required identification of the virtual disk
12 in the request.

13 Turning to Slide 19, that gets me to the API aspect of this claim
14 element. Veselov describes using its approach in a cloud environment and
15 also discloses communicating with the virtual computing environment and
16 computing resources using an API. Veselov says it can be API 120 or
17 another API. Patent Owner criticizes Veselov for not matching the claim
18 language explicitly, for not explicitly saying that the API is used to identify
19 virtual disks, but that doesn't respond to our showing that a POSA reading
20 Veselov would have that understanding. The law says you have to read the
21 prior art for all it fairly suggests. Again, Veselov describes interacting with
22 the cloud environment and its resources using APIs. It talks about
23 generating snapshots containing aspects of a virtual machine, including a

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1 physical or virtual disk or logical volume. A POSA would understand the
2 role of the API in that. At minimum, it would've been obvious given
3 Veselov's disclosures in the state of the art at the time.

4 Turning to Slide 20. Patent Owner has similar arguments for the
5 claim elements requiring querying a location of the identified virtual disk
6 and receiving identification of the location. They say Veselov never calls
7 what it does an API-based query, but Veselov describes that the scanning
8 service can include instructions identifying the data to include in the
9 snapshot, including, for example, file system details. Dr. Stavrou explains
10 that a POSA would've understood that Veselov scanning service queries the
11 location of the identified virtual disks so that it can locate them when
12 generating snapshots to include them. And he showed that what Veselov
13 describes is consistent with other contemporaneous references describing
14 comparable activities such as API -- or describing comparable activities as
15 API queries. For example, that's in -- as we include here on this slide,
16 Exhibit 2020, the Sancheti reference. It's also in that same paragraph of Dr.
17 Stavrou's testimony where he refers to Exhibit 1055, which is a VMware
18 exhibit.

19 JUDGE GALLIGAN: Mr. Argenti, this is Judge Galligan in
20 Dallas. I have a question just about the snapshots, and this is tangentially
21 related to the question about images and snapshots. But my understanding is
22 that these APIs, for instance, AWS and maybe Azure, but AWS we're
23 talking about here at these APIs, CreateSnapshot being one of them and that,

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1 you send a lot of the papers and things.

2 What was the purpose, and this is sort of getting away from the
3 claims filed, but just out of intellectual curiosity, what was the purpose of
4 the snapshot in those cloud computings? Was it just to create a backup of
5 data for no reason or was it to analyze, or what did they -- what did AWS
6 create these snapshots for? Do you know? Or is there anything in the record
7 about that?

8 MR. ARGENTI: I'm not sure, but yeah, I might get back to you on
9 that, Your Honor. I'm not sure if the evidence in the record is AWS specific,
10 but certainly, we have exhibits, ample evidence that describe not only using
11 it as a backup, right? You could replicate the VM if something happened,
12 but also using it for analysis purposes, just like what's going on in the claim.

13 JUDGE GALLIGAN: Okay. Thanks.

14 MR. ARGENTI: Turning to Slide 21. Our petition explained the
15 second way that Veselov describes querying and receiving the location of
16 the virtual disk, which is by obtaining the location of the virtual machine.
17 Patent owner does not dispute that Veselov teaches this, but they argue that
18 the virtual machine location and the virtual disk location aren't the same
19 thing. They say one doesn't tell you the other, but that's not true for a couple
20 of reasons. First, the virtual disk is associated with the virtual machine. So
21 the physical location is irrelevant. At the virtual level, if you know the
22 endpoint of the virtual machine, that also provides the location of the virtual
23 disk that's associated with it. They're viewed as the same computer system.

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1 Second, even at the physical level, in a system like AWS, the
2 Patent Owner relied on so heavily in their Patent Owner Response, the
3 virtual machine and virtual disk have to be in the same availability zone.
4 You see that, for example, in Exhibit 1133 here on the slide. An availability
5 zone is something like a data center or a group of data centers. These claim
6 elements don't require any level of specificity for the recited location. And
7 we had our claim construction that it encompasses both virtual and physical
8 locations. That's not disputed. So if knowing the availability zone of the
9 virtual machine tells you the availability zone of the virtual disk, the claim is
10 satisfied.

11 Turn to Slide 22. In claim elements 1.5 and 1.6. Element 1.5 is
12 the taking at least one snapshot term that I already discussed with respect to
13 claim construction. And there's no dispute that Veselov does disclose taking
14 a snapshot. In fact, Veselov on its own is enough to satisfy the claim here
15 even under Patent Owner's construction because Veselov does not require an
16 active VM snapshot. And the undisputed record shows that POSA has
17 understood that most VMs were inactive most of the time. And that's before
18 you get to Price's offline teachings that I have already discussed. So element
19 1.5 is satisfied. As to element 1.6, regarding --

20 JUDGE GALLIGAN: Mr. Argenti, quick question on that.
21 Can you just point us to the evidence in the record and you can do this on
22 rebuttal just for the proposition that VMs are usually inactive? I'm just
23 curious just for -- just to have it, you know, at our fingertips, I'd appreciate

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1 that.

2 MR. ARGENTI: Sure. Sure. We do have that included in some
3 of the later slides. One of them is included here. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] We have some in our
9 later slides. We'll try and collect it all for you, Your Honor.

10 JUDGE GALLIGAN: Thank you.

11 MR. ARGENTI: So as to element 1.6, regarding analyzing the
12 snapshot, Patent Owner admits that Veselov discloses this, but argues that
13 not -- that it's not disclosed in the context of a cloud environment using APIs
14 in a way that would satisfy the claim. As I've already discussed, those
15 arguments can be rejected as an unreasonably narrow reading of the
16 reference. Beyond that, there is no dispute that Price discloses offline
17 analysis. Patent owner's other element 1.5 and 1.6 arguments are really
18 improper attacks on the references individually, and repetition of their
19 arguments against motivation to combine. And they can be rejected for the
20 reasons that I've already discussed.

21 Turning to Slide 23. Patent Owner also argues that Veselov
22 doesn't satisfy element 1.7, reporting the detected vulnerabilities as alerts.
23 Veselov discloses an assessment result describing the security vulnerability.

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1 And the result is displayed to a user in a user readable format, including
2 identifying a recommended remediation action to address the problem.
3 Patent owner argues that that's not an alert, but has never explained why.
4 All their expert says is that not all reports are alerts, and alerts notify
5 stakeholders of situations that require attention. But that's exactly what
6 Veselov describes.

7 Turning to slide 24 --

8 JUDGE ZECHER: So can I ask a question about that? Because I
9 found that pretty interesting. If some reports are alerts, what would qualify
10 as alerts in this context?

11 MR. ARGENTI: Again, I think we have to focus on the fact that
12 they haven't explained why what Veselov does is not an alert. If we look at
13 their concession about what would qualify as an alert, they say that it's
14 something that notifies stakeholders of situations that require attention. And
15 that's what Veselov does. Beyond that, they haven't offered a claim
16 construction that would explain their position that what Veselov has is not
17 an alert.

18 JUDGE ZECHER: So your position is that Veselov's reports
19 notify stakeholders of situations that require this?

20 MR. ARGENTI: Absolutely.

21 JUDGE ZECHER: Okay.

22 MR. ARGENTI: Turning to Slide 24 and Ground 2. For claims 2
23 and 10, which require that the alert reporting includes indicating priority

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1 levels associated with the detected vulnerabilities. Here we turn to the
2 Hufsmith reference. Hufsmith discloses that sometime the volume of
3 reported vulnerabilities can create cognitive overload. So it can be
4 beneficial to convey classifications to make those vulnerabilities easier to
5 assess.

6 As Dr. Stavrou explains, Hufsmith uses similar techniques as
7 Veselov to detect and report vulnerabilities, but further describes prioritizing
8 the vulnerabilities and alerts. Dr. Stavrou also explains the benefits of
9 applying this to Veselov, including allowing for rapid identification of the
10 most dangerous vulnerabilities, which Patent Owner again does not dispute.

11 And Slide 25, Patent Owner argues that a POSA would not have
12 combined Hufsmith's teachings regarding container images with Veselov's
13 virtual machine snapshots, but as I've discussed with respect to Price, Patent
14 Owner overstates the differences between the images and snapshots and has
15 now rebutted our showing that a POSA would find those teachings relevant
16 to each other.

17 And as to containers and virtual machines, Hufsmith explicitly
18 states that its teachings are applicable to virtual machines. They also argue
19 that part of what we cite in Hufsmith relates to pre-deployment source code
20 annotations that have no place in Veselov. I'm going to discuss that in more
21 detail with respect to the '032 Patent. But for now, a combination does not
22 rely on the source code annotations, nor is Patent Owner correct in its
23 narrow reading of Hufsmith as limited to a pre-deployment context.

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1 Turning to Slide 26 and Ground 3, where we add the teachings of
2 Huseinovic for Claims 6 and 14 regarding including page file memory in the
3 snapshot that allows deduction of running applications. Patent owner's
4 argument here amounts to a single sentence, asserting that Huseinovic
5 counsels against collecting offline data. That's not true, nor have they
6 explained their assertion. In addition, their argument depends on their
7 flawed interpretation of the claim as requiring taking a snapshot of a virtual
8 machine at rest. Not to mention, it also fails to respond to our alternative
9 obviousness theory addressing the requesting a snapshot aspect of the
10 claims. So the Ground 3 arguments can be rejected for any of those reasons.
11 Now that's it for the '031.

12 Turning to the '032 Patent, the claim construction issues here are
13 the same as in the '031 so I won't discuss them again. As we see here on
14 Slide 27, in the '032 Patent, we rely on the combination of Veselov and
15 Hufsmith for Ground 1.

16 Turning to Slide 28. I've already introduced Hufsmith, but in the
17 context of the '032 Patent IPR, it Hufsmith discloses that one of the
18 contextual factors relevant to its vulnerability assessments is whether the file
19 or code is executed. Is it dormant or is it active? In other words, is it being
20 used? If not, the identified vulnerability may be down weighted when
21 assigning priorities. As Dr. Stavrou explains, "Consistent with Veselov's
22 description of vulnerability analysis and alerting, Hufsmith provides a more
23 detailed description of common techniques for doing so, including use

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1 determinations and associated prioritization."

2 Turning to Slide 29, Dr. Stavrou also explains the benefits of
3 applying distance teaching to Veselov. It would enable rapid identification
4 of which assets are most at risk and which vulnerabilities are the most
5 dangerous. The benefits of use based prioritization were well known, as
6 demonstrated not only by Hufsmith, but also Hibbert, Exhibit 1063. Much
7 like Hufsmith, Hibbert explains that if its system is technically vulnerable
8 but the offending application is not used, that's a lower risk. And it talks
9 about use based vulnerability prioritization to help with remediation like
10 Veselov discloses. So of course, it would've readily appreciated the benefit
11 of applying Hufsmith's teachings regarding use based prioritization to
12 Veselov.

13 Turning to Slide 30. Patent owner, however, attacks the
14 combination. First, they argue the differences between container images and
15 virtual machine snapshots, meaning Hufsmith's teachings don't apply. As I
16 explained for the '031 Patent, that doesn't hold up. More specifically here,
17 they argue that Veselov and Hufsmith don't analyze analogous data in
18 analogous ways. As we see on this Slide 30, the references refute that. For
19 example, both of them talk about analyzing files, packages, and
20 configurations. Both of them talk about performing CVE analysis. Both of
21 them talk about running static or dynamic runtime assessments. Both of
22 them talk about configuration assessments. Patent owner doesn't even
23 acknowledge these similarities, let alone rebut them.

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1 JUDGE ZECHER: Counsel, just to push back there a little bit.
2 Doesn't that just mean they are analogous teachings, not so much that there
3 are combinable?

4 MR. ARGENTI: Well, I think the similarities not only show that
5 they are analogous, but also, the similarities certainly tend toward
6 combinability. We're not relying entirely on that. We're not making an
7 analogous art reference and stopping at that. As I explained in the previous
8 slides, we have plenty of explanation about how and why a POSA would've
9 seen fit to combine these teachings. But I think the similarities are certainly
10 relevant to their combinability.

11 JUDGE ZECHER: What do you think is the best? Do you think
12 it's this whole notion that Veselov talks about suitable security assessments
13 in the context of CVEs and Hufsmith actually specifically mentions CVEs?

14 MR. ARGENTI: I think that's very relevant. In terms of my
15 favorite bit, I'm not sure if I would rank them. I liked them all quite a bit.
16 It's tough to pick one, Your Honor. But that is certainly relevant.

17 JUDGE ZECHER: Thank you.

18 MR. ARGENTI: Turning to Slide 31, as in the '031 IPR, Patent
19 Owner also argues that Hufsmith's source code annotation embodiment has
20 no applicability to Veselov, but Hufsmith's teachings regarding use
21 determinations and the relevance to vulnerability assessments are in no way
22 limited to source code annotations, nor did we propose incorporating source
23 code annotations into Veselov. Hufsmith says that the teachings in its

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1 source code annotation discussion can also be applied to its other
2 approaches. We see that here. And we can't forget that it also says that its
3 techniques are applicable to virtual machines.

4 Turn to Slide 32. Patent owner also argues against reasonable
5 expectation of success. Their argument in the Patent Owner Response is that
6 a POSA would not have expected to garner enough information from a
7 snapshot to make an application usage determination. That's at page 18 of
8 their POR, as we see on the top left. And as we see here, to support that,
9 they cite a couple of things. [REDACTED]

[REDACTED]
11 And they also cite their expert, Dr. Kaeli, but when you look at the
12 cited paragraph of his declaration, which we have here, he says nothing of
13 the sort. Rather than support the assertion regarding a POSA's
14 understanding of snapshots as too limited to allow for usage determinations,
15 he says something else entirely in that paragraph. He says you can't put
16 Hufsmith's source code annotations in Veselov. That's a strawman attack as
17 I've explained. So they have no support for their reasonable expectation of
18 success argument.

19 Turning to Slide 33. In the disputed limitations, first, Patent
20 Owner argues Hufsmith does not disclose determining whether applications
21 are in use. They have two points here. First, they say Hufsmith's usage
22 assessment isn't done on applications, but rather on application components
23 like files or modules. That is, again, an overly narrow view of the prior art.

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1 Hufsmith is not limited to a single installed application per container image.
2 Dr. Stavrou explains that distributed applications, like Hufsmith describes,
3 are typically made up of multiple installed applications. So this semantic
4 distinction between applications and executing code is a misreading of the
5 reference. Just as importantly, they're attacking the reference individually
6 and ignoring the combination. There's no dispute the Veselov discloses
7 determining which applications are present in snapshot. We applied
8 Hufsmith's teachings regarding use based prioritization to arrive at a
9 determination of which applications in Veselov are used.

10 The other point they raise is that Hufsmith is limited to pre-
11 deployment and can only determine what will be used, not what is being
12 used. That, again, misreads the reference, which talks about deployment and
13 execution environment records. And it doesn't address the combination and
14 how we apply the teachings to Veselov deployed virtual machines.

15 Turning to Slide 34. Patent owner argues that the combination
16 fails to satisfy the claim requirement for reporting the vulnerabilities as
17 alerts prioritized according to use. They argue that Veselov doesn't disclose
18 alerts. But as I've explained, it does. And also, there's no dispute that
19 Hufsmith discloses alerts. They argue that use based vulnerability
20 prioritizations are not presented to the user in Hufsmith, but rather only used
21 to calculate an overall risk score for the entire image. But Hufsmith says the
22 metrics associated with that overall score are also included in the dashboard,
23 which, at minimum, suggests including the weights. Not to mention

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1 Hufsmith describes providing information about vulnerability classifications
2 to make them easier to assess. When you take all that together and combine
3 it with Veselov's individual vulnerability assessments that are reported to the
4 user, that's how you arrive at obviousness. Patent owner's arguments against
5 physical combinability are misplaced.

6 Turning to Slide 35. So that covers Claim 1, but for the dependent
7 claims we will discuss now, which recite common aspects of usage
8 determinations. Claim 2 requires determining whether or an application is
9 not in use. Hufsmith expressly talks about making a dormancy
10 determination. Claim 3 requires that the use determination includes
11 checking configuration data. Both Veselov and Hufsmith talk about
12 assessing configuration data. Claim 4 requires that the use determination
13 includes verifying access times to files by an operating system. Hufsmith
14 describes analyzing execution environment records, which Dr. Stavrou
15 explains would include file access times. And he explains that access time
16 determinations were a common way of making usage determinations as
17 corroborated by, for example, Exhibits 1063 and 1079. Claim 5 requires that
18 the use determination includes analyzing application logs or system logs.
19 And again, Veselov describes analyzing system logs.

20 Turning to Slide 36. Dependent Claims 16 and 20 require that
21 determining the location of the snapshot includes clearing a cloud
22 management console for the location of the snapshot and the location of the
23 virtual disk. Patent owner largely relies on arguments similar to the '031

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1 IPR, arguing that Veselov's Figure 5 doesn't disclose a cloud management
2 console for the same reason that they argue it doesn't disclose a cloud API.
3 And they argue that Veselov doesn't disclose identifying a virtual disk
4 location. Those arguments can be rejected for the reasons I've already
5 discussed. Dr. Stavrou also explained an alternative mapping in which
6 Veselov's determination of the snapshot location, which is undisputed, also
7 serves to identify the location of the virtual disk because Veselov discloses
8 storing them in the same general location, such as its computing
9 environment. And again, there's no level of specificity required by the
10 claims.

11 Turning to Slide 37. In Ground 2 of the '032 IPR, we address the
12 quarantining requirement of Claim 12, and we turn to Hutchins, which
13 describes placing a virtual machine in quarantine in response to detecting
14 malicious code. That teaching is undisputed. Patent owner attacks lots of
15 other aspects of Hutchins as incompatible with either Veselov or Hufsmith.
16 But none of them go to the combination actually proposed in the petition.
17 We are not relying on Hufsmith's specific virus scanning approach or it's
18 analysis of instantiated virtual machines, although that does show how
19 similar it is to Veselov. Hutchins teaches the basic principle that if you find
20 something threatening in a virtual machine, quarantine it. That makes sense
21 in the combination of Veselov and Hufsmith, discussed in Ground 1, and
22 Patent Owner has no meaningful response. So that's it for the '032 Patent.

23 I'll turn now to the '685 Patent, which requires detecting sensitive

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1 data, in addition to many of the other claim elements that we've already
2 discussed. Our IPR, again, involves the combination of the Veselov and
3 Hufsmith here. I've already discussed the relevant claim construction issues,
4 Patent Owners' arguments about combined ability of Veselov's
5 embodiments, and claim elements requiring identification of a virtual disk
6 and querying its location so I'm not going to repeat that for this patent.
7 Instead, I'm going to focus on the issues unique to the '685 patent.

8 We turn to Slide 39. As to the combination prior art, we explained
9 that Hufsmith describes the importance of avoiding potential exposure of
10 sensitive data. For example, it talks about indicating a risk of exfiltration of
11 confidential information or leaking encryption key information. And similar
12 to the '032 IPR, Dr. Stavrou explained the motivation to improve security by
13 applying Hufsmith's teachings regarding prioritizing and filtering security
14 issues to allow for rapid identification of the most important vulnerabilities.

15 Turning to Slide 40. Patent owner argues that Hufsmith's filtering
16 and prioritizing benefits are not applicable to Veselov. They argue that
17 Hufsmith's containers are more complex than virtual machines with more
18 vulnerabilities. But remember, Hufsmith says its approach applies to virtual
19 machines. And we've seen -- Veselov described running many of the same
20 types of analysis as Hufsmith. They argue Veselov says its results can be
21 evaluated without issue so there's no need for an improvement. But the law
22 says there's no need for a prior art reference to criticize itself in order for a
23 benefit to be relevant. Dr. Stavrou explained with corroborating evidence

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1 the benefit of prioritization and filtering in view of the large number of
2 vulnerabilities typically identified. As we see here, exhibits such as
3 Mohanty confirm this. There is no reasonable dispute.

4 Turning to Slide 41. Patent owner also argues against reasonable
5 expectation of success with respect to detecting sensitive data without
6 interacting with a virtual machine. They argue this was still difficult years
7 after the priority date, but the evidence of record shows that's not the case.
8 Some of it is included on this slide. Detecting sensitive data was well
9 known before the challenge patents. Looking for keywords, health and
10 numeric patterns, document fingerprints, et cetera. That is equally
11 applicable to virtual machines, as well as their snapshots. So the argument
12 that a POSA would not have reasonably expected it to work in the
13 context of snapshot analysis is unsupported and not credible.

14 Turning to Slide 42 and the specific disputed limitations in the '685
15 IPR. Again, I'm going to skip over limitations where they raised the same
16 arguments that we've already discussed for the other patents. For Element
17 1.6, Patent Owner argues the cited references do not satisfy the requirement.
18 Sorry, Patent Owner argues the cited references do not satisfy the
19 requirement for analyzing the snapshot to detect sensitive data.

20 They argue that Hufsmith at best discloses detecting a vulnerability
21 that could potentially result in exposure of sensitive data rather than
22 detecting sensitive data itself. That is not a fair reading of everything that
23 Hufsmith teaches or suggests. It doesn't just disclose indicating a

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1 vulnerability that could expose sensitive data. It describes, for example, in
2 Paragraph 118 that we've included here, assessing whether such a
3 vulnerability might result in a partial loss of restricted information or a total
4 loss of restricted information.

5 As Dr. Stavrou explains, these teachings, at minimum, suggests
6 detecting sensitive data. If the system can determine whether a vulnerability
7 would result in losing all sensitive data or some sensitive data, it certainly
8 suggests that the system is aware of the sensitive data present.

9 Turning to Slide 43 and Element 1.8, which requires reporting the
10 vulnerabilities and sensitive data as filtered and prioritized alerts based on
11 the risk level of the machine. Patent Owner argues Hufsmith doesn't
12 disclose detecting sensitive data, which should be rejected for the reasons I
13 just discussed. They also argue Veselov doesn't disclose alerts, but as we
14 discussed that misreads Veselov and ignores Hufsmith's contributions to the
15 contribution or to the combination. Finally, they argue that Hufsmith's
16 teachings regarding source code and annotations are not applicable to
17 Veselov, which I've also addressed. They do not address or respond to our
18 additional citations to other aspects of Hufsmith beyond the source code
19 annotations, as such are obvious misshowing based on the totality of the
20 disclosure stands un rebutted.

21 Turning to Slide 44, moving on to Dependent Claims 2 and 14,
22 which require that the virtual machine is inactive during the snapshot
23 analysis. As I discussed earlier, Veselov's analysis does not depend on the

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1 state of the virtual machine during the analysis and the record establishes
2 that a POSA would understand that most virtual machines are inactive most
3 of the time. There was a question earlier about evidence supporting that. In
4 addition to the exhibits I cited earlier, more exhibits are cited on this slide.
5 Exhibit 1066, Exhibit 1064.

6 For example, Exhibit 1066 shown here, stands for that proposition
7 as do others in evidence. And Exhibit 1064 is more specific in extending
8 that principle to the duration of a typical security analysis. So plan two
9 would've been obvious in view of a POSA's understanding of Veselov and
10 virtual machines.

11 Turning to Slide 45 in Ground 2, which adds Chari for additional
12 disclosure of detecting and remediating sensitive data. As we see here, for
13 example, in Paragraph 76, Chari discloses discovering the presence of
14 sensitive data items in virtual machine, images and snapshots. So that
15 negates any dispute about the scope of Hufsmith's teachings on that point.

16 Chari also discloses remediation of vulnerable sensitive data. The
17 example it provides is labeling and sanitizing modules in a snapshot, which
18 is also another example of detecting the sensitive data.

19 As Dr. Stavrou explains, Chari describes residual sensitive data as
20 a particular concern in cloud environments. And he explains that POSA
21 would've appreciated the benefit of prioritizing and filtering to furthering
22 Chari's remediation efforts as it would've helped bring the sensitive data to
23 the user's attention.

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1 Patent owner's arguments on this ground misread Chari and attack
2 the references individually. The fact that Chari talks about sanitizing its
3 snapshots as a form of remediation doesn't mean that its teachings regarding
4 detecting sensitive data are inapplicable to the combination.

5 Turning to Slide 46 in Ground 3. Here, we're bring the teachings
6 of Price and Huseinovic regarding inactive analysis and page file memory
7 that we've already discussed. We've also provided corroborating evidence
8 that these features were well known, some of which is included here on
9 Slide 46. As we've discussed, Patent Owner's arguments against the
10 combination of these references relies on attacking physical combined
11 ability, which is misplaced.

12 So that covers Patent Owner's arguments directed to purported
13 shortcomings of the references in our grounds. Turning to Slide 47 and their
14 secondary considerations arguments, which are essentially the same across
15 all three IPRs as well as the three other IPRs that we're going to be back in a
16 month to discuss.

17 Patent Owner relies heavily on a copying argument, alleging Wiz
18 copied the claimed inventions from them. We have explained that that fails
19 and I'm going to get to it in turn, along with the other individual categories
20 of secondary considerations that they raised. But before we even address the
21 shortcomings of the individual categories, they have a problem that applies
22 all across the board.

23 Turning to Slide 48. The law requires a nexus, a connection

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1 between the alleged secondary considerations evidence and the claimed
2 invention. It is the Patentee's burden to establish that nexus and they have
3 wholly failed to meet their burden to establish nexus here. Aside from
4 quoting some case law, the analysis is missing from their patent on a
5 response.

6 There are two ways to establish nexus. One is by establishing a
7 presumption that evidence regarding a commercial product relates to the
8 claimed invention. There are specific requirements to establish that nexus
9 presumption. You have to show that the product embodies the claims and
10 you also have to show that the product is coextensive with the claims.

11 The reason for that coextensiveness requirement is to ensure that
12 evidence talking about the product is talking about the claimed invention
13 rather than the unrecited features. As we pointed out in our Reply, they
14 didn't meet those requirements. In their Sur-reply, they clarified that they
15 were not arguing for a presumption of nexus. Okay. So what does that
16 leave? What did they have to show?

17 Let's turn to Slide 49. Absent a presumption of nexus, Patent
18 Owner has to show that the evidence of secondary considerations is the
19 direct result of the unique characteristics of the claimed invention. As we
20 see in the Janssen decision here, if the evidence results from something other
21 than what is both claimed and novel in the claim, there is no nexus to the
22 merits of the claimed invention. The secondary considerations evidence
23 can't be tied to just a feature or even a combination of features if they are

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1 found in the prior art. That's what Yita says. That's the other case cited here
2 on Slide 49.

3 The evidence has to be a direct result of a novel feature or
4 combination of features. This creates a problem for Patent Owner. They've
5 never identified what their novel feature or combination of features is.
6 When they point to specific features of their claims in their exhibits, we see
7 that in the prior art. When they try to group multiple features together, it not
8 only creates a disconnect with their secondary considerations evidence that
9 doesn't refer to those groupings of features, it also creates a problem when
10 you look at the other challenge patents that recite different combinations of
11 claimed features. Any way you slice it, they are unable to establish nexus,
12 which is why they tried to sidestep the requirement by making a quasi
13 presumption argument without satisfying the presumption requirements.

14 So let's turn to Slide 50, and let's look at some examples of their
15 evidence and arguments that highlight their failure to show nexus. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

7 Turning to Slide 51. To further demonstrate the nexus problem,
8 let's look at the claims of the challenge patents. They all require identifying
9 virtual disks of a virtual machine or locating a snapshot of a virtual disk, of a
10 virtual machine for analysis. [REDACTED]

[REDACTED]

18 Patent Owner has not argued that this is what the challenge claims
19 recite nor could they. So any evidence broadly referring to Orca or to
20 SideScanning or Orca's technology or even Orca's patented technology, they
21 can't show that it relates to these particular challenged claims.

22 Turning to Slide 52 and another example, each of the challenged
23 claims is directed to detecting vulnerabilities with the '685 Patent adding

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detecting sensitive data. [REDACTED]

[REDACTED] We see

6 that in Exhibit 2067 page 10 here.

7

11 Let's turn to Slide 53. [REDACTED]

17 Let's turn to Slide 54. [REDACTED]

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1 there or what might have been excluded. So while it's clear from what they
2 did submit that SideScanning has many unclaimed features, we don't know
3 the true extent of it.

4 Let's turn to Slide 55. Illustrating another problem with their
5 general reliance on SideScanning for nexus. The claims require reporting
6 the detected vulnerabilities as alerts, but Patent Owner's technical
7 documentation describes providing multiple other types of alerts that are not
8 reporting vulnerabilities and are not even the result of the snapshot analysis.
9 The three definitive alerts, in their words here from Exhibit 2067, page 9,

10 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 Let's turn to Slide 56. So Patent Owner cannot show nexus for
15 evidence that just refers to Orca or SideScanning generally, but even for the
16 evidence that might facially be more closely tied with the claim language,
17 they still have problems because they can't show that any skepticism or
18 praise or any other category arises from a combination of features that is
19 both claimed and novel.

20 Let's take for example, Exhibit 2076 here on Slide 56. Patent
21 Owner cites the statement, they put a lot of weight on the statement, that
22 Orca came up with a genuinely genius innovation. But let's look at what it's
23 talking about specifically. It refers to Orca's ability to analyze workload

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1 data without an agent, but that's what Veselov does. Snapshot analysis of
2 virtual block storage without using an agent. You can't show nexus to the
3 claims where the feature being addressed is in the prior art.

4 [REDACTED]
[REDACTED]
[REDACTED] Let's look
7 at Slide 57. Here's another example. Patent Owner cites to a different part
8 of Exhibit 2076 as praising Orca's introduction of the agentless
9 SideScanning.

10 Specifically what we've included here, pages -- excerpts from
11 pages 8 and 11 of Exhibit 2076. But the record is full of examples of
12 agentless analysis of virtual machines, including scanning disk drives and
13 analyzing images and snapshots. It's not just in Veselov. I already
14 mentioned the Ammon reference, Exhibit 1040. There are others in the
15 record. Patent Owner can't establish nexus for its evidence discussing Orca's
16 agentless scanning. Let's look at Slide 58. Similarly, Patent Owner cannot
17 show nexus where its evidence refers to using Cloud APIs for its scanning.

18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Sancheti reference describes using APIs to identify

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1 virtual disks. That's Exhibit 1020. Both Dr. Stavrou [REDACTED]
2 testified that's just what these known APIs were used for.

3 Turning to Slide 59. Some of Orca's secondary considerations
4 evidence relates to what they call context-sensitive prioritized alerts.
5 Bringing vulnerability is a particular concern to a user's attention, but that
6 too was known. You see it in the grounds references, Price and Hufsmith.

7 We also see it in Hibbert, which describes agentless analysis. It
8 says, "An agent is optional and takes into account contextual information
9 like execution time and assigns a lower risk if a vulnerable application is not
10 used." So Patent Owner can't show nexus to evidence based on contextual
11 prioritization. Turning to Slide 60. Other evidence refers to locating and
12 classifying an organization's data across all possible locales. [REDACTED]

[REDACTED]

[REDACTED]

15 But to the extent that evidence like this relates to the sensitive data
16 claim elements, that was not novel. In addition to Hufsmith and Chari, we
17 provided ample other references showing, locating, identifying, and
18 detecting sensitive data was well known. And that includes describing or
19 detecting sensitive data across an entire organization such as Exhibits 1134
20 and 1136, which we see here.

21 So turning to Slide 61. To sum it up, Patent Owner concedes they
22 are not relying on a presumption of nexus case, so it can't be as simple as
23 them saying SideScanning practices the claims and here's a bunch of

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1 evidence talking about how great SideScanning is. And to the extent that
2 their evidence talks about Orca or SideScanning, or their, quote unquote,
3 "patented technology" generally, that isn't enough because their product has
4 many significant unclaimed features and they have many patents. And
5 where their evidence does get specific and refers to a particular feature or
6 even a combination of features, we've shown that what is referred to was not
7 novel. It's all there in the prior art, including in the context of agentless
8 workload scanning. To prove nexus, they needed to establish that their
9 evidence is the direct result of something both claimed and novel and they
10 failed to do that.

11 JUDGE GALLIGAN: Mr. Argenti, this is Judge Galligan here.
12 So I wanted to -- we're looking at Slide 60 here. So I am a little concerned
13 with some of the -- your arguments where you say, well, this feature was
14 known and therefore they can't have nexus. And this was known. And, you
15 know, the Federal Circuit says, in the Medtronic case, which is a -- I think
16 has a good exposition of things like copying and discussions of it, you know,
17 just because things are individually known, they may be -- the claim may tie
18 them up in some kind of unique combination.

19 And if we just look at individual elements, we would essentially be
20 there would be no point in a -- in an objective evidence argument because
21 you would just say, well, the combination teaches it, ergo there can never be
22 a nexus, and that can't be right. So shouldn't we be focusing more on -- I
23 mean, whether I understand there maybe are a lot of unrecited components

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1 that may have been the basis for the success.

2 Is that why you're saying that, for instance, there are -- we haven't
3 gotten or -- well, praise or whatever you -- praise or (INDISCERNIBLE) or
4 something. Is that more the basis? Because I do -- I mean, you can imagine
5 if we put in a -- if we put in a decision something like, oh, that was in the art,
6 no nexus, I mean, that's probably legally wrong, right?

7 MR. ARGENTI: Absolutely, Your Honor. And that is not what
8 I'm encouraging the Board to do. What I was just referring to in the
9 discussion in those slides that we went to through is not only identifying
10 particular features, but also those features in combination, in combination
11 with each other, in combination with agentless workload scanning.

12 So I want to make sure that we're keeping kind of the high level
13 view here. They had to propose -- if they thought they had a novel
14 combination of features, they had to identify what it was. They had to say,
15 here's our novel combination of features and it's in common across all three
16 of these patents. They didn't do that. So we're not responding to a particular
17 novel combination of features. They never identified one. I agree with your
18 characterization of the law.

19 We are not proposing that secondary considerations nexus fails
20 simply because individually these elements we're known in the art, although
21 I think it's highly relevant given the fact that they haven't made out their
22 nexus case. But what we're saying and when you look at the record
23 evidence, you see them in combination with each other. You see them in

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1 combination with agentless workload analysis. You see prioritized
2 reporting, you see detecting sensitive data.

3 So that's why I'm saying, no matter which way you slice it, they
4 had the burden of identifying what their novel combination of features is,
5 and they needed to do it in a way that was tied both to each of the three
6 challenge claims -- in fact, six challenge claim sets, because using the same
7 arguments in the other three IPRs. So they needed to come up with a way to
8 characterize their novel combination of claimed features that applied to all
9 six patents, and then was also rooted -- like directly connected to their
10 secondary considerations evidence. That's what they failed to do.

11 JUDGE GALLIGAN: Thank you. So, you know, you say novel
12 combination. Let's just look at the 865. I think you would admit that
13 Veselov does not teach searching sensitive data and therefore you relied on
14 Hufsmith in combination. So that's, you know -- that is some novelty
15 because one reference doesn't show it, right? But you seem to be saying,
16 well, it was painfully obvious. And even if there was this combination, it
17 wouldn't outweigh a strong case of prima facie obviousness based on the
18 teachings and a rationale to combine. Is that what you're saying? Because
19 the novel -- when you keep saying novel, I think 102 -- and we don't have a
20 102 reference here.

21 MR. ARGENTI: So a couple points in response. First, I want to,
22 again, point out they have not argued that that is the novel combination of
23 claimed features to which their secondary considerations argument

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1 -- evidence relates. If they took a firm position on that, they'd be carving out
2 their other claim sets. That's why they won't take the position. But even as
3 to that combination, it's the secondary considerations analysis is not limited
4 to the grounds references -- to the grounds combination of prior art. It needs
5 to consider what was known in the art. So that's where we've come in and
6 said that -- the combination of those features, that was known. Here's plenty
7 of references that show that it was known.

8 JUDGE GALLIGAN: There was a -- so you have some evidence
9 in the record that there was an agentless SideScanning device, or I hate to
10 use that terminology because it's not in the claims, but what we talked about
11 before where you do a -- you scan -- you take a snapshot and then you
12 analyze for sensitive data. I thought that was the point of your combination
13 is that there's no one reference that has that, so you put those together with
14 Hufsmith and Veselov. Was I wrong?

15 MR. ARGENTI: I believe you're talking -- you might be referring
16 to the Chari reference, which actually is part of the combination. It's part of
17 the Ground 2 combination. So at least the Chari reference fits that
18 characterization. As, again, as to -- I don't think that our IPR grounds where
19 we're combining two references to arrive at the claims is in any way a
20 concession, but there's no other prior art out there that has those references,
21 right. You --

22 JUDGE GALLIGAN: Okay. And I did want to talk about
23 copying. I assume you're going to get to that, right?

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1 MR. ARGENTI: Yep, absolutely.

2 JUDGE GALLIGAN: Yep.

3 JUDGE ZECHER: So just so I'm clear on this, this whole issue of
4 nexus, you're saying effectively they've given up on the presumption of
5 nexus, hence the admission in that Sur-reply, and they're only relying on
6 direct -- or direct nexus, which will require them to prove the unique
7 characteristics of the claim invention. And you're saying you haven't
8 identified these unique characteristics; is that correct?

9 MR. ARGENTI: Yep. I think that's clear from their Sur-reply and
10 from the case file.

11 JUDGE ZECHER: All right. Thank you.

12 MR. ARGENTI: So that's nexus. Now, I'll turn to the individual
13 categories of secondary considerations that they've raised that they've
14 alleged here. Turning to Slide 62, in view of their failure to establish nexus,
15 you don't even need to analyze these individual categories to see if they are
16 sufficient. But if you do, you see that they fail on an individual basis as
17 well.

18 First, as to long-felt need, they have multiple problems. Their
19 long-felt need theory is largely premised on their own patent's discussion of
20 the problem it purports to have addressed. They don't have any legal
21 authority that that constitutes subjective addition.

22 JUDGE BAER: Sorry, Mr. Argenti, could you just clarify what
23 you just said? You said given that there's no nexus, you don't have to look at

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1 these individual factors, and I'm not quite understanding what you're saying
2 there. I mean, don't we have to look at nexus for each of these alleged
3 secondary considerations. And I'm just confused by your statement of the
4 law in your introduction. Could you clarify, please?

5 MR. ARGENTI: I'm certainly not saying that you don't need to
6 examine nexus for the individual categories. That's not what I meant to say.
7 I meant to say that once you find that they have failed to establish nexus for
8 any of the categories or for all of the categories, then the analysis can stop
9 there. You don't need a determination as to the weight that the evidence
10 should be given because they haven't established nexus that tells you it
11 shouldn't be given any.

12 JUDGE BAER: Do you think that would be supported by the
13 Federal Circuit if we did it that way?

14 MR. ARGENTI: I think if it's a scenario where the finding is that
15 they have failed to establish nexus. I think the law says that that is -- means
16 they're not entitled to rely on the evidence. However, I mean, a more
17 comprehensive assessment, certainly we would welcome for Federal Circuit
18 review. But really nexus is a requirement to establish an ability to cite and
19 rely on secondary considerations evidence and they have failed in that
20 requirement.

21 JUDGE BAER: And in your view, is the nexus question a binary
22 question or does that go to the weight of the evidence?

23 MR. ARGENTI: I do think that there are cases that would support

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1 that -- there are cases, certainly, that say if you fail to meet the -- rise to the
2 threshold of establishing nexus, for instance, in a scenario like this, where
3 they have not even presented an argument on nexus. They've said they
4 didn't present an argument as to presumption of nexus and, as I said, other
5 than citing case law, they didn't provide any analysis. They never even
6 identified what their novel combination of claim features is that -- which is
7 part of the nexus analysis. So I think it's easy to say, you have failed to
8 make any argument or showing whatsoever. However, there are also cases, I
9 think, that say strong nexus, weak nexus. So but, here, I think those don't
10 apply.

11 JUDGE BAER: So it's your understanding of the law that either
12 approach is permissible; is that correct?

13 MR. ARGENTI: I think here, where they have wholly failed to
14 even argue nexus adequately, yeah.

15 Problems for long-felt needs, jumping back into it. The long-felt
16 need theory is largely premised -- oh, sorry. I mentioned that, the reliance
17 on their own patents. So next you have the legal principle that there is no
18 long-felt need if another already provided the solution. And as I just
19 explained, everything that they point to as an important feature was found in
20 the prior art, including in the context of agentless scanning.

21 This is underscored by their own exhibit that we cite here, Exhibit
22 2102. They cite this as evidence of the challenges of establishing network
23 scams and agents in cloud environments. But if you look at the exhibit, the

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1 very next sentence says that Qualys solved that conundrum by 2015. Patent
2 Owner says the problem wasn't really solved until they introduced an
3 agentless solution, but again, Veselov and others disclosed agentless
4 solutions before that. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 JUDGE BAER: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] I don't know, maybe the state of the art
14 changed. I just don't know how that's relevant legally. Could you explain
15 that to me or tell me a case that you're trying to fit this analysis into?

16 MR. ARGENTI: Their argument is that not only was there a long-
17 felt need, but that they solved that with their agentless solution. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22 MR. ARGENTI: I think we're more directly responding to the part
23 of their argument where they argue that their solution -- that they provided a

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1 solution to the long-felt need. But again, we have many other arguments
2 with respect to long-felt need, the insufficient evidentiary support for it,
3 improper reliance on their characterization and their background state of the
4 art in the patent. So not just that. Unless you have any other questions, I'll
5 move on.

6 Turning to Slide 63 and skepticism, their evidence isn't connected
7 to their claims. It has to be skepticism specific to the invention, not generic
8 to the field. Data governance concerns are not skepticism specific to the
9 invention. Concerns about transferring data out of the customer's
10 environment are not skepticism specific to the invention. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

15 In the '032 IPR, they cite this sentence specifically as evidence
16 that, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23 In the 032 IPR, page 18 of their Patent Owner Response, they

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argued that that quote [REDACTED]

[REDACTED] For

example, page 44 of their '031 Patent Owner Response. So which is it?

Turning to Slide 64 and the category of industry praise, most of Patent Owner's evidence is nothing more than self-praise or equivalent comments from [REDACTED] Self-praise, including third party publications, repeating a Patent Owner's own statements are not praise, not industry praise, at least. We know that from the Bayer HealthCare decision that we cited in our briefing. And sponsored articles, like the TAG Cyber Report, are no different. They're just another form of self-interested statements, not industry praise. Exhibits, like 2017 -- or 2117 and 2118 are really just long-form ads.

Turning to Slide 65. Another problem with their so-called industry praise comes up with the alleged customer comments. They argue the various customers had good things to say about SideScanning. First of all, those comments are second or third hand at best, which creates hearsay problems that we pointed out. But beyond that, the cases that we cited also show that this is not really industry praise. It might be favorable personal opinions. But how is that praise by the industry, let alone with nexus to the claims? These comments should not be given weight.

JUDGE ZECHER: So are you effectively arguing that praise by

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1 [REDACTED] is not praise at all?

2 MR. ARGENTI: I think *Bayer HealthCare* supports that
3 interpretation. But even if you want -- don't want to make that legal
4 conclusion as the basis of your opinion, it certainly goes to the weight. It
5 should be given minimal weight.

6 Turning to Slide 66 and copying, which is the central focus of
7 Patent Owners' arguments. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18 So if we turn to Slide 67, Orca's copying theory starts with an
19 assertion that Wiz's workload scanner was based on information obtained
20 from Mr. Shua during a 2019 meeting between Mr. Shua and Yinon Costica
21 at Microsoft. [REDACTED]

[REDACTED]
[REDACTED]

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[REDACTED]

8 Turn to Slide 68. So what evidence does Orca rely on? [REDACTED]

[REDACTED]

12 And they argue that the Board should infer copying based on access, plus
13 substantial similarity. But that misstates the law. Copying requires
14 duplication of the patented features based on access to the Patentee's work.
15 That substantial similarity has to be based on the access. [REDACTED]

[REDACTED]

18 So if we turn to Slide 69, [REDACTED]

[REDACTED]

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█ [REDACTED]

█ [REDACTED]

3 Turn to Slide 70. [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

10 Let's turn to Slide 71. [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

19 JUDGE GALLIGAN: Mr. Argenti, I kind of want to talk about

20 that a little bit because it's -- I understand your point that it's typical in this

21 landscape and that may be true. But that would tend to show access. And if

22 you're tracking your competitor and that -- and you somehow figure out

23 what they're doing, and then you -- not you -- and a company is tracking

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1 another company and then that company implements features based on such
2 competitive intelligence or whatever, that's essentially what the Federal
3 Circuit talks about when it says, you know, you may not have a smoking
4 gun, but you've got circumstantial evidence. You have access and a product
5 ensued that had similarity. And I think that's what Patent Owner is getting at
6 here. It -- why isn't that enough evidence to say maybe there was some
7 copying? I mean, that -- it sounds like what you're saying is, they were
8 copying us, we were copying them. I mean, I -- and there's nothing wrong
9 -- I mean, I'm not saying there's nothing wrong with that. That sounds like
10 what was happening.

11 MR. ARGENTI: I agree with your characterization of Orca's
12 arguments. And the key thing in your question that you said, is that, well,
13 why couldn't you have an inference that the product development was based
14 on that copying? And that's what the case law says, right, that I pointed out,
15 that the product development needs to be based on the access. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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1 JUDGE BAER: I was confused -- this is Judge Baer. I was

2 confused a little bit about the dating problem. [REDACTED]

3 [REDACTED]

4 [REDACTED] Could you just highlight for me the dating

5 problem again? I wasn't quite following that.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 JUDGE BAER: Thank you.

20 JUDGE ZECHER: Well, how do we reconcile those two points?

21 We have that this was developed independently, but yet on one hand, [REDACTED]

22 [REDACTED] How do you suggest we balance that out?

23 MR. ARGENTI: [REDACTED]

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JUDGE ZECHER: So it's more of a timeline that we have to work through?

So turning to Slide 72. Beyond the inferences that Orca wants the Board to make regarding the initial development of Wiz's workload scanning, here's Orca's supposed smoking gun evidence, the stuff that they argue shows direct copying of Orca. But it shows nothing of the sort. [REDACTED]

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1 I'm going to turn to Slide 73 and commercial success. First, as
2 we've discussed, they cannot just presume a nexus for SideScanning or any
3 Orca product. And they haven't shown that their sales are the direct result of
4 the claims unique characteristics. So they haven't tied their sales to the
5 patent claims. Second, Orca's investment and revenue numbers are, at best,
6 very weak evidence of commercial success, even with nexus. The more
7 probative evidence, as the Federal Circuit tells us and we've included on this
8 slide, is whether those numbers represent a success in the relevant market.
9 For example, that's the In re Applied Materials case. Orca argues in their
10 briefing that Orca resides in a market of two, with Wiz as its only
11 competitor. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 JUDGE ZECHER: Yeah. I have two questions about this issue. I
16 -- you can take them in any order. But my first question, is there any
17 evidence of market share in the record? And my second question is, what do
18 we do with the numbers regarding funds from investors? How does that
19 apply to a commercial success analysis?

20 MR. ARGENTI: As to the first question, the only evidence that
21 I'm aware of as to -- that could even as a stretch be called market share is the
22 bar graph in Exhibit 2076. I believe it's at page 21. They argued in their
23 Sur-reply that shows that they are a top five competitor or top five player in

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1 the market.

2 The big problem there, which we had already pointed out in our

3 Reply and they did not respond to, is that according to their own revenue

4 numbers, that chart is way off. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] We don't know how many competitors there are.

9 So it's absolutely not reliable evidence.

10 JUDGE ZECHER: Just to be clear, this is a chart that shows

11 Prisma Cloud, CrowdStrike Cloud, Wiz, SentinelOne, Orca, so on so forth?

12 MR. ARGENTI: That's correct.

13 JUDGE ZECHER: Okay.

14 MR. ARGENTI: [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 JUDGE ZECHER: Okay.

22 MR. ARGENTI: I don't have the exhibit number, but it's cited in

23 his declaration.

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1 JUDGE ZECHER: And then my second question.

2 MR. ARGENTI: The second question as to investor revenue, I
3 think most of the commercial success case law focuses on product revenue,
4 sales income as opposed to investment.

5 I'm not going to stand up here and say that it should be completely
6 discounted on the basis that it is investor revenue, but I think the case law
7 does say that raw numbers are not enough. You need to know how that
8 compares.

9 So there's no evidence of how that compares to other cybersecurity
10 startups, for example, so I think at best it's entitled to minimal weight.

11 JUDGE ZECHER: Thank you.

12 MR. ARGENTI: Turning to -- just before I move on, [REDACTED]

[REDACTED]

[REDACTED]

15 I'm on the last slide, Your Honor. Thank you. I see.

16 So Slide 74, the record evidence shows that it's been Wiz, not
17 Orca, that innovated and achieved commercial success. And that success
18 was based on Wiz's innovative contributions to the field, among other
19 factors.

20 This is Patent Owner's own Exhibit 2076, which I was just
21 referring to. It demonstratives that Wiz introduced an innovative, intuitive
22 graphing approach to workload analysis.

23 [REDACTED]

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■ [REDACTED]

■ [REDACTED]

3 This Exhibit 2076 stresses the differentiation between Wiz and
4 Orca, not substantial similarity. It undercuts their arguments about not only
5 commercial success but also their attempts to tie Wiz to their challenge
6 claims as opposed to Wiz's own innovation.

7 With that, I think I'm just about out of time, so I will -- unless the
8 panel has any questions, I'll take my seat.

9 JUDGE BAER: Thank you, Mr. Argenti. I have you at 101
10 minute, so you will have just short of 20 minutes when you come back. It is
11 now 12:50. I think this would be a good time for a break. We'll go off the
12 record.

13 (Whereupon, the above-entitled matter went off the record at 12:50
14 p.m. and resumed at 1:28 p.m.)

15 JUDGE BAER: And we're back on the record.

16 Mr. Davis, would you like to reserve time for surrebuttal?

17 MR. DAVIS: Yes. We'd like to reserve 20 minutes.

18 JUDGE BAER: All right. We will start the clock whenever you're
19 ready.

20 MR. DAVIS: Thank you, Your Honor. This is Blake Davis for
21 Orca Security. Appreciate you having us here today.

22 At their core, Wiz's invalidity grounds across these three patents,
23 they suffer from similar deficiencies. Not the same deficiencies, but

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1 somewhat similar.

2 Wiz has identified a lot of references that include similar words to
3 the words that are used in the claims of the patents that are being challenged.
4 They've identified disclosures of various elements in isolation across many
5 different references. They've done that exercise.

6 But what they've failed to do is to actually identify and provide
7 sufficient rationales without hindsight for why a person of skill in the art
8 would have -- both could have and would have combined the references in
9 the particular arrangement that is claimed in each of those challenge patents.

10 This really echoes the basic premise on which KSR is built. This
11 is Slide 5 of our -- of Patent Owner's demonstratives. Most if not all
12 inventions rely on building blocks long since uncovered, and claim
13 discoveries almost of necessity will be combinations of what, in some sense,
14 is already known.

15 But, as KSR tells us, a patent composed of several elements is not
16 proved obvious merely by demonstrating that each element was
17 independently known in the prior art.

18 Perhaps a quippier way of saying that from the Fromson case on
19 Slide 6, "Only God works from nothing. Men must work with old
20 elements." The inventor, Avi Shua, was no different. He had to work with
21 old elements. And what he came up with in each of these patents are
22 inventions that are not only not shown in the prior references as arranged in
23 the claim in the references Wiz identifies, but when Orca introduced them,

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1 they received massive praise, commercial success, and Wiz copied them to
2 take some of that commercial success for their own.

3 For our presentation today, Ms. Bruner will start off with us as a
4 LEAP practitioner addressing claim construction, then I'll address the gaps
5 in Wiz's obvious combinations and prior disclosures, and then my colleague,
6 Mr. Lumish, will address the objective indicia, including Wiz's overt
7 copying of patented features.

8 MS. BRUNER: Good afternoon. My name is Nicole Bruner. I'm
9 here on behalf of Patent Owner Orca to discuss claim construction. Turning
10 to Slide 144. And I am not sure if I'm able to work this. I apologize.

11 Ah, thank you. That didn't work either.

12 Okay. If I refer to the slide numbers, will that be okay with Your
13 Honors?

14 JUDGE ZECHER: Of course --

15 JUDGE BAER: Yes.

16 MS. BRUNER: Perfect. Turning to Slide 144, the dispute here
17 begins with the blue underlying clauses, taking at least one snapshot and
18 requesting taking at least one snapshot.

19 It's undisputed that these clauses require a direct object. The
20 question is, what is that direct object?

21 And as you see here, the answer's in the claims. The direct object
22 is the virtual machine at rest.

23 Wiz argues that the direct object of these clauses is the subsequent

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1 wherein clause, but this clause merely describes the snapshot, and it leaves
2 open what the snapshot depicts.

3 What the snapshot of both clauses depicts is the virtual machine at
4 rest.

5 And this makes further sense in view of the specification. Turning
6 to slide 145 we see the specification confirms this at-rest focus, starting with
7 the abstract. The abstract describes the method and system for securing
8 virtual cloud assets at rest.

9 Relatedly, Figure 2, which describes the claimed '031 techniques
10 begins with receiving a request to scan a VM at rest for vulnerabilities.

11 JUDGE BAER: So I remember there -- some discussion in
12 Petitioner's Reply that this at-rest language wasn't in the originally filed
13 specification; is that true? When -- is that true, and if so, when was the at-
14 rest language added?

15 MS. BRUNER: So the at-rest -- are you speaking, Your Honor, of
16 the provisional?

17 JUDGE BAER: Yes.

18 MS. BRUNER: So that is not a position I have prepared, but I'm
19 happy to provide citations and more evidence separately if you'd like.

20 JUDGE BAER: But the at-rest language here, it is language from
21 the -- so this is from the abstract and the title of the patent; is that correct?

22 MS. BRUNER: That's correct, Your Honor. And it is from the
23 abstract and the title, and also it's undisputed that the at-rest language claims

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1 priority back to the January 2019 date. That has not been disputed.

2 JUDGE BAER: Could you just say your last sentence again?

3 What hasn't been disputed, please?

4 MS. BRUNER: It has not been disputed that the at-rest claims for
5 the '031 Patent claim priority back to the January 2019 date.

6 JUDGE BAER: Well, I guess that's my point, but that's where I'm
7 running into a little bit of trouble. We're focusing on this at-rest language
8 and this at-rest language being important, but it strikes me that there's no
9 dispute about the priority date, and the priority goes back to the provisional
10 and the materials not in the provisional, so it strikes me that this whole at-
11 rest language is -- it's not quite as important as one might think, given that
12 it's not in the provisional.

13 MS. BRUNER: Well, Your Honor, I'm glad you asked, because I
14 can actually further show how it is important, also in view of the prosecution
15 history and Federal Circuit precedent.

16 If we look and as you noted the title, the title itself describes how
17 techniques for securing virtual cloud assets at-rest against cyber threats.
18 This really dictates the focus of the claims we see today.

19 And this is further confirmed in *Wastow v. TruckMovers* where
20 the Federal Circuit there found that the title in that disputed patent, *Universal*
21 *Folding Boom Trailer* -- the Federal Circuit found that that title informed a
22 person of skill that the claims there are also required a universal folding
23 boom trailer. The same should apply here. The at-rest in the title certainly

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1 informs a person of skill, and it reinforces the scope of what we've seen in
2 the plans and the specification, that at-rest virtual machines are at issue and
3 certainly disclosed in the claims.

4 And this is further described in the prosecution history, turning to
5 Slide 150. What we see in the prosecution history is the applicant expressly
6 describing what the issued claims mean. Looking at the top of slide 150,
7 where it says, "Claim 20 as amended recites taking at least one snapshot and
8 requesting taking at least one snapshot of the virtual machine at rest," this is
9 language taken directly from the applicant arguments filed June 30th, 2022,
10 and the applicant used this language to distinguish the prior art on the basis
11 that the prior art did not teach taking a snapshot with VM at rest.

12 And we see at the bottom of Slide 150 where the applicant and the
13 examiner were discussing Derbeko, a prior reference of record, and the
14 applicant noted that Derbeko did not describe taking and analyzing a
15 snapshot while the VM is at rest.

16 Similarly, going to Slide 150. I'm sorry, 151. We have again the
17 same issued claim language that the applicant has been focusing on, and the
18 applicant is using this language in the same section to argue, again, that the
19 prior art of record, here Bansal, does not teach or attempt to solve the
20 problem addressed by the pending claims, which the applicant states is to
21 analyze a snapshot taken while the virtual machine is at rest, detect
22 vulnerabilities.

23 Now, we did hear from Mr. Argenti, Wiz is arguing that this at-rest

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1 limitation was taken out of the claims during prosecution, and through that
2 amendment, Mr. Argenti and Wiz are trying to argue that the claim should
3 be ascribed a different meaning based on the claim amendments. But that
4 doesn't address that -- looking at slide 149, the claim language that expressly
5 discloses at rest with both limitations, on the left, is treated exactly the same
6 as the issued claim language we see on the right. The applicant consistently
7 treated this claim language as the same across all amendments and
8 arguments.

9 JUDGE BAER: But it is rather curious, isn't it? I mean, can you
10 give us another explanation for why the applicant would pull this particular
11 language out of the claim?

12 It seems to me we have this lack of clarity, and it's one thing to
13 have lack of clarity when it had never been clarified, but it was clear here in
14 your Slide 149, this is Exhibit 1004 at page 123, the at-rest limitation was in
15 both of those clauses, and it was pulled from the first clause.

16 Can you give us a plausible explanation for why that language was
17 pulled from the first clause if it wasn't meant to modify that first clause?

18 MS. BRUNER: So the prosecution record actually doesn't show
19 clearly why there was a change in language, but it does show that the
20 applicant truly viewed the left and the right as the same. And it shows that,
21 if anything, at-rest was redundant in both clauses because the applicant
22 treated the left and the right recitations as the same, and argued against the
23 prior art not teaching, taking a snapshot at rest based on both recitations.

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1 And this is also further shown in looking at Slide 152, Edwards v.
2 Cook. Here, the Federal Circuit had a similar scenario where there, the
3 applicant had removed the word intraluminal from the word graft. And the
4 Federal Circuit there determined -- sorry, the 1st Circuit there found that the
5 applicant's arguments treated graft the same as intraluminal graft and
6 declined to broaden graft to beyond the meaning of the intraluminal graft.
7 And so there, the Federal Circuit still only found that the applicant's
8 arguments treated two different recitations the same and afforded the same
9 meaning.

10 The next term I'd like to construe is analyzing the at least one
11 snapshot. And this analyzing the at least one snapshot language is present in
12 the '031, '032, and '685 claims, so the arguments will apply for all three
13 patents. As an initial matter, Your Honor, is -- I think Wiz has waived this
14 argument, but to take a step back, Wiz argued in the petition that analyzing
15 the at least one snapshot encompassed both analyzing the snapshot or
16 snapshot data and analyzing a VM instantiated from a snapshot, and Orca
17 explained that this is wrong. Analyzing the at least one snapshot does not
18 encompass analyzing a VM instantiated from a snapshot.

19 Turning to Slide 155, Wiz's construction has been abandoned. Wiz
20 argued that the petition does not depend on a substantiate VM approach and
21 that the claim construction dispute is moot, and the Board could therefore
22 find that Orca's construction should be adopted. However, to the extent the
23 Board would like to consider Wiz's arguments, it's wrong for the reasons we

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1 put into our Patent Owner Response.

2 And turning to Slide 156 is an initial matter. Wiz's expert, Dr.
3 Stavrou, has no opinion on this construction. In deposition, Dr. Stavrou
4 admitted that he was provided this construction from his counsel and did not
5 challenge or question the basis for it. He simply adopted it for his own
6 analysis of the claims.

7 Wiz also argued that Orca's Amended Complaint relies on analysis
8 of instantiated VMs. This is not true, and Orca explained that in the PORs.
9 Wiz also tried to argue that the intrinsic records support that analyzing a
10 snapshot encompasses analyzing instantiated VM, and we again showed that
11 that was false.

12 And we just heard from Mr. Argenti that there are inconsistencies
13 in Orca's position. This is also incorrect. And I'd like to turn Your Honors
14 to Slide 6 of Wiz's presentation.

15 JUDGE BAER: Slide 6 of Wiz's presentation?

16 MS. BRUNER: Yes. Thank you.

17 JUDGE BAER: Give us just a moment.

18 MS. BRUNER: Sorry for the paper shuffle.

19 JUDGE BAER: It's fine. Whenever you're ready.

20 MS. BRUNER: Sure. Thank you, Your Honor. Wiz argues that
21 Dr. Kaeli in his deposition admitted that an embodiment for analyzing
22 instantiated VMs, disclosed in column 6, line 62 of the '031 Patent, is a
23 technique for analyzing a snapshot. And that is not what the deposition

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1 testimony on Slide 6 says. And it's also not Dr. Kaeli's opinion. And I can
2 provide a cite for Exhibit 2073, and that is Dr. Kaeli's opening declaration to
3 the Patent Owner's response.

4 At Paragraph 55, Dr. Kaeli addresses this exact point and explains
5 that Orca's specification describes embodiments for analyzing instantiated
6 VMs as separate from embodiments for analyzing snapshots, and that Orca
7 and its specification treats these as separate and that they cannot be
8 interchanged.

9 Elsewhere, Wiz argues that Orca has inconsistencies between
10 District Court and the PTAB, and that's not the case. Wiz has -- or Orca has
11 continually maintained that, through District Court and its PTAB arguments,
12 that analyzing a snapshot encompasses analyzing a snapshot or snapshot
13 data. It does not encompass analyzing instantiated VM. Thank you.

14 JUDGE BAER: Thank you.

15 MR. DAVIS: Thank you, Your Honors. Blake Davis again for
16 Orca. I'm actually going to not use the slides because I'm going to jump
17 around a little bit based on how the argument from Wiz came in. And I
18 think it's going to be a little bit easier if we just navigate it based on the
19 paper version, and I'll just keep the record of it by identifying what the slide
20 is.

21 JUDGE BAER: That's fine.

22 MR. DAVIS: So one of the questions that Your Honors had at the
23 beginning of Wiz's presentation that I just want to address before getting into

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1 these different grounds is the difference between agent versus agent-based
2 and what are some of the sort of good disclosures of really what that means,
3 and where is agentless scanning down in the claims.

4 JUDGE ZECHER: Just to be -- are you saying agent versus
5 agentless?

6 MR. DAVIS: Agent versus agentless scanning.

7 JUDGE ZECHER: Okay.

8 MR. DAVIS: Yes.

9 JUDGE ZECHER: Just making sure.

10 MR. DAVIS: And, I'm sorry, I think I misspoke and I said agent
11 and agent-based. Agentless and agent-based approaches. And I think that,
12 Judge Zecher, I think that you pointed out one that is a great example, which
13 is Wiz's blog post in Exhibit 2026, which is the -- a description of agent
14 versus agentless approaches.

15 And what Wiz says, the two key components of agentless scanning
16 is privileged access using cloud APIs and scanning snapshots. And
17 naturally, those limitations are found in every single one of the claims. For
18 example, in the '031 Patent claims. Yes.

19 JUDGE ZECHER: I don't think there's any dispute --

20 MR. DAVIS: Okay.

21 JUDGE ZECHER: -- claims have APIs and snapshot scanning. I
22 guess, are we supposed to imply that there's privileged access there? I mean,
23 that's not explicitly recited in the claim, but I assume it must be part of what

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1 you're scanning. You have to have access to the data in order to scan it,
2 right?

3 MR. DAVIS: That's right, Your Honor. And that's just -- that's the
4 way that the cloud API access works is, for the same reasons that you and I
5 can't access somebody else's cloud environment using any cloud API that
6 exists, you have to have the sort of privileged access to be able to use those
7 APIs to access the cloud environment. And that's really actually what you'll
8 see in the claim language itself, where it establishes an interface between the
9 security system and the computing environments. So that's really that first
10 limitation of the claims is what that's directed to.

11 JUDGE ZECHER: So I guess, just to -- for my own understanding
12 and what I'm thinking through here, I assume you're saying agentless has got
13 two fundamental underlying principles to it. It's the APIs and the snapshot
14 scanning --

15 MR. DAVIS: That's right.

16 JUDGE ZECHER: -- effectively? Okay.

17 MR. DAVIS: And what I should say is that I think that what Wiz
18 has introduced are -- there are other references that predate Orca's patents
19 that use the term agentless. And I think that what you'll also see, though, is
20 after Orca introduced this technology, the industry effectively redefined the
21 term to be directed to what Orca had introduced.

22 And that's what Wiz did as well, because the agentless approaches
23 that Wiz has identified in its variety of tertiary references, none of them have

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1 to do with agentless scanning using cloud computing API access and
2 analyzing snapshots. That's what Orca introduced, and then Wiz copied.

3 JUDGE BAER: Just to make sure I have your point, Mr. Davis,
4 you're saying that agentless scanning post the challenged patents meant
5 something different than it did before. And I understood you to say before it
6 meant API access and snapshots, or is that -- do I have that wrong? What
7 was the change that -- in the definition of agentless scanning that you're
8 articulating?

9 MR. DAVIS: So I'm saying that the characteristics of agentless
10 scanning, and I think actually specifically what it refers to in, like, Exhibit
11 2076, the CNAPP report on the future of cloud security, agentless
12 SideScanning, in Wiz's documents, they refer to it just as agentless scanning.
13 Before Orca, people didn't characterize that as being the two key
14 characteristics of agentless scanning.

15 JUDGE BAER: What did they mean when they said agentless
16 scanning before that?

17 MR. DAVIS: So agentless scanning before Orca would just be
18 something that doesn't require you to install an actual piece of software onto,
19 like, a running VM. And that's where, if you look at, for example, the agent-
20 based approach in Exhibit 2026, it's talking about actually installing
21 something into the computer so that it is running on the computer and it
22 provides a depth of information that is differentiated from an agentless
23 approach that doesn't install anything on the computer.

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1 JUDGE BAER: So you would agree with Mr. Argenti's
2 description for before Orca, that it meant not software installed on the target
3 device? But you're saying that the definition changed to mean something
4 different afterwards, and that is particularly API access via a cloud network
5 to a snapshot; is that correct?

6 MR. DAVIS: Can you say that one more time?

7 JUDGE BAER: Yes. When I asked Mr. Argenti, what do you
8 mean when you say agentless scanning, he articulated a definition that I
9 understand to be consistent with what you just articulated for what agentless
10 scanning was before Orca, which is scanning with no software installation
11 on the target device?

12 MR. DAVIS: Yes. I think at a high level, that's a correct
13 characterization of what agentless would've been. It just would've been
14 contrasted with an agent approach, which does actually install software on
15 the device.

16 JUDGE BAER: But you're saying post Orca, now when people
17 say agentless scanning, they mean something different than that; is that
18 correct?

19 MR. DAVIS: So I don't want to say that I'll characterize
20 everything that the industry has ever said. I think that when you look at the
21 evidence that's in the record in this case, in these IPR proceedings, both from
22 Wiz as well as from Orca, and from third parties discussing Orca's product
23 or Wiz's product, yes, I do think that is how they're using agentless scanning

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1 is to refer to those characteristics.

2 And naturally, a lot of the evidence is not looking at just those two
3 parts alone. It also has the other elements of the claims that we put together
4 in our patent response that sort of map to each of the claims in an
5 individualized analysis, which my colleague, Mr. Lumish, will address, and I
6 don't want to take too much from his argument. And so -- and I think we
7 will circle back to this and discuss it more in the context of the objective
8 indicia.

9 Before we get there, though, I do want to talk about the prior art
10 and where the gaps are in those references. And let me start with Veselov,
11 because as Mr. Argenti pointed out, that's the starting point for all of their
12 grounds. And across all of the -- all three IPRs, they all start with Veselov.
13 And I totally get why they started with Veselov. It has a lot of the same
14 words that are in the claims of the challenged patents. But once you actually
15 get into the details and you look at it, particularly in view of the objective
16 indicia, it's clear that the details that are missing, the arrangement of the
17 claims that's missing from Veselov, are parts that drove the real success.
18 What may have looked obvious now was not obvious then.

19 And starting with, if we go to Slide 10 of the Patent Owner's
20 presentation. So during Wiz's presentation, I want to note for the Board, that
21 they did not identify for you what embodiment they are actually relying on
22 from Veselov. You heard them talk about Figure 1. You heard them talk
23 about Figures 3A and 3B. You heard them talk about Figures 5A and 5B.

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1 And you heard them identify citations from all of them in combination, but
2 never telling the Board which one they're relying on. And that's what you
3 see in the petition. They just -- they cite a whole lot of stuff and they leave it
4 for the Board to piece together the different elements of the claims from that
5 variety of cites. That's not a proper, obviousness analysis from the outset.

6 It's particularly inappropriate here, when you look at what exactly
7 is missing from these different embodiments, which is something that we
8 described in the papers. And we can see on Slide 11 is really what Wiz is
9 doing, is they say from Figure 1, I'm going to take the computing resource
10 service provider and the APIs, but I'm not going to take any of the other
11 elements like the snapshot storage. I'm just going to leave those parts out.

12 From the Figures 3A and 3B embodiments, I'm going to take the
13 discussion of virtual disks. I'm going to take a discussion of the API. I'm
14 going to take the discussion of the computer resource service provider, but
15 I'm not going to use any of the rest of the stuff.

16 And then for Figures 5A and 5B, they're going to say, look, that
17 one has the right type of scanning of analysis or the right type of snapshot
18 analysis, so I'm going to use that. And then I'm just going to combine it with
19 all the different things. That's not appropriate here, because it's undisputed
20 that in order to combine embodiments for purposes of an obviousness
21 argument, even within a single reference, you have to have a motivation to
22 combine, and Wiz does not dispute that it never proposed any motivation to
23 combine any embodiments in Veselov.

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1 Slides 12 through 19 identify some of the various missing elements
2 from each of the embodiments standing alone, which is something that Orca
3 showed, and that Wiz just doesn't really address. Because, again, what
4 they're relying on is all the embodiments. And I think, actually, if you look
5 -- and I'm going to switch over to Petitioner's slide for just a second.
6 Petitioner's Slide number 18, because I think that this is sort of emblematic
7 of the issue here.

8 And if you look at Slide 18, Wiz is talking about just the elements
9 of identifying virtual disks of a virtual machine. It's what they have
10 underlying. They're not talking about the cloud computing platform APIs.
11 They're not talking about any of the other aspects of this. Just that one piece
12 of the claim. Take that out and just look at that.

13 And then what they cite from Veselov, there's four disclosures.
14 The top left disclosure from 3, 32 through 40 is discussion -- discussing a
15 summary of alternative embodiments at the outset of the patent. The bottom
16 left citation to 8, 25 through 45 is the Figure 1 embodiment. The top right
17 disclosure at column 2, lines 46 through 54, are describing the drawbacks of
18 prior art systems. These are of the prior art systems that are being
19 disparaged and distinguished by Veselov itself. And then the bottom right
20 citation is the Figure 3A and 3B embodiments that Wiz says it's no longer
21 relying on because it doesn't rely on the assessment VM approach.

22 That's what they do. They give the Board evidence from every
23 disclosure in the patent that uses the right words. And then they want the

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1 Board to arrange them in the order that are claimed. But there's no support
2 for that, because each of the embodiments standing alone is missing
3 something.

4 JUDGE BAER: Mr. Davis, isn't there -- I mean, I take your point,
5 but isn't there -- I don't know that I agree with your characterization that it's
6 entirely their construction that is putting these together.

7 Isn't there some indication of putting these things together both in
8 the background and then in the passages of Veselov that describe some of
9 the similarities between the two, including the passage about the interactions
10 and the --

11 MR. DAVIS: Yes, Your Honor. And that brings me to actually
12 Slide 20, if we want to switch back over to Patent Owner's presentation.
13 And this is that argument of the implementations and interactions, which is
14 Veselov at 560 -- Veselov at -- sorry, let me start that over to make sure
15 that's clear for the record. On Slide 20, we are looking at Veselov at 16, 45
16 through 67. And this is that implementations and interactions discussion
17 that Wiz's presentation went through.

18 To be clear, Veselov does tell us that sometimes there are elements
19 in the different embodiments that operate the same way. That's what this
20 says. It tells us. But what Wiz ignores or brushes past is which elements it's
21 really talking about, because it tells us which ones, and those are the ones
22 that are highlighted in yellow on Slide 20. If you go to Slide 21, those
23 yellow components are not the ones that Wiz is mixing and matching

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1 between these embodiments. What Wiz --

2 JUDGE BAER: Isn't an API, though, an interaction for a user
3 device 302? Why does that not -- in other words, I hear your point that the
4 API isn't one of those listed numbers, but it says implementations and
5 interactions for, and it lists 302.

6 So isn't an API an interaction of a user device? Or how is it not?

7 MR. DAVIS: So I think that you're right. An API is an
8 interaction, but it's not any interactions. It's the interactions of these
9 components. And if you look back at Slide -- if you look at Slide 21, the
10 user computer in Figure 5A is not interacting with a component that is the
11 same as one that is described in Figure 3A. The user computer is interacting
12 with the scanning service 510, which is an element that is not the same
13 between Figures 5A and 5B and Figures 3A and 3B.

14 And the reason for that is the sort of -- the baseline, which is what
15 is Figures 5A and 5B intended to disclose is not a cloud computing
16 environment. It is an on-premises environment where there is no computing
17 resource service provider, which is another element that's missing from
18 Figure 5A. And it's not listed as a component that has the same
19 implementation and interactions as Figures 3A and 3B. Wiz would just have
20 the Board take a component that is not listed as being the same and just add
21 it to Figures 5A and 5B, but there's no motivation to do that in the record.

22 Now, I also note that Wiz said, well, look, Figure 5A and 5B, it
23 says the word computing resource service provider in the discussion. And I

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1 can take the Board to Slide 27.

2 JUDGE ZECHER: This is Petitioner's Slide 27; is that correct?

3 MR. DAVIS: Of Orca's -- patent Owner's Slide 27.

4 JUDGE ZECHER: I'm sorry. Patent Owner's Slide 27?

5 MR. DAVIS: Patent Owner's -- Orca's -- Patent Owner's Slide 27,

6 which is discussing Veselov at column 18, 1 through 15. And what Wiz

7 says is, well, look, it uses the word computing resource service provider.

8 That's the thing that's not depicted, as if it is not depicted as hosting the

9 computing environment. That's not what it says. The computing

10 environment is not discussed anywhere in this paragraph. What it says is not

11 shown is a security module or security service, which holds encryption keys

12 for the optional feature of if your -- the different resources are encrypted. So

13 it's, like, a security -- it's just an additional security module.

14 It's also not something that Wiz relied on in the petition because it

15 doesn't act to anything in the claims. And so Wiz is trying to extrapolate

16 from this that there's some additional disclosure. But what you can see in

17 the actual descriptions of Figures 1, 3A and 3B, and this goes back to what

18 we show on Slide 10. If you look at the introduction of Figure 1, Veselov at

19 column 2, lines 23, 29, it says expressly, "Computing environment

20 implemented by the computing resource service provider, 104."

21 Figures 3A and 3B, it's express at Veselov 10, 37 through 39.

22 "Example computing environments implemented by a computing resource or

23 risk provider, 300, 350." Then you get Figures 5A and 5B. These are the

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1 additional embodiments that just have example computing environments 500
2 and 550 not implemented by a computing resource service provider.

3 Now, Wiz also pointed to a discussion at the very end of Veselov
4 that says, well, when we say some embodiments and one embodiments, we
5 don't mean that those embodiments are necessarily limited to the
6 components that are actually disclosed. But this is where Wiz is just taking
7 things out of context again, because if you look just two sentences later,
8 Veselov provides you with the -- at column 24, lines 65 through 25, 2 of
9 Veselov, it explains that "these and other issues," talking about the -- in one
10 embodiment and embodiment. "These and other issues may vary with the
11 particular context of usage. Therefore, the particular context of the
12 description of or the usage of these terms may provide helpful guidance."

13 That's what we're saying, too. If you actually look at the way that
14 these different embodiments are introduced, the context tells you that
15 Figures 5A and 5B is an on-premises environment. The other ones are not.
16 And Wiz doesn't provide any basis for combining these various disparate
17 environments, each of which are missing core limitations of the claims.

18 So that alone is a reason enough to reject Wiz's invalidity grounds
19 in the '031 Patent, as well as in the '685 patent, which has identical
20 arguments for those limitations, as well as for the '032 Patent in -- for claims
21 16 and 20. I -- just those patent claims for the '032 Patent.

22 JUDGE ZECHER: Mr. Davis, I guess I understand you to be
23 arguing that Wiz is improperly combining mutually exclusive embodiments.

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1 What -- how would you respond to the fact that a lot of these embodiments
2 do share common features and they seem to build off one another? Would
3 you say that that's an impermissible reading of Veselov?

4 MR. DAVIS: So I would disagree that Veselov is building off of
5 the other embodiments. What it is -- at least, it depends on, I guess, which
6 embodiment you're discussing. Because Veselov does have other
7 discussions in other portions of the written description where it ties
8 particular elements and says, this is done similar to what's above. And
9 where it says that, obviously that's what it intends.

10 But when you look at Figures 5A and 5B, that's not what it's
11 saying. It's not saying, hey, this is just building on one of the embodiments
12 that's previously above. It's really discussing an alternative embodiment
13 compared to Figures 3A and 3B, which is really -- if you go to Orca's Slide
14 19, you can see that in Veselov at column 17, lines 1 through 3, which is
15 Figures 5A and 5B. "Are -- rather than recreating and instantiating a
16 duplicate VM," and that's really talking about the Figures 3A and 3B
17 environments, "the scanning service 510 is configured to analyze the volume
18 image 508 as a data file."

19 So this is not meant to build upon Figures 3A and 3B. It's an
20 entirely different disclosure. It's an alternative.

21 JUDGE ZECHER: So you would obviously argue that these are
22 unpredictable variations in these embodiments. Is that what you're saying?
23 I mean, there is case law that would support that if you have predictable

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1 variations in different embodiments, it doesn't require a leap of logic to
2 comply.

3 So how would you kind of respond to that case law?

4 MR. DAVIS: So what I would respond is that, first, it's not an
5 argument that's been raised by Wiz in the petition.

6 JUDGE ZECHER: I don't know that it needed to be. It's a case
7 law from the Federal Circuit. This is standing principle that they would
8 offer, so I can give you the case. It's *Boston Scientific*, 554 F.3d 982.

9 So how would you respond to us applying that, if we were to do so
10 in this case?

11 MR. DAVIS: So the way that I would respond is that in the -- I
12 don't know that it would be appropriate to add a new invalidity ground
13 where there's no motivation or basis for combining. And I don't think that
14 there's any evidentiary support for it being a predictable variation. But I
15 think that what a POSA would understand by reading the reference is that
16 these are not predictable, is that you would need to focus on what the
17 reference itself says, which is that these are alternative embodiments for
18 different circumstances and different alternative environments, and in a way
19 that is -- directs the POSA away from what is claimed.

20 I think, in addition to that, the lack of a motivation for combining
21 the embodiments is that even if you were to combine all of the embodiments
22 together, you still are missing the core elements of each of the '031 and '685
23 Patent claims that require a cloud computing API to identify and locate

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1 virtual disks of a virtual machine.

2 And with that, I'll go to Slide 35.

3 JUDGE BAER: This is Orca's Slide 35?

4 MR. DAVIS: This is Orca's Slide 35. Yes, Your Honor.

5 So in the context of the claims and in the context of these patents,
6 we're talking about cloud environments. And we can see from the '031
7 Patent itself, as well as in the corresponding disclosures for the '685 Patent,
8 that the virtual machines and the virtual disks, they're not located in the same
9 place. They don't have the same location. And that's, you can see, VM 119-
10 1, 119-2, which is separate from the virtual disks 118-1 and 118-2.

11 If you go to Orca's Slide 38, we have Dr. Stavrou, who's -- who is
12 his expert, who admits there is nowhere in Veselov that identifies or
13 describes an identifier for a virtual disk. And this is Dr. Stavrou, his March
14 deposition at 142-15 through 143-3. He's not aware of any citation in any
15 embodiment in Veselov that actually identifies an identifier for a virtual
16 disk.

17 Turning to Slide 39, one of the arguments that Wiz has made,
18 they've made it in their briefing, they've made it again today, is, well, the
19 VM and the disk, they could sometimes be in the same location, and so that
20 should be enough. But that's not right, because -- and this is, I guess,
21 hopefully a helpful analogy, in a physical computing environment, which is
22 what you would sort of see on the right, if you consider the car the virtual
23 machine, and then the disk the driver, those two are always going to be the

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1 same thing. Like, your laptop computer, it's going to have the hard drive
2 inside of it.

3 That's not how it works in a cloud environment. In a cloud
4 environment, the storage is separate from the virtual machine and it can
5 change over time. It is not always in the same location. It's not always the
6 same disk.

7 And so knowing the virtual. What we are in a scenario is what's on
8 the left, which is the VM and the disk are separately located. And what Wiz
9 has not shown is any disclosure of identifying the virtual disk anywhere in
10 Veselov. And Veselov is the only reference that they rely on for its
11 limitation.

12 Now --

13 JUDGE BAER: I'm sorry, Mr. Davis. Just if you could help me.

14 MR. DAVIS: Yes, sir.

15 JUDGE BAER: Are we talking about identifying the virtual disk
16 or identifying the location of the virtual disk? I'm just a little confused on
17 which limitation we're talking about.

18 MR. DAVIS: Yes.

19 JUDGE BAER: I assume we're talking about identifying a
20 location, not just identifying a virtual disk, but I want to make sure I'm not
21 making a mistake here.

22 MR. DAVIS: That's right. So the -- it's both 1.2 and for the '685
23 Patent, its -- and the '031 Patent, it's both elements 1.2. It's 1.2 through 1.4,

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1 which is utilize the cloud computing platform APIs to identify virtual disks
2 of a virtual machine in the client environment. So we know from Dr.
3 Stavrou, there is no such identifier in Veselov.

4 JUDGE ZECHER: Does that actually require an identifier? It just
5 says to identify virtual disk. It doesn't say --

6 MR. DAVIS: It does --

7 JUDGE ZECHER: -- identifiers specifically.

8 MR. DAVIS: That's right. It has to identify the virtual disk and it
9 also has to give the location. That's the Limitation 1.3. And so --

10 JUDGE ZECHER: And it doesn't need to be done by using an
11 identifier?

12 MR. DAVIS: It does. Yeah. We're not trying to say that you need
13 to literally have the word identifier in Veselov. But what Wiz has not
14 identified is anywhere in Veselov that discloses using a cloud computing
15 API to actually identify a virtual disk in any fashion.

16 What Wiz instead argues is, if we go to Slide 40 of Orca's
17 presentation, we look at the '031 Patent petition at page 31.

18 JUDGE BAER: That was Slide 40; is that correct?

19 MR. DAVIS: That's Slide 40. Wiz says that "using APIs to
20 identify virtual disk of cloud hosted BMs was a routine part of generating
21 snapshots as described in Veselov." And then what Wiz does is they don't
22 cite any disclosure in Veselov.

23 They cite five or six tertiary references that talk about how those

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1 types of APIs exist in the world, which is presupposed by the claim language
2 itself. The claim language says that you're using Cloud computing A -- or
3 APIs that are provided by a cloud computing environment. They're the
4 cloud computing provider APIs.

5 What Wiz has done is they've said, oh, well because those were
6 known, it must have been obvious to use them in the way that's actually
7 claimed. But that's not only wrong as a matter of law, it's wrong when you
8 look at what the industry reaction was.

9 It is really easy to say after the fact cloud APIs, like that must have
10 been obvious. Everybody must have been using those, but they weren't
11 using it for this purpose.

12 And we see that because when the industry is reacting to Orca's
13 introduction, which, if you go to Orca Slide 44, for example, we see this is
14 the Redefining CNAPP Guide and Exhibit --

15 JUDGE BAER: Mr. Davis, I'm sorry, could you just give that
16 reference one more time?

17 MR. DAVIS: The Exhibit 2076, which is the Redefining CNAPP:
18 A Complete Guide to the Future of Cloud Security Report.

19 JUDGE BAER: Give me just a moment --

20 MR. DAVIS: Yes.

21 JUDGE BAER: -- to get there. This is -- the exhibit number is the
22 same, or is that for a specific case?

23 MR. DAVIS: It is the same across all of the different IPRs.

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1 JUDGE BAER: And I'm sorry. I just need it one more time.

2 MR. DAVIS: Exhibit 2076. It's also on Orca Slide 44. And I
3 have the relevant cites included on that slide, if it's easier to reference the
4 slide.

5 JUDGE BAER: Orca Slide 44?

6 MR. DAVIS: Orca Slide 44. I apologize for going --

7 JUDGE BAER: I'm sorry.

8 MR. DAVIS: Yeah.

9 JUDGE BAER: I'm trying to follow. Orca Slide 44, I have it. Go
10 ahead.

11 MR. DAVIS: And so what we see in Slide 44 is that Orca
12 introduced the -- and this is the top right quote at page 7, "Orca introduced
13 the concept of agentless side scanning. The CSPM market can be defined by
14 pre and post-Orca. The ability to view workload data without an agent was a
15 genuinely genius innovation."

16 And then what's the first thing that they point out? "Utilizing the
17 nature of cloud APIs being accessible to vendors." That was genuinely
18 genius.

19 JUDGE GALLIGAN: Counsel, this is Judge Galligan in Dallas
20 here. I wanted to follow up on that a little bit. You know, this sort of -- I
21 -- you know, I read the patents and I was just trying to figure out, where
22 does the patent -- let's take the '031 Patent in the 863 case, says use the
23 interface, utilize cloud computing platform APIs to identify virtual disks.

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1 Where is that in the patent? Can you point me to where that
2 -- where it is explained how to do that?

3 MR. DAVIS: So, Your Honor, I would need to go back and take a
4 look at that, but I'm happy to find those citations and provide them to you
5 during my response time.

6 JUDGE GALLIGAN: That's perfect. Yeah. And I kind of wanted
7 to, you know, if you want to address in your response, that's fine, I was
8 reading, you know, reading the briefs and I'll go back to the 863 case and
9 -- let me see.

10 It was at the patent of a response that might have -- it might have
11 involved (INDISCERNIBLE). But it seemed to be along the lines that
12 Veselov doesn't -- I'll find it. But Veselov doesn't use the APIs like this to
13 create a snapshot or to locate virtual disks.

14 And we know that there's a dispute about that, obviously, whether
15 it actually does. And Veselov has a lot of disclosure of APIs, a lot of
16 disclosure of using APIs for, for instance, getting the scan -- you know,
17 using it for the scanning service.

18 This Slide 44 here, I'm kind of struck because it says it utilized the
19 nature of cloud APIs being accessible to vendor. So like, this was
20 functionality that pre-existed. Using APIs to, for instance, capture a
21 snapshot appears to be something that was maybe AWS developed it and
22 Orca used, which is fine.

23 But I guess I'm questioning why there's so much lack of -- you're

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1 alleging there's so much lack of disclosure in Veselov. But I see more
2 disclosure of any of this in Veselov than I do in the challenged patents. And
3 that would tell me, well, it probably was known this is how things were
4 done.

5 I mean, if you want to create a snapshot, you go in there and you
6 use AWS's snapshot feature. And that's -- I mean, that's kind of what -- I
7 think that's what Petitioner is saying with respect to Veselov.

8 Veselov has APIs. How else would you possibly interface when it
9 says things like you interface with the system, the customer interfaces with
10 the system via the API.

11 How else to read that when it says you have a scanning service that
12 can be done using an API? How else to read that other than to say the
13 scanning service creates the snapshot using the API or utilizing the API or in
14 some manner the API is utilized?

15 And so you can point me to the element of disclosure in the
16 challenge patents in your surrebuttal. But I do want you to think about that,
17 because we're asked to look past detailed disclosure in Veselov. But I don't
18 see much in the challenge patents of this particular API, you know,
19 functionality (INDISCERNIBLE).

20 MR. DAVIS: And so I think the focus here is on it's what's
21 claimed, which is to use the APIs not just to create snapshots, but it's using
22 them to actually get to the underlying location of the disks and the
23 importance of that so that you can actually have the scanning happen where

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1 the disk is, rather than merely where the VM is. I think --

2 JUDGE GALLIGAN: (INDISCERNIBLE) to the -- our focus is
3 on the claims and that's kind of why I want to know. I'm sort of thinking of
4 In re Epstein. They would say you're demanding more, and this is
5 enablement context, you demand more of the -- maybe the prior as than you
6 do with the challenging patents, but I mean, I don't see any of that in the
7 patent. This thing, like, no one had ever used an API to do this. And I don't
8 see any discussion of how it would be done, for instance.

9 And one would think, if this were the novel feature, that there
10 would be some discussion in the patent to say, oh, yeah. And by the way,
11 these APIs are key. No one's ever done this before. This is how you would
12 do it. Otherwise, we're left to assume that a person skilled in the art knew
13 how to do this. That's claimed. And that's kind of where I'm, you know,
14 coming from.

15 MR. DAVIS: So I think that there's a difference between the
16 claimed arrangements as compared to, which I think that with the claims, a
17 POSA would be able to implement this invention and that the invention is
18 enabled. Although, I don't know that enablement is a proper for the Board to
19 address in an IPR context.

20 JUDGE GALLIGAN: We're not --

21 MR. DAVIS: And so --

22 JUDGE GALLIGAN: To be clear, we agree here. We are not
23 addressing enablement.

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1 MR. DAVIS: Yeah.

2 JUDGE GALLIGAN: It's more of there. There's a lot of -- there
3 are a lot of complaints about the lack -- alleged lack of disclosure in
4 Veselov. And it seems that Veselov is at least as detailed, and I'm -- in my
5 opinion way more detailed about how you use APIs to, for instance, create a
6 snapshot, than anything in the patent.

7 And that's where I'm having a little bit of difficulty seeing the
8 deficiency in that -- in Veselov with -- in respect to this particular use of
9 APIs to do this. That's all.

10 And so I'm certainly not calling into question whether it's enabled
11 or not. Obviously, that's not the course, and I would -- I'm not calling that
12 into question, to be clear.

13 MR. DAVIS: Okay. And so I'll get back to that on the rebuttal
14 time. But I think that when the focus is looking at what is claimed and
15 looking at the prior art to see whether it discloses the arrangement that's in
16 the claims, what is missing from Veselov is a discussion not just of using
17 APIs generally, but specifically to get to the virtual disk location.

18 And that is something that is absent from all of the different
19 disclosures in Veselov. And it's something where, and staying with the
20 Exhibit 2076, it's not just to use the cloud APIs, but it's to get to the
21 underlying instance hard disks. And that's the sort of elegant like magic
22 approach that everyone has attributed to Orca.

23 You know, when we get to AWS and we talk about AWS, all -- I

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1 have to note that AWS is not something that is in any of the petitions. And
2 it's not an argument that Veselov would have been combined with AWS.
3 And Veselov itself doesn't refer to AWS at all.

4 And I think that this goes to, again, sort of the nature of how easy
5 it is to copy what these inventions are because they appear simple after the
6 fact. And we see that in Wiz's own invalidity arguments. I think that Wiz's
7 Counsel mentioned that it -- that the arguments came -- about AWS came a
8 little bit late in these proceedings.

9 And what I'd direct the Board to is, actually, if we look at Slide 55
10 --

11 JUDGE ZECHER: Is this slide 55 --

12 MR. DAVIS: -- of Orca's presentation Slide 55, Wiz, obviously,
13 spent a lot of time working up their petitions and identifying some 80-plus
14 references to include in each of their filings.

15 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22 And so that's where -- at least one place where actually Orca's
23 disclosure is more detailed than Veselov, is actually identifying what

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1 exemplary cloud environments could be used.

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 And so what Wiz did is they just took that and then introduced it
7 into the record as evidence that these things existed. But we know that just
8 being known isn't enough. And we know that these are new and they
9 shouldn't, frankly, be considered because they're not part of the combination
10 and weren't in the petition.

11 If we go to Slide 57 of Orca's presentation, we have Dr. Stavrou's
12 row's deposition transcript at 81-14 through 22, and 82-18 through 21,
13 where, for example, on the '031 Patent, he doesn't mention AWS or Amazon
14 once in his opening declaration.

15 And then in his reply declaration, not counting exhibit titles and
16 citations and things, he uses AWS over 20 times. It also pervades Wiz's
17 presentation today. [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Those arguments not only are they new, but if you actually look at
21 -- and if you go back a couple of slides to Slide 54 of Orca's presentation.
22 This is one of the exhibits that they use, Exhibit 1131. It has a copyright of
23 2025. They downloaded it in July of this year. It's not prior art. They are

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1 using today's iteration of AWS as a justification of what was known back in
2 2019.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] And all of the benefits that Orca describes are just merely
7 something that everybody was using.

8 I think the other thing that the Board asked during Wiz's
9 presentation is in these documents, these AWS documents, what does it say
10 snapshots are used for? I can tell you what not a single one of them says,
11 use them to analyze them for snapshots, or use them to analyze for
12 vulnerabilities, use them to analyze for sensitive data.

13 Instead, what you have are that you use images to launch new
14 instances or you use snapshots. You can't use snapshots to launch new
15 instances, but you could replace volumes. And so what these various API
16 calls described is not the purpose and not the way that they're used in any of
17 the challenge claims.

18 JUDGE BAER: Oh, I'm sorry. Are we talking about Veselov or
19 other references to snapshots?

20 MR. DAVIS: I'm talking about the other references to snapshots
21 that Wiz is now relying on in their Reply that are from AWS, which is
22 absent from Veselov and what they are trying to interject as a new reply
23 argument, which shouldn't be considered. But even if it was considered, it's

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1 not reliable because it's not relying on prior documents.

2 JUDGE ZECHER: Mr. Davis, do you mind if we turn back to
3 Veselov? I'm still struggling to understand what's missing in this whole
4 identification claim feature. I mean, Veselov does talk about performing a
5 security assessment. It talks about obtaining access to a snapshot. It
6 indicates that that snapshot could be a logical volume of something in a
7 virtual machine. What is missing from that disclosure? Are you saying the
8 APIs used to do that is not explicitly disclosed there, or are you just -- I'm
9 trying to understand it hard, so?

10 MR. DAVIS: Yeah. So what Veselov says generally is that you
11 can access the snapshot, but it doesn't identify querying the virtual disks of
12 the virtual machine, and it doesn't have any disclosure of locating the virtual
13 disk.

14 JUDGE ZECHER: Well, I guess I -- I'm struggling to understand.
15 If I obtain access to a snapshot of which is just a portion of something. I
16 would need to know its location to do that, wouldn't I? I mean, it's not just
17 going to randomly pull something and give it to me, right?

18 MR. DAVIS: So I think that that would be conflating what is a
19 snapshot with the virtual disk. And so I could request there -- that a
20 snapshot be created without identifying -- without using an API to query
21 what virtual disks exist, to have a locate -- to also query a location of those
22 virtual disks, and then to receive that location in step 1.4.

23 And so you could just send out a request and you say, hey, I want a

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1 snapshot of this -- I want a snapshot of this device, and you would not get an
2 identification of the virtual disk. You wouldn't not locate it. It would just
3 the system would take that, and it would just create a snapshot.

4 JUDGE ZECHER: It'll be a whole device is what you're saying?
5 The whole --

6 MR. DAVIS: Right.

7 JUDGE ZECHER: But doesn't it say that the snapshots could be
8 many different things? It can be the entire logical volume, or it could be just
9 a portion of that. How are we supposed to read the portion aspect of it,
10 which would imply it's a specific location in a virtual machine, right?

11 MR. DAVIS: So I think the portion of the logical volume actually
12 would be a -- just a certain set of files within the virtual machine. It's not a
13 disk. It's just a set of files. And I think that's disclosed in Veselov, where it
14 says that a volume image or a snapshot may just be whatever subset of files
15 are required in order to perform the assessment.

16 And so it's not saying -- I think that it is not saying that it's
17 specifically the virtual disks of the virtual machine. In the interest of time,
18 just because there's quite a bit more to go through, I want to try to jump into
19 some of the other issues. Understanding I won't be able to get through all of
20 them. So looking past just Veselov and combining environments. For the
21 '031 Patent, Wiz also introduces Price to do offline analysis.

22 I think that if we go to Slide 29, there's no dispute that the only
23 thing Veselov actually discloses is analyzing running virtual machines. And

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1 so that's where Wiz has to add in Price in order to get the '031 Patents
2 requirements of analyzing -- taking a snapshot of the VM at rest and
3 analyzing the snapshot while the VM is inactive. The issue here is that if
4 you turn to Slide 31. By adding Price's offline machines, you are going
5 contrary to Veselov's objectives. And what Veselov is really about, Veselov
6 is about --

7 JUDGE BAER: Mr. Davis, before we go farther, I'd like to be
8 helpful to me if we could be a little more precise. The word you used was
9 going against. So what I'd like to know is, are you arguing that I think we're
10 talking -- are we talking about Hufsmith or Price?

11 MR. DAVIS: This is that implementing Price's offline machines
12 into Veselov would be contrary to Veselov's objectives.

13 JUDGE BAER: Right. So this contrary to their objectives, I'd like
14 to be a little bit more precise with that. Are you saying that Hufsmith is non-
15 analogous art? Are you saying that there was no reason to combine
16 Hufsmith, or are you saying that there is no reasonable expectation of
17 success?

18 And I understand that it's hard to use that language particularly, but
19 you know, we have this framework, and we need to be specific within this
20 framework. So it would be helpful to me to know which of those three
21 buckets, and it doesn't have to be just one. Which of those three buckets
22 you're specifically arguing?

23 MR. DAVIS: Yeah. So you mentioned Hufsmith. Here, we're

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1 talking about Price for the '031 Patent.

2 JUDGE BAER: That's what I thought. We're talking about
3 combining Price and Veselov?

4 MR. DAVIS: Yes. Okay.

5 JUDGE BAER: Are you saying Price is not analogous art to
6 Veselov? Are you saying there's no reason to combine Price with Veselov?
7 Are you saying there's no reasonable expectation to combine Price with
8 Veselov in the way that petitioner is suggestion?

9 MR. DAVIS: I don't think that we are disputing. We're not
10 disputing analogous art. We are disputing that a POSA would be motivated
11 to combine them, Veselov and Price generally, as well as in the particular
12 way that they are -- the way that they are proposing to modify them.

13 Addressing that -- the generally that you wouldn't combine them in
14 -- I guess you wouldn't combine Veselov and Price more generally, that's
15 because Price is looking at analyzing active VMs using agents. And then it's
16 looking at offline VMs using images, which is contrary to Veselov, which
17 says you shouldn't have -- is only directed to online VMs, and it's trying not
18 to interact with them at all.

19 JUDGE BAER: When you say contrary, are you saying that Price
20 teaches away from the combination?

21 MR. DAVIS: So I think that -- so I think it would be Veselov is
22 teaching away, but even if it doesn't reach the level of teaching away, the
23 suggestions about Veselov's objections under Federal Circuit case law, you

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1 don't have to have it be an expressed teaching away for it to still cancel away
2 from the combination. And so even if the Board didn't find that it was a sort
3 of teaching away.

4 But I think that because in Veselov, it says that the objective of
5 this, the system is to have VMs that are running their normal workload and
6 servicing requests from customers, that a POSA would not be motivated to
7 then look to systems that are analyzing VMs that are offline, particularly
8 where Veselov is trying to have a monitoring and assessment system that is
9 not complex.

10 And everything that Wiz is adding is adding complexity, where
11 what Veselov system is really about a user who's operating a computer says,
12 this is the computer I want to analyze, or this is the thing that I want to
13 analyze. And I want to do this particular security assessment on it and get
14 the results back.

15 And really, that's the gist of everything that Veselov is talking
16 about, is really this sort of individualized request and individualized results.
17 It's why you don't have alerts, and it's why you don't have offline VMs,
18 because the person who's doing this request is not going to be interested in
19 the machine that's turned off.

20 JUDGE BAER: So Petitioner has articulated a motivation to
21 combine the offline feature. And the one they've articulated, they say there's
22 a security benefit. And I don't think they dispute that there's a cost to that
23 security benefit and that you don't get to keep your online system running.

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1 Are you disputing that that would be a benefit, or are you saying,
2 yeah, that's a benefit, but it's not enough to overcome the drawback of
3 stopping your production system?

4 MR. DAVIS: I think that it is a -- sort of it's a hindsight
5 reconstruction to just take that one part of offline images and combine them
6 in Veselov. And that without hindsight a person implementing Veselov
7 would not look to how to analyze offline.

8 JUDGE BAER: Well, I'm not sure what you mean by hindsight,
9 because I think Price teaches that. So if by hindsight, you mean you're
10 looking at the prior art and getting a rationale from the prior art, I'm with
11 you, but I think that's permissible. So I want to know what you mean by
12 hindsight.

13 Do you mean, well, you're not considering what Veselov teaches,
14 or do you mean you're making up a reason that wouldn't apply, or yes, that
15 reason applies, but it's just not enough to overcome this contrary teaching in
16 Veselov?

17 MR. DAVIS: I think it's mostly the latter, which is that it's just not
18 enough to overcome the particular objectives of Veselov, that a person who's
19 implementing Veselov, which is the -- what petitioner has -- how they have
20 framed their obviousness argument, they would not have been directed to
21 Price because it really -- particularly when you read Price as a whole, it's
22 introducing agent-based online scanning.

23 But I also just want to get to even if you were to combine them in

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1 the way that Wiz is arguing, you're still missing a really kind of key element
2 of this, which is, if you go to -- and I'm going to try to go through things a
3 little bit quickly. If you go to Slide 49. So here's an issue. What Wiz has
4 proposed in its combination is you take Veselov's online machines with
5 snapshots, and you take Veselov's -- or sorry, and you take Prices offline
6 analysis, which is a VM images.

7 If you -- that's the combination that's been proposed. What they
8 miss and what they don't provide any motivation for is why do you then get
9 offline VM snapshots and offline VM analysis? It's a gap in their theory.
10 They just sort of swap out images and snapshots because allegedly, they
11 might be equivalent data. Slide 51, equivalent data is not enough. Even if
12 there were --

13 JUDGE BAER: I don't think they're arguing that they're
14 equivalent. I think they're arguing the only thing we need from Price is
15 offline-ness. This a reason to do something offline. They're not relying on
16 Price for snapshots. So I don't think the law would require us to have
17 snapshots in both images -- in both references so long as one does. I think
18 all their borrowing from Price is the offline-ness aspect. Now I understand
19 you to be saying, well, look, Veselov has contrary teaching, and I hear you
20 on that, but do they need snapshots in both references?

21 MR. DAVIS: So you would then need a reasonable expectation of
22 success for swapping out snapshots and images. And in Wiz's own evidence
23 that it is introducing these proceedings. If you look at Slide 52, for example,

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1 one of the new exhibits they introduced in Reply is -- says that you would
2 take machine images, which so images rather than the snapshots by taking
3 the virtual machine offline.

4 So images offline, but for snapshots, which is in blue at the bottom
5 of Exhibit 1129, 229 through 33, it says, "Snapshots are a checkpoint of the
6 virtual machine while the virtual machine is online." And so what the
7 evidence that they've shown is actually that a POSA would understand and
8 have a reasonable expectation of success using snapshots for online, but not
9 for offline. Instead, what they would think is to use VM images rather than
10 snapshots.

11 JUDGE BAER: So on the reasonable expectation of success, I
12 understand your argument, but what is special about images that makes them
13 conducive to being offline that is not true of snapshots? So the particular
14 -- your claim doesn't specify anything other than it's a snapshot and that it's
15 offline.

16 So what is special about an image that's different than a snapshot
17 that makes a snapshot not conducive to being offline, such that a person of
18 skill in the art would not have a reasonable expectation of success in that
19 combination?

20 MR. DAVIS: So one example of that would be, if you go to our
21 -- Orca's Slide 54 and this is another piece of evidence that Wiz introduced
22 in its Reply is that you can use AMIs, and granted, this is a document from
23 2025. We don't think that it has too much weight, but it does explain what

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1 one of these key differences is, which is that you can use machine images to
2 launch new instances, but you can't use snapshots to launch a new instance.

3 And so that's one of the key differences between a snapshot and a
4 VM. And then if you go back to Slide 53, a person would think that's really
5 important for Price because what Price is describing at Paragraph 14, which
6 is on the right side of Slide 53, is that you use the offline images that are
7 collected for the offline virtual machines in order to simulate the operation
8 of those offline virtual machines. It is to create that duplicate VM that you
9 couldn't do from a snapshot.

10 JUDGE BAER: I understand. So I take your point that if you
11 wanted to create a duplicate VM, you would not use an offline snapshot, but
12 I don't think that's what Petitioner is proposing. What Petitioner is
13 proposing is just take a snapshot and do some analysis on the snapshot of an
14 offline virtual machine. And I asked you, why wouldn't you use -- why
15 would you use an image but not a snapshot so there'd be no reasonable
16 expectation of success?

17 And I don't think it's an answer to say, because you couldn't initiate
18 a snapshot. That may be true. But why would you not take a snapshot of an
19 offline machine? Why is there no reasonable expectation of success? What
20 is special about images such that you wouldn't take a snapshot of an offline
21 machine?

22 MR. DAVIS: So I think that what it likely is is that in many
23 systems there might be exceptions, and I think that Wiz has tried to identify

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1 other systems that aren't part of the combination where you can take a
2 snapshot while the machine is offline. But I don't know that that is -- they
3 certainly haven't shown that it's inherent, that you can actually take
4 snapshots. And what we have evidence of is that actually many systems
5 won't allow you or don't indicate that you can take snapshots of offline
6 machines.

7 They use AWS as an example. But again, AWS isn't part of the
8 combination. It wasn't introduced in the petition and the evidence that
9 they're relying on isn't reliable anyways for the positions that they're doing.
10 This is just a lot of gap filling after the fact to fill in -- any hole that we find,
11 they just -- they look for another reference that could potentially fill that gap.
12 And that's not a proper obviousness analysis. It's one that is riddled with
13 hindsight.

14 I want to just quickly address the -- there are many other
15 arguments in the papers, but I want to address just two additional arguments
16 on the '685 Patent. And --

17 JUDGE GALLIGAN: I did have a quick question. Two quick
18 questions, I hope. One is when we were talking to Petition's Counsel, there
19 was a question about whether inactive, offline, at rest, generally are the same
20 thing as that you're -- I don't know if offline is actually recited, but I know
21 there's inactive and at rest; do you agree that those are the same? Are they
22 different? Is there a distinction that we need to know about?

23 MR. DAVIS: I don't think that there's any distinction that the

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1 parties have disputed between those different iterations.

2 JUDGE ZECHER: Can I add one to that? What about the static
3 virtual machines? Is that on the -- offline? Is that at rest? What is that?

4 MR. DAVIS: I think static is generally talking about the state of
5 data rather than talking about the status of the virtual machine. So I would
6 say that static is actually not the same as -- that's a different category of -- it's
7 not talking about the -- a virtual machine status.

8 JUDGE ZECHER: Okay.

9 MR. DAVIS: Looking at -- so --

10 JUDGE GALLIGAN: I did have a -- this is Judge Galligan. I
11 have one more question. And just looking at, for instance, this is the '031
12 Patent of Claim 1, and the inactive recitation. This is a system for inspecting
13 data to generate a snapshot. I don't think you'd have to generate or capture
14 the snapshot when the thing is inactive or at rest. Well --

15 MR. DAVIS: And so --

16 JUDGE GALLIGAN: It -- depending on -- that -- that's actually a
17 dispute issue. I get that.

18 MR. DAVIS: That's right.

19 JUDGE GALLIGAN: The same one -- going under the analysis
20 part, and maybe this is better highlighted in -- where that issue isn't at play.
21 I think it's in the '685 Patent in Claim 2, it says, "During the analysis of the
22 snapshot, the virtual machine is inactive."

23 This is a -- this is also a system for inspecting data. So my

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1 question would be what -- how does it -- why does it matter whether -- if I
2 capture data from a virtual machine, and then I just -- I sit on it, it's a
3 snapshot. And then a day later I decided to do some analysis. The virtual
4 machine may or may not be running. How does that work -- what's the
5 patentable distinction there with the system that analyzed the data?

6 Because I -- my understanding is that the system that analyzed the
7 data really doesn't care at that point. It's just analyzing a snapshot, and it's
8 not using the virtual machine. Virtual machine may be on or off. But I
9 think there's testimony from -- it's Exhibit 1414. And I don't know if it's
10 -- or it's testimony basically saying that they just create a snapshot. It
11 doesn't matter whether it's inactive or active. So how does that -- I just
12 -- what do we make of that limitation in a system for analyzing data? Why
13 do we care if some other virtual machine that's irrelevant at that point is
14 active or not?

15 MR. DAVIS: So I think just the idea that it's irrelevant is
16 something that's been -- it's something that Wiz has created for -- but it's not
17 something that's actually described in Veselov. What Veselov is always
18 talking about are running VMs and where the VMs can continue to be
19 executing in the environment. They're the ones that are presumptively, in
20 Veselov, not being turned off and being inactive. And so that's -- I think in
21 addition to that, then there's the claim construction issue of the '031 Patent,
22 which is that you have to take the snapshot of the VM at rest, not merely
23 analyze it while it's offline. And so those are --

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1 JUDGE GALLIGAN: So that -- the Veselov requires the virtual
2 machine to continue operating? I thought that -- I thought it takes a snapshot
3 and then does analysis of the snapshot. And at that point, that's sort of a
4 focus of Veselov. So it actually requires the virtual machine, the original
5 instance to keep operating?

6 MR. DAVIS: I mean, that's how it describes it throughout every
7 embodiment.

8 JUDGE GALLIGAN: What -- why -- I -- okay. I guess I didn't
9 pick up on that, but I didn't know why it wouldn't even matter if Veselov's
10 -- I'll look into that, then. Okay. Thanks.

11 MR. DAVIS: In the '685 Patent, just briefly, I just want to address
12 the detection of sensitive data in particular. And really, I want to go to Slide
13 -- in Orca's presentation, Slide 118.

14 So -- and maybe I'll start with, actually, Slide 117, which is talking
15 about Hufsmith and what their theory is. So what Hufsmith discusses is
16 detecting security vulnerabilities. The vulnerabilities may indicate that there
17 could be confidential information that gets exposed, but Wiz is trying to
18 double dip on vulnerabilities as being both vulnerabilities and sensitive data.
19 But really all that Hufsmith is describing is the vulnerabilities.

20 And if you look at Slide 118, the distinction between detecting
21 vulnerabilities and detecting sensitive data is in the '685 Patent, columns 5,
22 19 through 24, vulnerabilities, '685 Patent at 619 through 30, is talking about
23 detecting sensitive data, which are cyber threats that do not represent

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1 vulnerabilities.

2 Slide 119, I just want to -- I think that it can be helpful to visualize

3 this. So in what Wiz's combination is, is talking about on the left, which is,

4 if you imagine that a vulnerability is an open vault door, it's an open safe.

5 All that Veselov Hufsmith looks at is the door open. It doesn't matter what's

6 inside, because all it's looking at is the vulnerability, which is the open door.

7 And the sensitive data is -- in here, it's the -- sort of the coins that are inside.

8 It's the valuables.

9 What the '685 Patent does is it detects both. It detects the open

10 door and it tells you what's inside of the system. And that's really important

11 because you can -- in the context of the '685 Patent, because you can

12 prioritize the sensitive data with the vulnerability higher than just the

13 vulnerabilities alone that Hufsmith teaches. And that's also on Slide 120,

14 which is the '685 Patent at column 6, 46 through 48. Again, this is a feature

15 that Wiz has copied, which is what we have on Slides 121 and 122.

16 It counters -- you know, Wiz says, oh, well, detecting sensitive

17 data was super obvious. Everybody was doing it. Never in this context.

18 Never in the context of analyzing snapshots with cloud computing APIs.

19 That's something that, even three years later, when Wiz introduced the

20 feature of using sensitive data detection in the cloud environment, that they

21 said it was hard. It's a difficult problem. And that specifically detecting

22 both the vulnerabilities and the sensitive data together is something that,

23 even three years later, basically, no one was doing.

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1 The evidence shows that 1 percent of companies in 2022, three
2 years after the patent, were doing any type of cloud data security analysis,
3 which is contrary to any of the arguments about it being routine and
4 everybody was doing it.

5 JUDGE ZECHER: So your argument is that Hufsmith is only
6 detecting vulnerabilities, not sensitive data. Is that your argument?

7 MR. DAVIS: That's correct.

8 JUDGE ZECHER: Okay.

9 MR. DAVIS: And so when you combine the two references, you
10 don't just get sensitive data from that combination. There's just no
11 disclosure of it. Wiz, I think, recognizes this, which is where they add the
12 Chari reference. The problem with Chari is that it's incompatible with
13 Veselov, because Chari requires that you actually install a labeler and a
14 sanitizer onto the virtual machine instance itself, in order to detect any
15 sensitive data, which is contrary to what Veselov says, to not interact with
16 the machine.

17 It's contrary to the '685 Patent claims themselves, which say to
18 analyze the snapshot without interaction with the VM, and it's contrary to
19 Veselov because Veselov says that the snapshots are read-only, such that
20 you couldn't have that labeler do anything that Chari's describing. It's really
21 just a hindsight reconstruction of adding Chari into these claims.

22 And we show that, for example, on 134 and 135, which is just
23 -- what Wiz's argument basically is, is take the one part of Chari that you

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1 like, the green part, but just ignore the way that you actually get to that.
2 Don't look at how you actually analyze and figure out what the sensitive data
3 is. Then --

4 JUDGE BAER: And if we don't ignore that part as you're
5 suggesting, is it your position that now Chari is -- you used the word
6 incompatible; is it your position that it is not prior -- it is not analogous art?
7 That it teaches away, or something else?

8 MR. DAVIS: It would be incompatible.

9 JUDGE BAER: Yeah, I --

10 MR. DAVIS: So --

11 JUDGE BAER: You used the word incompatible. I'm just trying
12 to fit that in a doctrine of patent law that is more familiar, which is saying
13 two references are incompatible. Is that another way of saying they are non-
14 analogous art? Is it a way of saying they are -- there's no reason to combine?
15 Is it another way of saying there's no reasonable expectation of success?
16 What does it mean --

17 MR. DAVIS: Oh, right.

18 JUDGE BAER: -- when you say they're incompatible?

19 MR. DAVIS: You wouldn't have a reasonable expectation of
20 success, because if you combine these two references together, you will not
21 get a system that works.

22 JUDGE BAER: So you're saying they are analogous, you just
23 wouldn't have a reasonable expectation of success in combining them?

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1 MR. DAVIS: That's right.

2 JUDGE BAER: Thank you.

3 MR. DAVIS: The only other thing I'll note on the Hufsmith
4 ground for the '032 Patent is -- and I think that this is apparent in the
5 briefing, but what Hufsmith describes for purposes of what is -- what Wiz is
6 pointing to as a use determination, those are for application modules in a
7 pre-deployment context. When it's pre-deployment, there's no installed
8 applications that are used.

9 If you look at the evidence that they have pointed to, it is not
10 talking about a plurality of applications. It's really just looking at particular
11 files, lines of code, which are in this -- just an entirely different context from
12 Veselov, because Veselov is not -- and it's undisputed in all three of the IPRs
13 that in Veselov, you would not have the code available. You would not have
14 vulnerabilities associated with dormant code, because you don't -- you can't
15 look at the code in Veselov, because it's in the post-deployment context,
16 which is entirely different than what Hufsmith is describing where you're
17 looking at a developer who is actually writing the code, annotating the code,
18 and Wiz's combination is just that, oh, well, even if that was what that's
19 talking about, that's not how we're going to use it in the combination. And I
20 think that the way that they piece those things together is really just
21 hindsight. Because what the references actually teach is not what the claims
22 require.

23 And I think that what I'm going to try to do now is I'm going to

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1 transition over to objective indicia, because I really think that the objective
2 indicia here seals the deal. Like, it is really abundant, the commercial
3 success and the way that all of the commercial success and all the praise and
4 the copying is tied directly to the claims.

5 And I'll pass this over to my colleague, Mr. Lumish to address that.

6 MR. LUMISH: Apologies here. The normal way of entering the
7 numbers isn't working so I'm just going to skip ahead to the slides. May I
8 ask just a housekeeping question? My understanding, given the LEAP
9 program, is that I, in fact, have 15 minutes more than what's on the --

10 JUDGE BAER: Yes.

11 MR. LUMISH: -- timer there?

12 JUDGE BAER: I gave you -- that's actually 16. You're correct.
13 Yes.

14 MR. LUMISH: Okay.

15 JUDGE BAER: And I'll --

16 MR. LUMISH: So before I begin eating into our rebuttal time --

17 JUDGE ZECHER: Wait, no, it was 99, so we've got --

18 JUDGE GALLIGAN: We started at 99 --

19 JUDGE ZECHER: Yeah.

20 JUDGE GALLIGAN: -- so you've got --

21 JUDGE BAER: Yeah, when this is done, you will have another 15
22 minutes. So you now have 27 minutes.

23 MR. LUMISH: Thank you. That's what I thought, but I wanted to

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1 be certain.

2 JUDGE ZECHER: You've got more than that. You've got 26 plus
3 15 on the back end.

4 MR. LUMISH: We reserved 20.

5 JUDGE BAER: Yes.

6 JUDGE ZECHER: Yeah. Well, hold on, 21 -- let's see the map.

7 JUDGE BAER: Let's go off the record here. Let's pause.

8 (Whereupon, the above-entitled matter went off the record at 2:55
9 p.m. and resumed at 2:55 p.m.)

10 JUDGE BAER: We're back on the record.

11 MR. LUMISH: Your Honors, I'll start, first of all, my name's
12 Doug Lumish. I'm with Weil Gotshal for the Patent Owner, Orca. And I'll
13 start where Mr. Argenti did on the secondary considerations, which is
14 discussing nexus, because it does seem to be their principal response to the
15 evidence that we've submitted. And there were two legal mistakes, I'll say,
16 in Mr. Argenti's presentation that I want to address up front.

17 One is -- what the presentation was largely a display of the
18 individual elements in the art, and saying, well, here's these individual
19 elements, and because of that, there's no nexus. You won't find the praise
20 goes to the invention. And we know that's not correct. The law is very clear
21 that the nexus is based on the combination. I have on Slide 161 a -- an
22 excerpt from the WBIP case, which is throughout our papers, and it tells us
23 that we're looking for the claimed combination as a whole, not when there's

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1 just some one new limitation or new feature.

2 The other thing I heard Mr. Argenti say over and again and maybe
3 was the primary argument he made in this portion of his comments was that
4 if there are other non-claimed features in the products that are the subject of
5 the praise, that are the subject of the commercial sales, they're out. You
6 don't look at them as secondary considerations. And that's wrong. That is
7 essentially coextensivity. He's arguing that if the product embodying the
8 claims is not coextensive with the claims, you don't consider it. That's only
9 true in the context of a presumption.

10 The FOX Factory case that they cite and others tells you -- thank
11 you -- that if you want to rely on a presumption, you need to show
12 coextensivity. If you're not relying on the presumption, you go to what you
13 heard a moment ago, which was whether the combination in the claims is
14 what is the subject of the secondary considerations. Our papers walk you
15 through limitation by limitation how the secondary consideration evidence
16 ties to the combination of limitations in the claims. I don't have time to do
17 that again today, but I will show you some of it.

18 JUDGE ZECHER: Mr. Lumish, can we actually talk about that a
19 little bit?

20 MR. LUMISH: Sure.

21 JUDGE ZECHER: I mean, that was a big point of contention
22 when we got to this Motion for Additional Discovery, and there was a
23 dispute amongst the panel as to when this showing of nexus was going to be

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1 made. And I think from Patent Owner's perspective, Orca said they're going
2 to punt this and they're going to put it in their Patent Owner Response.

3 So looking at your Patent Owner Response here and I'm just
4 focusing on the 865 case, and we get to this portion where you're talking
5 about Orca SideScanning practices for the '685 Patent, and we see a lot of
6 bullet points, and we see 63 paragraphs from Shua, 20 documents, and we're
7 supposed to cull through all that to find the nexus in the claim? So I'm a
8 little -- it's difficult for me to say that you've actually established nexus at
9 this point when I'm not sure that you have. I mean, it's hard for me to find
10 the evidence here that undergirds your argument. So if you can help us, you
11 know, where should we be looking? Because this is a lot of information to
12 take in that's not in the responsive brief, really.

13 MR. LUMISH: Well, respectfully, we would say it is in the
14 responsive brief. I would submit it's replete in the responsive brief. This is
15 the way we took -- the approach we took, which is instead of -- what we
16 tried to show, and maybe we didn't make this clear as we should have, but
17 what we tried to show was how the thing called SideScanning is definitional
18 of the limitations of the claims. And we show it through their expert, we
19 show it through our expert.

20 Our expert has an entire section of his report where he shows that
21 the SideScanning technology that Orca sells embodies every limitation of
22 the claims, including the core elements, the common elements that we've
23 talked about quite a bit today, the use of cloud APIs, the use of snapshots,

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1 and so forth, plus the detailed requirements. So for the '685, for example,
2 where it uses PII as opposed to other types of data. And then we mapped the
3 secondary considerations to SideScanning and to those limitations. And it's
4 not one section.

5 We don't have a header that says, here's nexus. My submission to
6 Your Honor is it's -- everything in there is a demonstration of that. Mr. Shua
7 also maps the limitations. So we have Dr. Kaeli doing it, we have Mr. Shua
8 doing it, and our entire presentation in our submission is of the limitations of
9 the claims being shown in the secondary considerations. So I can't point you
10 to one page because I think it's nearly all the pages.

11 JUDGE ZECHER: Well see, that's the problem we have, right?
12 Because really you only spent about two or three pages doing this mapping
13 in the Patent Owner Response and I got to go look at 63 paragraphs in a
14 declaration and 20 different documents to get to where you want me to go.
15 So --

16 MR. LUMISH: I understand --

17 JUDGE ZECHER: -- do you see the do you see the problem that
18 we have?

19 MR. LUMISH: I understand that, Your Honor, and if that was a
20 suboptimal way to handle it, then we should have done it differently. But
21 that is the approach. It was to map it, yes, you're right, it's in two and a half
22 pages roughly for each of the three Patent Owners' responses, where bullet
23 by bullet, we say, here's the limitation, here's where you find it, and we cite

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1 extensive evidence for it.

2 JUDGE BAER: Mr. Lumish, is it true that you are not arguing for
3 a presumption of nexus with your commercial product with Orca's
4 commercial product?

5 MR. LUMISH: That's right, Your Honor. That's right. Mr.
6 Argenti is correct. We agree on that. And we have multiple patents.
7 There's six that are at issue here. This goes to the coextensivity point. For
8 us, what we need to show, because instead of the presumption, which would
9 require showing that each of those different claims from each of those
10 different patents is somehow all coextensive with the commercial product,
11 instead, we focus on, all right, where's this combination in this claim, and
12 how is it shown in the secondary considerations? And we avoid the
13 presumption that way.

14 JUDGE BAER: And that's fair enough. I want to address your
15 point earlier. I understand that significant unclaimed features cuts against
16 coextensiveness for the presumption, and you're saying, well, we're not trying
17 to establish that so that's all a smoke screen. But if the objective evidence is
18 tied to an unclaimed feature, it is still true, is it not, that that cuts against
19 nexus and thus cuts against non-obviousness even absent of presumption?

20 MR. LUMISH: A 100 percent. Absolutely true.

21 JUDGE BAER: Okay. You weren't protecting that point?

22 MR. LUMISH: No. So let -- let's -- I'll make it up in a silly
23 example. Let's imagine that all the praise and all the commercial success

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1 was due to the fact that the color scheme that Orca uses in its marketing
2 materials. That would've no bearing on as a relevant secondary
3 consideration in this case. What we tried to show, and I think we have
4 shown, is that what the praise goes to, what the skepticism went to, and the
5 wrong felt need went to was the collection of things in the combination of
6 the things that are claimed as inventions, including the critical elements of
7 using cloud APIs to locate and identify virtual machine disks, using
8 snapshots for offline machines, and so forth. And so I don't disagree with
9 the legal point. I do disagree with its application in this case.

10 Okay. So one thing I wanted to point to is the Volvo case. This
11 was cited -- it's Volvo Penta. It's 81 F.4th 1202. This was cited in Wiz's
12 papers, and I was reading it getting ready for our hearing today. I think it
13 overwhelmingly supports Orca's position in this case. And so I would invite
14 Your Honors to go look at that case from our point of view as well. In that
15 case, the Federal Circuit reversed and remanded a PTAB finding of
16 obviousness, it did it because the PTAB had found the Board erred in
17 finding no nexus for secondary considerations, and it remanded the case to
18 go back and look at the evidence through the prism of the secondary
19 considerations.

20 And what I thought was most important about that was stepping
21 back on the facts of the case, it is a case about essentially where the motor
22 goes in a boat for wake surfing. And, traditionally, motors are back in the
23 stern, and if you're wake surfing, that means you're pretty close to the

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1 propellor. So what the Volvo Penta company did was say, well, let's figure
2 out a stern drive. Let's push the motor up front. And there's more to it than
3 that, but they're essentially positioning the motor up front so that if you're
4 wake surfing, it's further away from you and between most of the boat and
5 your wake surfing, so it's safer.

6 When looking at the secondary considerations, the Federal Circuit
7 doesn't say, there's other parts to the motor, there's its gasoline usage, there's
8 the internal combustion, there's all these other things that were also true of
9 the motor that's being sold. They looked at the praise and the commercial
10 success that came from the big picture. Where it was located, how it was
11 built to be a tractor, a pulling motor instead of a pushing motor from the
12 back, and how that created a safer environment for a wake surfer. And so
13 this notion that you have to try to find every single word of the claims in the
14 secondary considerations I would say is refuted by their own best case on
15 this issue, which is the Volvo Penta case.

16 Given the timing, I'm going to jump -- well, let me stay with nexus
17 for a minute, and then I think I'm going to jump to copying, because I don't
18 know they'll have time to cover much more than that. On the nexus, I think
19 it's important to go back, and this is in our papers, to thinking about what the
20 patent is distinguishing over. And on my Slide 162, I have from each of the
21 three patents, language beginning in column -- line 1, line 49 of the '031, and
22 it maps to others in the other two patents, the distinctions that are being
23 drawn, the things that were shortcomings in the prior art. One of them is

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1 traffic inspection.

2 On Slide 163, we see the use of network scanners, and I'm going to
3 do this more quickly than I'd hoped, but you'll have the slides. In 164, it's
4 distinguishing what's called traffic monitoring or monitored traffic. Same
5 with 165. And then you get to 166 and it's distinguishing the need or the use
6 of agents where you have to install them on each of the servers in the way
7 you've heard from both -- Counsel on both sides today.

8 And then it distinguishes and criticizes prior art approaches where
9 the machines are not at rest, where -- to Judge Galligan's question, where the
10 machines are continuing to run and to process. And the solution for it is the
11 things that are these core elements of the combine plans. In Slide 168, you
12 see the APIs provided by the cloud computing platform. In Slide 169, you
13 see the lack of agents, and detecting the security vulnerabilities while the
14 machine is powered off.

15 JUDGE GALLIGAN: Can I -- Counsel, Mr. Lumish?

16 MR. LUMISH: Yes, Your Honor?

17 JUDGE GALLIGAN: Can we go back to Slide 168? And this is
18 -- I think this is -- yeah, about that. And this is kind of what I was getting at
19 with your co-counsel. I mean, I looked at this, and it basically says you can
20 interface with the system using APIs. And that's pretty -- there's a lot other
21 instance of APIs, and then it talks about monitoring APIs. This appears to
22 be the extent of the disclosure of what the novel feature of SideScanning
23 was.

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1 I mean, I would expect there to be more, and I -- that's why I'm -- I
2 understand that SideScanning logically covers the claim, but I go back to the
3 circuit saying things like, well, you know, it's got to be tied to something
4 that's unique characteristics. And I guess I just would've expected more, and
5 I'd like you to comment on that. I've asked your co-counsel to comment on
6 this. Where in the patent is there this disclosure of using APIs in a particular
7 manner claimed?

8 JUDGE BAER: Mr. Lumish, before you answer, I apologize. I'm
9 going to solve our clock problem here. I'm going to put 16 minutes on. And
10 just so you're clear, you're going to have 16 minutes before you enter your
11 rebuttal time of 20 minutes. You're welcome to use as much of that total 36
12 minutes as you want, but I'm going to put 16 on the clock, okay?

13 MR. LUMISH: Thank you, Your Honor. It's very helpful.

14 JUDGE BAER: Yeah. Give me just a minute. Sorry for the
15 interruption. You can tell me when you're ready.

16 MR. LUMISH: Not at all. Not at all. And I was --

17 JUDGE BAER: Go ahead.

18 MR. LUMISH: Okay. Thank you. Judge Galligan, I was thinking
19 about your question while I was sitting down, and Mr. Davis may have
20 better ideas than I do when he gets up after going back to review the patent.
21 But I think my answer is this, which is I don't disagree with you that the
22 description in the patents, the '031, '032, and '685 on how to use the APIs in
23 the written description are pretty broad, and there's not a ton of them. And I

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1 think you can understand from that to some level that those of skill in the art
2 understand what APIs are and understand how to use them. What I think is
3 the critical distinction, though, is what you use them for. And so while I
4 think it's fair to hold us to the level of description and say, well, Veselov's
5 got more than you do, I don't disagree with you that that's something you can
6 consider. I think you have to look at what it's -- what's being described.

7 And Veselov just does not describe using the cloud APIs in the
8 way that Mr. Shua thought of it and the others did so that you can get access
9 to your VMs sitting in some giant server center that AWS has, that Google
10 has, that Microsoft has, in a way that you used to have this on premises. If
11 you wanted to scan your servers, you'd go to your own servers, you can go
12 put agents on them, you can go scan them directly. You could go
13 manipulate your own systems.

14 Now, in the modern world, Amazon's got them, Google's got them,
15 Microsoft's got them. How do you get to those and how do you access them
16 in a way that allows you to do these types of security measures? And it
17 sounds simple in hindsight. It's elegant. It doesn't require a ton of
18 disclosure, because once you say it, the light bulb goes off.

19 And those who are skilled in the art go, okay now I know how to
20 do that. You told me what to do. I know how to do it.

21 It's the what to do, though, that's just missing in Veselov and I
22 think is the critical question.

23 JUDGE GALLIGAN: And that's a -- I appreciate that answer.

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1 And it helps me a lot and it kind of gets me back to Judge Zecher's questions
2 where he says, it's -- I mean, Veselov has a lot of disclosure of APIs using, I
3 believe it talks about using APIs for the scanning service and things like
4 that. So you know, does the light bulb go off when one of skill in the art
5 reads Veselov and says, oh, you can -- do -- you have a scanning service?
6 You access the system via APIs. You create a -- an image, not an image, a
7 snapshot. And then you do some analysis for vulnerabilities, acknowledging
8 that it doesn't expressly say sensitive data. I'm thinking of the '685. And
9 that's where I'm grappling, I mean, I'm just being honest.

10 MR. LUMISH: And I appreciate that very much. It helps me
11 try to win you over here. And I get you're skeptical about the point. So
12 here's --

13 JUDGE GALLIGAN: And I just -- I'm just being -- I just want to
14 -- I just want to understand, and that's all. I appreciate your answer and any
15 other information you can give us would be helpful, but that's kind of where
16 I'm -- to Judge Zecher's point too, that's kind of where I'm getting at.

17 MR. LUMISH: Yeah. And I understand it. And so here's my
18 answer to that, Your Honor, which is, the secondary considerations is never
19 more important than in exactly this situation. Which is, we can sit here in a
20 room with a bunch of lawyers who come in and tell you it's there, it's not
21 there, and put the pieces together.

22 And you're in a situation where you say, how did a person of
23 ordinary skill in the art interpret it?

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1 The secondary considerations, put that real world layer over it.
2 And you can say, how did the industry react to it? How did Wiz react to it?
3 How did the pundits and the thinkers and the people, the commentators,
4 react to it. And that's why the secondary considerations in this case are
5 uniquely important. So what I've got on the screen is Slide 183, and this is
6 the CNAPP guide. This was independent analyst, this isn't something from
7 Orca. It's an independent analyst group who did a report and they said this
8 was a pivotal moment in cloud.

9 And as Mr. Davis, I think pointed out before, it's Orca's
10 introduction of agentless SideScanning that you can define the industry,
11 CPSM being the cloud security sort of marketplace, both pre- and post-Orca.
12 And the reason for it is you're viewing workload data without an agent,
13 utilizing the nature of cloud APIs. And so AWS has been out, the people
14 know about it. They know about these AWS interfaces and APIs. But when
15 Orca tells the world, hey, use those to access your systems, your virtual
16 machines and their disks. And to use the snapshots of those virtual disks to
17 do your security scans, outsiders who aren't here today with skin the game
18 said it was a pivotal moment in cloud.

19 They said it was an introduction by Orca. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

4 Let me show it to you again, in a different context. First of all, this
5 is something that is in our papers, but could have been more clear. Slide
6 195. One of the awards that Orca got was from Amazon. And from AWS.
7 AWS called Orca it's, I think it was security partner of the year, in this
8 award. Veselov is an Amazon patent. It's an AWS patent. If Amazon and
9 AWS thought, this is just another also ran using what we have already been
10 doing, what we've told the world, they wouldn't have given this award. You
11 wouldn't think they'd have given this award to Orca.

12 I can't put words in Amazon's mouth, but it's an inconsistency to
13 suggest that this is something everybody who uses AWS and is familiar with
14 its APIs would know to do.

15 Then you get into this -- so this is the pivotal moment in cloud,
16 Exhibit 26 again, 2076. So I'm on Slide 197, it's Exhibit 2076 6, 7, and this
17 genius -- genuinely genius innovation, as Mr. Davis pointed out, isn't for the
18 broad notion of SideScanning or agentless scanning, as Wiz would have you
19 believe, it expressly refers to utilizing the nature of cloud APIs being
20 accessible to vendors. So Judge Galligan, I think this is a place where that
21 kind of evidence has so much more weight.

22 Because, yeah, if you can read Veselov and say, it's just an API.
23 We've all heard of APIs. We've done a million of these cases and there's

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1 APIs everywhere. But, knowing that you should use them to access the
2 virtual machines and their disks to do your snapshotting, to do your
3 scanning, is something Orca thought of. And it was reacted to by the
4 marketplace as a genuinely genius innovation, not as an obvious thing you
5 would do because AWS has had these APIs in it.

6 Okay. So I am going to jump to copying.

7 JUDGE ZECHER: Mr. Lumish, can I ask you just two quick
8 questions on commercial success before you do that? And I only feel
9 obligated to do that because I asked Mr. Argenti the same. But in the
10 commercial success weight of the arguments you -- you've brought to bear
11 here on this issue, what weight should we give the numbers associated with
12 the investors that you've pulled in, to establish Orca and get it off the
13 ground? And then second question is market share.

14 MR. LUMISH: Sure.

15 JUDGE ZECHER: Mr. Argenti pointed me to page 21 of Exhibit
16 2076. I think you just had that up in Slide 183. Is that the only evidence of
17 Orca's market share in this space for cloud Security?

18 MR. LUMISH: It's not, Your Honor. So let me do them in reverse
19 order.

20 JUDGE ZECHER: Okay.

21 MR. LUMISH: On the market share point, I can -- I think it's in a
22 slide. If it is, I'll try to jump to it. [REDACTED]

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[REDACTED]

[REDACTED]

18 The other thing is the revenues we have from Wiz are enormous
19 and they've been going up. They were listed in our paper as being identified
20 as the fastest growing company in the world. Or software company in the
21 world. So we know that their revenues are extreme, that they're very
22 successful. Going to the investment question, I don't know how much
23 weight to give that is the true answer. I haven't seen a lot of cases where

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1 they talk about the investment. I don't disagree with Mr. Argenti that I think
2 it's relevant, but I don't know exactly how to place it in commercial success.

3 Here's what I'd say about that from a common sense thing. We're
4 looking at the real world, we know that in secondary considerations, WBIP
5 and Medtronic say that. The real world for startups isn't revenue, it's
6 investment. It's who's coming in to invest in them? Are they getting the
7 seed money they need to be successful, to build their business, to hire
8 employees, to build the machines and get the space they need?

9 So I think the investment in a case like this, where it's a pretty
10 nascent market, both companies are in the early stages of their commercial
11 activity, that the investment's actually quite compelling. I don't know that
12 that would always be the case, but I think here in this marketplace, given
13 where we sit, it's incredibly compelling.

14 JUDGE BAER: Yeah.

15 MR. LUMISH: And then the Google acquisition layers on top of
16 that.

17 JUDGE BAER: If you, and you can feel free to respond in
18 rebuttal, but if there -- if there's any case law you can point to us on that. I
19 did a deep dive. I couldn't find it.

20 MR. LUMISH: I didn't find one either, but -- so I don't have one
21 to cite you when I sit down, Your Honor.

22 JUDGE BAER: Yeah.

23 MR. LUMISH: Okay. So copying. Let me address the timeline

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issue. [REDACTED]

[REDACTED] There are a host of problems with that.

6 First of all is, it disregards completely the Microsoft meeting in 2019. You

7 have sworn testimony from Mr. Shua that it occurred. He met with Yinon

8 Costica. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 Okay. So let me --

A horizontal bar chart consisting of 20 rows. Each row begins with a small black square on the left margin, followed by a black horizontal bar of varying length. The bars are arranged in a pattern that suggests a sequence or comparison. The lengths of the bars vary significantly, with some being very short and others nearly spanning the width of the chart area. The bars are arranged in a way that suggests a sequence or comparison, with some bars being longer than others, indicating a hierarchy or a range of values.

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[REDACTED]

10 And then there's a legal fallacy here. Last point on the timeline,
11 which is copying later in time is not irrelevant. The secondary consideration
12 of copying treats it as essentially another form of praise, that why would you
13 copy if you didn't need to, or if it wasn't it -- it's a backhanded compliment to
14 the Patent Owner that this was something unique, and important, and
15 valuable, otherwise, you wouldn't have copied it. [REDACTED]

[REDACTED]

[REDACTED]

18 So that was the main rebuttal on copying. I think I'll pause there.
19 There's a million more things I'd love to talk to you about on secondary
20 considerations unless there's something you think I have to have -- need our
21 rebuttal time on. Okay. So with that, I'll pass the podium, Your Honors.
22 Thank you.

23 JUDGE BAER: Thank you, Mr. Lumish. Let me do a little math

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1 here. You're going to have 17 minutes for your Sur-reply.

3 JUDGE BAER: Surrebuttal, I should say.

5 And we are going to stick pretty tightly to the 20 minutes. So --

7 JUDGE BAER: We'll wait until you're ready to start the clock.

9 JUDGE BAER: (CROSSTALK) --

12 JUDGE BAER: Correct.

14 a question from when I first spoke. There was a question from Judge
15 Galligan, I believe, about did known cloud -- or were snapshots just used for
16 backup copies in the prior art? I think I provided some cites at that point,
17 but I wanted to provide others describing using snapshots for cloud forensics
18 in the prior art. That's Exhibit 1062. It's also in 1049 Huseinovic. [REDACTED]

21 So those are just some examples of uses of snapshots in the prior art where it wasn't limited to backup purposes.

23 back to you with some more cites. I think I addressed those as I went on the

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1 first time I was up. So at the -- that was the only one I was going to circle
2 back to. But if there's anything else that you'd like more information on,
3 please just let me know.

4 So jumping into, first, the claim construction points that Ms.
5 Bruner raised. One point as to the taking a snapshot at rest. I think we heard
6 her admit that the prosecution history doesn't have any explanation for why
7 that limitation was removed, which I think is a pretty good concession that it
8 was just a typical scenario of broadening the claim language.

9 We also heard the argument that the second half of the analyzed
10 construction that we proposed in the petition has been abandoned by us.
11 Also that we've abandoned reliance on Veselov Figure 3A 3B. That's not
12 true whatsoever. What we did is point out that the ground of challenge does
13 not rely on the second aspect of the construction. We certainly -- we still
14 stand by it, but the ground doesn't depend on it and it doesn't turn on that.
15 The first aspect of the construction is more than enough to find obviousness,
16 but we didn't abandon the second part

17 JUDGE ZECHER: Is the sole basis to support the second half of
18 that construction there, infringement contentions, or is there something else?

19 MR. ARGENTI: The infringement contentions and Dr. Kaeli's
20 testimony about the specification, the example, their claim construction,
21 briefing in the District Court case. Not just --

22 JUDGE BAER: But nothing in the intrinsic record?

23 MR. ARGENTI: The intrinsic -- the specification. His testimony

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1 about the specification.

2 JUDGE BAER: Okay.

3 MR. ARGENTI: All right. Mr. Davis, I believe made an
4 argument that Orca's invention redefined agentless scanning as the term was
5 used in the field, I would point out, one, that's a new argument. I don't think
6 we see that in their briefing. Two, when -- the documents that he's pointing
7 to, whether it's a Wiz document or an Orca document, are -- it's in the
8 context of their products. So I don't think by any means it's a redefinition of
9 what the entire term means. And three, again, regardless, that new definition
10 as they allege, you find it in Veselov. That's what's going on in Veselov.
11 Using cloud APIs, using snapshots for agentless analysis.

12 I want to turn to Slide 30. Orca's --

13 JUDGE BAER: When you say it's in Veselov, I think that may be
14 a little overstated. I mean, I appreciate that Veselov says we've got some
15 problems. These problems are particularly to the cloud computing
16 environment. So I get that it is a -- it's a suggestion. I guess I take a little bit
17 of issue with saying, well, it's just -- it's stone cold there in Veselov. So is it
18 your position that Veselov discloses it explicitly, or that it suggests it in light
19 of its background discussion, and in light of some -- oh, ambiguities of
20 Veselov?

21 MR. ARGENTI: So it would be a misplaced requirement to say
22 that it has to disclose explicitly the words "use an API to determine a virtual
23 disk. Use an API to determine the location of a virtual disk". I think as

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1 we've made pretty clear in our briefing, our position is that when you look at
2 the disclosure of Veselov and what it talks about in terms of performing
3 those operations and the components that it talks about to use those. I see
4 you're skeptical of that. I don't want to go too far. Again, it doesn't talk --

5 JUDGE BAER: I agree with your characterization of the law.
6 What I'm interested in is your characterization of Veselov.

7 MR. ARGENTI: Right.

8 JUDGE BAER: Does it disclose it? Does it suggest it?

9 MR. ARGENTI: It --

10 JUDGE BAER: How would you -- how would you articulate it?

11 MR. ARGENTI: A POSA would understand Veselov's disclosure
12 as disclosing it, yes. It also suggests it. And yes, at minimum, it would have
13 been obvious in view of what talks about -- what Veselov talks about. That's
14 our position.

15 JUDGE BAER: And if you could just -- with some of your time,
16 address Mr. Lumish's point, which is that -- which is that it's very easy for us
17 to sit here and say this. What about the real world and why is everybody
18 pumping so much money into this? Why have we received so much industry
19 praise? What's going on there if this was so obvious? What's your response
20 to that?

21 MR. ARGENTI: My response to that is, first, that is sidestepping
22 -- no pun intended with SideScanning. Sidestepping their nexus
23 requirement. So you cannot presume that the praise for the product is praise

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1 for the invention. You just can't. With respect to specific comments like
2 this was a genuinely genius innovation, with respect -- you know, using
3 agentless workload scanning, that's where we get back to Veselov and the
4 POSA's understanding of what's going on in Veselov.

5 I believe I was jumping to Orca Slide 39. This relates to -- they've
6 been saying -- their argument that the -- you can't assume that the location of
7 a virtual machine is the same as the location of a virtual disk. What I
8 pointed out in my -- the first time I was up is that the evidence shows, for
9 example, in AWS, there's this concept of an availability zone. And it
10 requires that the virtual machine and the virtual disk be in the same
11 availability zone.

12 So when we look at this slide with the car and the driver, imagine
13 if there was a law in Virginia that said the car and the driver both have to
14 remain in the state of Virginia. That's equivalent to that Amazon availability
15 zone, right? So if you do know -- if you know that the car is in Virginia, you
16 know that the driver's in Virginia, because that's what the law says. That's
17 the availability zone requirement.

18 And again, this is getting to the physical location. It doesn't
19 respond to our argument about the virtual location and that when you know
20 the network address, or the end point of the virtual machine, you also know
21 the virtual location of the virtual disk drive because they are associated
22 together.

23 JUDGE ZECHER: Mr. Argenti, do you do you agree with Orca's

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1 characterization of their own Figure 1B that actually shows these disks being
2 off location of the virtual machine, or do you think there would be another
3 reading of it?

4 MR. ARGENTI: This is Figure -- I'm sorry --

5 JUDGE ZECHER: 1B. 1B.

6 MR. ARGENTI: 1B of Veselov?

7 JUDGE ZECHER: Yeah. No, no. 1B of their own patent.

8 Because I think that was the basis of demonstrating that, what is in the same
9 location.

10 MR. ARGENTI: Ah. I -- this is a good point. You -- if you see
11 there, they're both within the same cloud environment, 110. And our point
12 here is that there is no level of specificity on the location that is required in
13 the claims. And so whether it is outside of one box, but inside another,
14 they're both inside the same box. So it's all about where you draw the box,
15 and the claims don't say where you draw the box.

16 On Slide 40, Orca Slide 40, Your Honors, Mr. Davis pointed to
17 this and said, look, you see what they're citing about how you'd interpret
18 Veselov? They're not citing Veselov. There's no citations to Veselov here.
19 I would encourage the Board to look at the two paragraphs right above this,
20 what they're citing, that are full of the citations to Veselov. This paragraph
21 is intended to address how a POSA would understand that. We definitely
22 cited the parts of Veselov that we're talking about.

23 Judge Galligan had some questions about Orca's disclosure, Patent

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1 Owner's disclosure of APIs in the challenged patent specification and its
2 sufficiency relative to what Veselov is disclosing. In that discussion we
3 heard Mr. Davis say, well, what's really important to focus on here is the
4 claimed idea of using APIs to get at the underlying location of the virtual
5 disks. It's important to focus on that.

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED] But there's no dispute that
10 it's relevant to Veselov since Veselov was an Amazon patent.

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED] And it was at the time. This

16 document, 1121, is from the Wayback Machine, an archived copy from
17 2014. So they're attacking other documents as not contemporaneous.
18 There's no dispute that this one was. So when --

19 JUDGE BAER: Is this an argument that the identification was
20 inherent, or that in Veselov -- just help me put this argument into context,
21 please.

22 MR. ARGENTI: It -- we are not arguing inherency. I wouldn't go
23 so far, because Veselov is not limited to AWS. So I am not saying that it's

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1 necessarily there. I am saying that a POSA, coming with their
2 understanding of cloud environments and APIs, reading Veselov,
3 understanding that it's an Amazon patent, would certainly bring that to the
4 understanding of what Veselov is talking about. At minimum --

5 JUDGE BAER: So this is an argument that Veselov discloses
6 these elements that require the location of the virtual disks, even though it
7 doesn't use those words, location of the virtual disk. Do I have that right?

8 MR. ARGENTI: That's part of our argument. Although right now
9 I'm responding more to Mr. Davis's argument that this is the thing we really
10 have to focus on. This is part of our elegant solution. [REDACTED]

[REDACTED]

12 JUDGE BAER: As disclosed in Veselov. That's key, correct?

13 MR. ARGENTI: That's correct. That's correct. There's no dispute
14 that Veselov talks about generating snapshots in a cloud environment. If
15 you are doing that in AWS at the time, which is a very reasonable
16 interpretation of Veselov, that is certainly one of the known cloud systems at
17 the time, and Veselov is an Amazon reference. I'm not saying it's inherent.
18 I'm not saying Veselov has to be using it. But I'm saying you would
19 absolutely bring that understanding to a POSA's reading of Veselov. And if
20 you are generating a snapshot in AWS, you have to know the volume ID,
21 which is what they map to the virtual disk location.

22 As to some of the other AWS exhibits that they attacked as not
23 contemporaneous, we are not -- for one, we're not relying on them as prior

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1 art in the grounds so I don't think they need to be proven up with some of the
2 rigor that you see for other prior art proof requirements. However, our
3 expert, Dr. Stavrou, also addressed this and provided testimony in his reply
4 declaration that those exhibits, specifically 1131 and 1133, are consistent
5 with his personal knowledge and understanding and recollection of how
6 AWS worked at the time. If we're going back to 2017 to 2019, he addressed
7 that. For example, that's in his 1400 reply declaration. I think this is a cite
8 to the '031 declaration, Paragraph 27, Note 3, and again in Paragraph 41,
9 Note 5. Did I have that right? '031, yeah.

10 All right. We also heard Mr. Davis repeat again that Veselov log
11 is limited to requesting assessment of a specific virtual machine. I addressed
12 that earlier today. I pointed out that that's not true. Again, looking at our
13 Slide 18, where we cited, for example, Veselov 8, column 8, line 62 to
14 column 9, line 8. Veselov of also says that the request can be for a specific
15 component of the virtual machine such as a virtual disk. So we said that.
16 They have no response. They're just sticking with their same argument. It's
17 not supported by Veselov.

18 I want to get to -- let's see. I want to briefly address the '685
19 Patent, Slide 119, Orca Slide 119. They have their bank vault example.
20 Again, I addressed earlier today that Hufsmith is not limited to a
21 vulnerability assessment. Like, it's not limited to figuring out, is the bank
22 vault door open? Hufsmith has this disclosure that we included in our Slide
23 42 of the impact metrics assessment, which is, will this result in a partial loss

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1 of sensitive data, or will it result in a total loss of sensitive data?

2 So if you're looking at the two vaults on the left that are outlined in
3 orange, Hufsmith is able to tell which one of those has sensitive data to
4 make that assessment. If we lose the sensitive data from the lower vault,
5 that's going to be a total loss of sensitive data. If we lose -- have a problem
6 with the top vault, that is no loss of sensitive data. That's the impact metrics
7 that Hufsmith talks about.

8 Turning to secondary considerations. There were questions about
9 nexus for Mr. Lumish. Mr. Lumish said, I don't have time to do it again
10 today, right? They didn't do it in their patent on a response either. He also
11 said that the thing called SideScanning is definitional of the invention in the
12 claims. That sounds to me, again, like half of a presumption theory, it
13 sounds like he's arguing that because the claims -- that because
14 SideScanning practices the claims, then you can reach a nexus findings.
15 That's not what the law says.

16 I also want to point out that their WBIP case that they had on the
17 slide, as well as FOX Factory and Medtronic cases they rely on heavily in
18 their briefing are all presumption cases. Those are cases that involve a
19 presumption of nexus. That doesn't apply to what they're trying to show, as
20 he admitted today.

21 If we look at our Slide 48, I think his argument is quite relevant to
22 the sight -- sound -- sorry, SightSound Technologies case that we've
23 included at the bottom. You see there where the Court said, "In other words,

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1 a nexus exists if the commercial success of a product is limited to the
2 features of the claimed invention. They haven't shown that here. They have
3 -- they just simply have it. They have not met their burden of showing
4 nexus. I don't want it to be lost that they had the burden on that.

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED].

11 As to investments, there was more discussion about the
12 investments. And I agree that the record doesn't have citation to case law
13 either way on that one. I just want to point out as a practical matter, if we're
14 looking at investments in a company, if that startup company doesn't go
15 anywhere and goes belly up and all the investors lose their money, I think
16 it's a real stretch to say that any one of those investors would characterize
17 that as a commercially successful endeavor. [REDACTED]

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

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[REDACTED]

14 JUDGE BAER: Mr. Argenti, you have under a minute left.

15 MR. ARGENTI: Thank you. [REDACTED]

[REDACTED]

[REDACTED] Similarly --

21 JUDGE BAER: Mr. Argenti, we're going to have to wrap it up
22 with that.

23 MR. ARGENTI: Can I give you one more cite that I would

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1 encourage you to read?

2 JUDGE BAER: I'll give you 15 seconds.

3 MR. ARGENTI: Thank you. [REDACTED]

4 [REDACTED]

5 JUDGE BAER: Thank you, Mr. Argenti.

6 Mr. Davis, you have 15 minutes -- excuse me, 17 minutes

7 remaining, and we'll start when you do.

8 MR. DAVIS: Thank you, Your Honors. So I want to first address

9 Judge Galligan. You had asked about the disclosure in Orca's patent

10 regarding the APIs and using cloud computing APIs and how that differs

11 from Veselov. And I think that there's a principle here, which is that less is

12 sometimes more. Veselov does include a lot of disclosures, and it talks

13 about APIs a lot, but never in a very clear and concise way as to exactly how

14 you're supposed to use it. They just say, like, APIs exist. You can use them

15 for lots of different things. The difference you can see in Orca's patents, if

16 we look, for example, at Exhibit -- at, for example, the '685 Patent, and this

17 is similar in the '031, I'll get those cites as well, column 4, line 15 through

18 21, it explains that, "The interface between the client environment and the

19 security system can be realized using APIs or services provided by the cloud

20 computing platform," and then it gives the specific example of AWS. And

21 then down that column, column 4, line 55 through 58, it explains that, "The

22 security system is configured to query the cloud management Console 150

23 for the address of the Virtual Disk 118-1 serving the VM, and a location of

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1 the snapshot."

2 If we also look at, for example, in the '031 Patent, it includes a
3 similar disclosure at column 4, 51 through 56 regarding the -- using AWS as
4 the cloud computing platform and using its APIs, and then column 5, lines
5 31 through 35, where it specifies that the Security System 140 is -- and so
6 Security System 140, same security system as that column 4 disclosure, "Is
7 configured to query the cloud management Console 150 for the address of
8 the Virtual Disks 118-1 and 118-2 respectively serving the VM 119-1, VM
9 119-2, and a location of the snapshot."

10 So again, what it's doing, it is actually identifying what API to use,
11 AWS's API, and specifically to identify the virtual disks in order for the
12 snapshot -- the subsequent snapshot analysis. That is not in Veselov,
13 because what Veselov identifies is to set, just use an API, for example, to
14 identify a virtual machine, but never the virtual disk. I think what we heard
15 from Wiz is that Veselov is not limited AWS. I would modify that slightly,
16 which is Veselov does not mention AWS anywhere. It doesn't mention any
17 cloud computing API that should be used. It does say the words API, and it
18 uses the word cloud once in the background. [REDACTED]

[REDACTED]
[REDACTED], and that's
21 hindsight, and it's the hindsight reconstruction that the Board needs to avoid
22 engaging in.

23 And I think that this goes to what Mr. Lumish had said about, you

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1 know, we sit here in the courtroom today as lawyers, but we're not working
2 in the real world. We're not seeing how the real world reacts without that
3 objective evidence. And we could say, like, how important are disks versus
4 identifying the VM? Like, it seems like that shouldn't matter. That kind of
5 seems like the logical conclusion. But when we actually look at the success
6 of Orca and the success of what is claimed and what all of the different
7 objective evidence focuses on, it really is talking about using these cloud
8 computing APIs in order to use them in the way that Orca is using them to
9 locate and identify the virtual disks.

10 I think what Wiz's argument now, what they had mentioned was
11 that they had introduced exhibits about AWS availability zones. I think it's
12 really critical to realize what is the evidence that they have for these
13 availability zones? And the only evidence that they have is Exhibit 1133,
14 this is on Wiz's Slide 21, where they're talking about Limitations 1.3 and 1.4
15 of using Cloud computing platforms to query a location. And Exhibit 1133
16 at the top, they say, oh, well, yeah, it is a 2025 reference. But Dr. Stavrou
17 said in his declaration that that's based on his memory, that's what it was like
18 in 2019. What I can say is that when he was deposed in this case, and he
19 was asked, is there anything in Exhibit 1133 that tells you that it was
20 available in 2019, he said no. And that is Exhibit 2172 at page 132, lines 1
21 through 10, where he addresses exactly this exhibit. And so he could
22 provide nothing to identify why this is related to what happened in 2019.

23 And again, this all presupposes that Veselov is about AWS or that

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1 a POSA reading Veselov would think it's about AWS, but it doesn't mention
2 AWS anywhere. And when we look at the petition that was apparent,
3 because when Wiz was reading this reference, when Wiz was composing its
4 arguments to present obviousness in this case, it never mentioned Amazon
5 or AWS once. It was only after Orca had introduced a claim by claim,
6 element by element mapping, showing how Orca used these particular AWS
7 API calls, that Wiz came in and said, oh, but those ones are known, too.
8 That's hindsight, and it's also copying.

9 And I think that that just can't be sort of de-emphasized. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And that is where he got all the praise. That is

13 where he -- Orca got its success, it's how they got all of the investments that
14 they've created. And it's how they've created a product that really has
15 transformed the industry, and made it so that people now view agentless
16 cloud Security techniques to be the baseline that everybody needs to start
17 from. I think that's the Exhibit 2076. It says agentless solutions are now the
18 first step in everybody's security journey. And that's because of what Orca
19 introduced in 2019.

20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

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[REDACTED]

[REDACTED]

19 And I think that's where we also look at the Federal Circuit
20 precedent, which is to say you don't need direct evidence of copying. I think
21 that we're pretty close here of having that direct evidence. What you need is
22 access and similarity. [REDACTED]

[REDACTED]

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[REDACTED]

15 So for the '685 Patent, you'll see that the quotations throughout the
16 long objective indicia section will pull out discussions of using agentless
17 scanning, and using API access to detect both vulnerabilities and sensitive
18 data, because those are unique elements of the '685 Patent claims.

19 [REDACTED]

[REDACTED]

[REDACTED] You'll also see for the '031 Patent, focus on the
22 analyzing of VMs at rest, which has a direct nexus to the '031 Patent. And
23 so this isn't an analysis of nexus that is amorphous and attributable to all

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1 patents equally. That's not what the analysis was. It is a unique, patent by
2 patent, claim by claim analysis of nexus, that ties each of the objective
3 indicia to the issued claims of each patent.

4 And with that, Your Honor, we would ask that the Board reject
5 Wiz's would-be challenges, and find each of the claims patentable.

6 JUDGE BAER: Thank you, Mr. Davis.

7 All right. Unless there are any further questions from my
8 colleagues, with that, we are going to wrap this up. Thank you. We thank
9 the parties for the time and their arguments. We appreciate you participating
10 in the LEAP program. That was very helpful. We appreciate it. With that,
11 the case is submitted and we are adjourned.

12 (Whereupon, the above-entitled matter went off the record at 4:06
13 p.m.)

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