

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

PORTSMOUTH NETWORK CORP.,
Patent Owner.

IPR2024-00913
Patent 8,014,394 B2¹

Record of Oral Hearing
Held: October 16, 2025

BEFORE: ST. JOHN COURTENAY III, JUSTIN T. ARBES, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

¹ IPR2024-00989 has been consolidated with IPR2024-00913.

IPR2024-00913
Patent 8,014,394 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

SCOTT A. MCKEOWN, ESQ.
Wolf, Greenfield & Sacks, P.C.
601 Massachusetts Avenue, NW
Washington, D.C. 20001
(202) 389-6025
smckeown-ptab@wolfgreenfield.com

ON BEHALF OF THE PATENT OWNER:

KATHERINE D. CAPPAERT, ESQ.
Steptoe LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-6252
kcappaert@steptoe.com

The above-entitled matter came on for hearing on October 16, 2025, commencing at 1:00 p.m., at the USPTO headquarters in Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE ARBES: This is the oral hearing in Case IPR2024-00913 involving Patent 8,014,394. Case IPR2024-00989 has been consolidated with IPR2024-00913. Can Counsel please state your names for the record?

MR. MCKEOWN: Scott McKeown, Wolf, Greenfield, and Sacks for Petitioner Juniper Networks.

MS. CAPPAERT: Katherine Cappaert, Steptoe LLP, for Patent Owner Portsmouth.

JUDGE ARBES: Thank you. Per the Trial Hearing Order in this case, the parties each have 60 minutes of total time to present arguments. The order of presentation will be first, Petitioner will present its case regarding the challenged claims and may reserve time for rebuttal. Patent Owner then will respond to Petitioner's presentation and may reserve time for surrebuttal. Petitioner then may use any remaining time to respond to Patent Owner's presentation. And finally, Patent Owner may use any of its remaining time for a brief surrebuttal, responding to Petitioner's rebuttal arguments only. One reminder, we are able to view the party's demonstratives on our screen. To ensure that the transcript is clear and everyone can follow along, please refer to your demonstratives by slide number. Are there any questions from the parties before we begin?

MR. MCKEOWN: None from Petitioner, Your Honor.

MS. CAPPAERT: No.

JUDGE ARBES: Thank you. Counsel for Petitioner, you may proceed. And would you like to reserve time for rebuttal?

1 MR. MCKEOWN: Yes, Your Honor. I'll reserve 20 minutes.
2 Good afternoon. Again, Scott McKeown of Wolf, Greenfield, and Sacks for
3 Petitioner Juniper Networks. May it please the Board. The identical claims
4 at issue in these consolidated proceedings were canceled earlier this month
5 in IPR2024-00506, which was filed by Cisco. So all claims in these
6 consolidated proceedings overlap with the claims there. The only difference
7 being Cisco had two additional Claims, 5 and 15, which are not at issue here.
8 That final written decision also analyzed the Weyman reference, which is at
9 issue here. And that earlier final written decision found that Weyman
10 provided all of the -- I'll just call them distributed routing features of the
11 claims, which is pretty much everything with the exception of the last two
12 elements related to link aggregation.

13 The Li reference, L-I for purposes of court reporting, was applied
14 for those teachings. That reference is not of record here. So we have a
15 different mapping to those features. But in terms of the claims, the '394
16 Patent claims, which I'll pull up on the screen here in a second, claim
17 nothing more than distributed routing with additional link aggregation
18 techniques, which come from a prior art IEEE standard. And so these
19 claims, again, are unpatentable.

20 So just a brief overview of the grounds just for purposes of
21 highlighting what is different here. The primary reference Blease is an IPTV
22 implementation, so that's why it is used here. It tracks the primary
23 embodiment of the '394 Patent and provides at least slightly more detail in
24 the management of individual routing tables and contemplates that not only
25 that it would have a centralized architecture but a distributed routing
26 architecture. And so we've combined Blease with Weyman to essentially

1 track that preferred embodiment of the '394.

2 And then the Hu reference, H-U, is teaching the link aggregation
3 features, namely the stream threshold, the counting the number of streams,
4 and limiting an aggregated port to a certain number of streams or bandwidth.
5 And then the Deng reference, D-E-N-G, is added for some detail-dependent
6 claims relating to permissions. And then finally, the Rao reference talks
7 about the deactivation specifics for bringing a new card online, which is
8 relevant only to those Claims 8 and 18.

9 Just a quick overview as I realize the panel is up to speed on this
10 patent. But you see here at Petitioner Slide 3 the basic diagram of the '394
11 Patent with the -- I will represent the top portion of the claim prior to the
12 wherein clauses is essentially a distributed routing architecture with the
13 additional link aggregation features being the last two elements. So that
14 figure below, you have a content unit or multicast content user, again, in the
15 context of '394 Patent. This is a TV arrangement IPTV. A request comes in,
16 presumably for a given program, comes into one of the line cards. And then
17 there is a review and copying of that request that heads out to the content
18 source.

19 But essentially, the idea here is to speed up the channel changing
20 or as referred to in the '394 Patent as zap time. So if you're switching
21 between programs, rather than your requests going all the way up to the
22 source and coming back down before the channel changes, there's an internal
23 process whereby you can check the tables to see if that program that's being
24 requested is already being provided to someone else. And in that case, that
25 joiner can happen quickly, and the zap time is limited. But again, the
26 general concept here is a distributed routing architecture with the additional

1 features of link aggregation and management of the link aggregation as to
2 bandwidth there. And it was those last two wherein clauses that were added
3 to the patent prior to issuance.

4 The primary reference, as I mentioned, Blease is shown here on
5 Petitioner Slide 4. As explained at the top of the slide, this is an exemplary
6 architecture. So the architecture of router 42, illustrated in Figure 4, is
7 shown for exemplary purposes only. So this architecture that's shown in that
8 figure is a centralized architecture. But at the bottom of that figure there's
9 the portion of Blease, which is relied on in the Petition. In one embodiment,
10 for example, the control unit 44, which has all of the routing table
11 management and its corresponding functionality, may be distributed within
12 IFCs. Those are interface cards. So Blease is teaching that this architecture,
13 which is shown in the figure as centralized, can be implemented as a
14 distributed architecture.

15 JUDGE ARBES: Counsel, is there anything else in Blease that we
16 should be looking at to determine what the word distributed means, in that
17 sense? Obviously, we have other portions of the record with dictionary
18 definitions, expert testimony. But is there anything else in Blease that would
19 shed light on what that means?

20 MR. MCKEOWN: Well, I would submit the section at the top.
21 You're talking about the architecture of the router in Figure 4 is exemplary.
22 And then, when it talks about different embodiments for an architecture, in
23 this case a routing architecture, distributed in that context has meaning. It's
24 a distributed architecture. And as the record has demonstrated, as we've
25 argued in our briefs, the Patent Owner's expert certainly understands what
26 distributed means in the context of a routing architecture. And so I would

1 submit that there's nothing else to look at here. A distributed architecture is
2 well known in the art. In fact Weyman, which we rely on for the details of
3 this feature, the title is a distributed router, as will I show here on the next
4 slide. I'll skip over a slide.

5 So we'll go to Petitioner Slide 6. This is Petitioner's expert
6 explaining exactly that. Centralized, decentralized, and distributed routing
7 architectures are the only architectures. That's in his words. And then he
8 explains the characteristics of a distributed router architecture. Again, he's
9 using the word distributed. He certainly understands what distributed means
10 in the context of routing architectures. And that declaration was submitted
11 in the reexamination in March of this year. And three months later in this
12 IPR, suddenly distributed got confusing for the Patent Owner's expert. So as
13 we argued in our Reply, in the context of discussing routing architectures,
14 distributed has well-known meaning. In fact, Petitioner's own expert
15 identifies there's only three architectures, where Figure 4 is showing
16 centralized and then discusses a variety that's distributed. One of skill in the
17 art is left with no other conclusion there. This isn't a case where we need to
18 go to extrinsic evidence as to what distributed might mean outside of a
19 technical context in the routing context. And again, this is Patent Owner's
20 own expert saying this. There are only three such architectures.

21 JUDGE ARBES: Counsel, if you could go back to Slide 4 for a
22 moment, I'd like to just focus on that one sentence again. You would agree
23 that there are a lot of different ways that I could distribute the corresponding
24 functionality of the control unit. There's a lot of different ways I could do
25 that?

26 MR. MCKEOWN: Not if it's a distributed routing architecture. It

1 has to follow -- and going back to the slide we were just on, the Patent
2 Owner expert stated, "A distributed architecture must have some
3 mechanisms to make sure that the line card processing unit has the same
4 instructions as all the other line card processing units in the router."
5 Otherwise, it won't work. So at a minimum, a distributed routing
6 architecture has to do that.

7 JUDGE ARBES: Has to have some mechanism. But there are
8 different mechanisms to do that and --

9 MR. MCKEOWN: There may be different mechanisms to do that,
10 but we've pointed to -- well, if you're looking for distributed routing
11 architectures, one way to implement this teaching is to go to a reference that
12 is a distributed routing architecture, which Weyman. So --

13 JUDGE ARBES: One more question. If we can go back to Slide 4
14 again, can I ask -- do you need to copy all of the functionality of the control
15 unit there to the IFCs to have it be a distributed architecture? There's five
16 instances of functionality that are shown in Figure 4. Do I need to include
17 all five parts there in the IFCs for it to be a distributed architecture?

18 MR. MCKEOWN: I don't know that that's been disputed in the
19 record. But I think what we said in the Petition was that, at a minimum, the
20 distribution aspect would be -- again, going back to what the Patent Owner's
21 expert has defined a distributed architecture to be, at a minimum, each card
22 would have its own OIF map, which is output interface map. And there was
23 a mechanism to synchronize those maps, otherwise it wouldn't work. So --

24 JUDGE ARBES: Okay.

25 MR. MCKEOWN: -- at a minimum, you would need that. I don't
26 know that we've relied on any other aspects of that control unit just because

1 the claims don't require those features.

2 JUDGE ARBES: Okay. So at a minimum, you need the OIF
3 maps and some method to synchronize them among the different IFCs.
4 Okay.

5 MR. MCKEOWN: Right, because that is the definition of a
6 distributed routing architecture. And again, there's Weyman on Petitioner
7 Slide 5, I believe, which you can see the system and method for distributed
8 multicast routing. So not only is Weyman a distributed routing architecture,
9 but it's in the same application here for multicast use, which Blease is also
10 directed to. So we would submit that Blease and Weyman get you all the
11 way to those bold print features there, where we're now transitioning over to
12 the link aggregation features of the claim.

13 JUDGE ARBES: Actually, Counsel, before we move on, I'd like
14 to ask one question. If you have Patent Owner's Surreply on page 4, if you
15 have that --

16 MR. MCKEOWN: Yeah.

17 JUDGE ARBES: -- handy, I'd like to hear your response to Patent
18 Owner's argument that there are certain core principles in Blease about
19 mapping requests to a OIF map and then the concept of only sending one
20 copy of the stream to the switch so that it can be replicated at the switch and
21 that that provides the efficiency. That's the whole idea of Blease and that
22 turning Blease into a distributed architecture would contradict that design.
23 How do you respond to that?

24 MR. MCKEOWN: This is on which page?

25 JUDGE ARBES: Page 4 of Patent Owner's Surreply.

26 MR. MCKEOWN: Okay. Sorry. I'm looking at the Response

1 page. Well, general response to this argument is this is directed to the
2 centralized architecture, which as Blease identifies, is an exemplary
3 embodiment. So I would disagree with the fact that this is somehow critical
4 to Blease. Blease specifically teaches a distributing routing architecture.
5 This argument is basically saying, no. Blease is limited to a centralized
6 architecture, and here are the features of a centralized architecture. I think
7 this conflicts with the plain disclosure of Blease.

8 JUDGE ARBES: Maybe if we could talk about Figure 1 of
9 Blease, and I just want to make sure that my understanding of the reference
10 is right. As I understand Blease, the basic principle is that one copy -- yes.
11 So as I understand Blease, one copy of the stream is sent from network
12 device 4 to, let's say, network switch 6A, and then it's replicated there. And
13 then that provides the efficiency because I'm not sending multiple copies of
14 the stream. If I were to turn network device 4 from a centralized
15 architecture, as in Figure 4 -- if I were to turn that into a distributed
16 architecture, would I still have that efficiency?

17 MR. MCKEOWN: Well, you would still have the same -- if I'm
18 understanding you correctly, the portion of Figure 1 starting with the
19 subscriber device to the network switch is outside of the network device. So
20 whether that is centralized or distributed, the input to that network device
21 would presumably be the same.

22 JUDGE ARBES: Okay. But how would network device 4 look,
23 then, in a distributed arrangement? Presumably, there would be multiple
24 units. One unit perhaps communicating with network switch 6A and another
25 unit communicating with network switch 6B, each of them handling a set of
26 ports. That's a distributed architecture.

1 MR. MCKEOWN: Blease is talking about the network device for
2 -- let me go to -- so which I believe is shown in Figure 4. So that network
3 device has multiple interface cards, which are presumably going back to
4 Figure 1, connected to a plurality of network switches there. So the physical
5 connections there would look the same. You would still be coming into
6 individual line cards. It's the management of those signals coming into the
7 network device that would be changed to be managed in a distributed
8 fashion.

9 JUDGE ARBES: And I would still get the efficiency of sending
10 one stream instead of multiple on that line 14A, for instance, and then
11 having it replicated at the switch? That would still exist if I turned network
12 device 4 into a distributed architecture?

13 MR. MCKEOWN: That's correct.

14 JUDGE ARBES: Okay.

15 MR. MCKEOWN: So just going back to Petitioner Slide 7, so we
16 would submit that Blease provides the IPTV specifics. Again, those
17 specifics are not recited in the claim but tracks the main embodiment of the
18 '394 Patent. And we were following the teachings of Blease to utilize it in
19 the distributed routing architecture embodiment that's taught by Blease. And
20 how we would do that, we would go to the prior art and look for a
21 distributed routing architecture and probably in a multicast environment,
22 which would be Weyman, which meets the claim features prior to that
23 bolded language there on Petitioner slide 7.

24 As to link aggregation, as shown on the right hand side of the slide,
25 link aggregation was an IEEE standard at the time. So the only difference in
26 the claim language here relative to at least the standard is this idea of

1 forming the link aggregation group and essentially managing it such that it
2 doesn't go beyond its bandwidth or has some kind of quality of service
3 requirement. So as additional streams come in and seek to join the group,
4 we will prune them effectively to make sure we get whatever quality of
5 service or bandwidth requirement we are trying to track in that case. And so
6 we've pointed to the fact that all of these references, Blease and Weyman,
7 discuss link aggregation in various respects. And then the Hu reference is
8 specific as to the processing of stream requests and using a number and a
9 threshold, some of the more specific aspects of the claim.

10 And so there's the discussion of Hu. This is out of the Petition at
11 26 through 27. Just generally talking about through the aggregation of ports,
12 you can get a better utilization efficiency of the network, quality of service,
13 et cetera. So that would be the motivation for having a link aggregation
14 group where the number of streams that are allowed to be joined to that
15 group is monitored and a threshold is utilized for those purposes.

16 Which then takes us to the last two independent claims. So
17 method Claim 8, you see some ellipses there at the top. That's just cutting
18 out the distributed routing aspect of this claim that I've already discussed.
19 So what Claim 8 adds is this concept of, well, if we've got this distributed
20 routing architecture, we've got a number of cards. When we want to add
21 capacity, we want to add cards. How do we do that? How does that work?
22 And so this claim talks about deactivating the ports of this new card with
23 this new processing unit until such time as it has the necessary routing tables
24 to operate correctly.

25 And again, going back to the Patent Owner's expert's argument in
26 the reexam, that was sort of one of his fundamental definitional statements

1 of a distributed routing architecture as well where everybody has to be in
2 agreement on the routing tables for it to work correctly. So this is just a
3 natural extension of the architecture in which, well, when you're adding
4 cards, you don't want them to power up and start working before they have
5 all of the necessary information.

6 So we've pointed to Weyman, which generally describes the
7 concept of adding cards. So it was known to add cards. And we pointed to
8 the Rao reference, which specifically teaches this delayed activation. In the
9 briefing, the expert has taken the position that he does not understand the
10 term non-default, or it must be a typographical error. Setting that aside,
11 what Weyman teaches is adding cards and leaves it to one of skill in the art
12 to figure out what's the best way to get those things electrically up and
13 running.

14 And again, given the Patent Owner's own statement that distributed
15 routing architectures don't work unless everyone has the same information,
16 this is just a natural, obvious solution as to make sure that the cards are not
17 powered up before they have everything they need to operate. And so again,
18 that's -- the Rao reference was relied on for the more specific delay in the
19 deactivation and modifying Weyman, again, for the reasons known in the art
20 to allow consistent and predictable operation. And there's a little more detail
21 on Petitioner Slide 11 of that combination of Rao, just a bigger type really.

22 JUDGE ARBES: Counsel, can I ask a few questions about Rao?

23 MR. MCKEOWN: Sure.

24 JUDGE ARBES: On page 45 of Patent Owner's Response, they
25 make the argument that a person of ordinary skill in the art would
26 understand that the standby RPM in Rao is never initialized. Instead, it is

1 kept alive and receives updates from the master. Do you agree that process
2 described in column 9 of Rao is not initialization?

3 MR. MCKEOWN: I don't think I agree with that. I don't know
4 that it matters, frankly. I mean, we're pointing to the general proposition that
5 it was known to delay activation. So whether or not in the specifics of Rao
6 there are arrangements where one is on standby or not, the general
7 proposition has not been challenged. I think in the institution decision, it
8 was pointed out that the paths are not initialized until that delay is expired.
9 So there is a clear teaching of deactivation or a lack of activation for the
10 same reasons that we've relied on it. That is you want to have all of the
11 recent routing tables before you start routing.

12 JUDGE ARBES: And what, in your view exactly, is getting
13 deactivated or activated? The claims require deactivating the ports to which
14 the new processing unit is assigned and then, after constructing the list,
15 activating those ports. But it seems to me a lot of your argument has to do
16 with activating and deactivating the RPM as a whole rather than ports.

17 MR. MCKEOWN: No. I think we're using deactivating in terms
18 of the routing paths, which is you can't -- traffic is not flowing. The ports
19 aren't activated. You're not switching traffic through those ports until the
20 routing paths are open. And so the specific aspect of the reference we've
21 relied on in that respect is discussing the routing path.

22 JUDGE ARBES: And what is the best disclosure you can point us
23 to in Rao? I think you acknowledge that it doesn't explicitly say
24 deactivating. But what is the best disclosure for activating those routing
25 paths?

26 MR. MCKEOWN: It does use the word delay. And then I think

1 the best citation would be the one relied on in the institution decision,
2 referring to the routing pass not being up and running until after that delay.

3 JUDGE ARBES: Can you point us to -- I'm looking at column 11,
4 for instance, column 11, line 20 that says, "Activating the internal routing
5 -- activating the internal router path IP multicast forwarding information for
6 data path forwarding." Is that the language that you're referring to?

7 MR. MCKEOWN: Actually, let me go back to the institution. I
8 think it was the -- so I'm looking at -- it appears to be page 44 of the
9 institution decision, which discusses the -- it looks like column 9 of Rao. So
10 once all of the responses have been received, or if the delay timer runs out,
11 the old route entries from the card are replaced and pruned, thereby ensuring
12 that the entries in the replacement card are current. Once this process
13 finishes, the card is activated and begins -- and again, forwarding, actually
14 moving traffic.

15 JUDGE ARBES: Okay. I guess my concern is that the claim says
16 deactivating the ports and activating the ports. But I don't see a clear
17 disclosure in Rao talking about the ports. So is it your position that that
18 would have just been known, and there is expert testimony supporting that,
19 or --

20 MR. MCKEOWN: I would submit that for the replacement card to
21 be activated, it needs to be able to forward multicast data over its ports, and
22 what Rao is teaching is not allowing that activation to happen until the
23 necessary data is received. And if it's not received, then there's a pruning
24 operation. But the inability for that card to forward multicast data, I would
25 submit, is deactivating or not activating that card until you can actually do
26 what the card is supposed to do, which is route traffic over its ports.

1 JUDGE ARBES: Okay. And that is still the case even though
2 during this process that takes place in Rao, the master RPM and standby
3 RPM are still communicating with each other, right?

4 MR. MCKEOWN: Well, yeah. Activating and deactivating in this
5 context is distributing traffic in the distributed routing architecture. So
6 whether there's communication with -- there needs to be obviously some
7 communication whenever you add a card because you have to receive the
8 updated table. So there's always going to be some level of communication.
9 But in the context of the claim, deactivation is with respect to the actual
10 routing process.

11 JUDGE ARBES: So the standby RPM is not fully deactivated in
12 that it cannot communicate with anyone because it's still communicating
13 with the master RPM at least?

14 MR. MCKEOWN: Correct. And then, like I said, anytime you
15 plug in a card, there's going to be some minimum communication before it is
16 activated for actual use for -- in other words, why you put it in the box.

17 So absent further questions on the case in chief, I would just
18 reiterate that Blease, again, tracks the main embodiment of the specification.
19 It teaches both centralized and distributed architectures. One of skill in the
20 art understands a distributed routing architecture. There were patents
21 specifically to multicast distributed routing architectures. And at a
22 minimum, even if you didn't understand what distributed is in the concept
23 -- in the context of routing architectures, you would certainly know to look
24 to other solutions that use the word distributed in this context. So we've put
25 all of that in our briefing and submit that Blease is combinable with
26 Weyman for the distributed routing features. And then the link aggregation

1 features are just using the standard and managing bandwidth just by limiting
2 connections, which is taught by the Hu reference. Unless there's further
3 questions, I'm happy to rest for rebuttal.

4 JUDGE ARBES: One last question, Counsel. What is your
5 position as to the relevance of the reexam findings for these proceedings?

6 MR. MCKEOWN: I don't think they're relevant because it's
7 different art. But the concepts of some of the claim features, certainly the
8 reexam declaration, which is specifically discussing a distributed routing
9 architecture directly conflicting with the testimony that was submitted here,
10 is highly relevant. But in terms of the ultimate determination there, given
11 the different prior art and even different claim construction, makes it
12 irrelevant.

13 JUDGE ARBES: Different claim construction?

14 MR. MCKEOWN: Well, BRI.

15 JUDGE ARBES: Thank you.

16 MR. MCKEOWN: Thank you.

17 MS. CAPPAERT: Good afternoon, Your Honors. I will start on
18 the slides by Slide number 9, talking about, I guess -- well we can start at
19 Slide 8, which is the overarching slide, which is basically the four
20 independent Claims 1, 11 and then the dependent claims that relate to that,
21 which are 2, 4, 6, 7, 12, 14 and 17. Petitioner relies on a combination of
22 Blease, Weyman, and Hu. And we would submit, and as we've explained in
23 our papers, that there's no motivation to combine Blease, Weyman, and Hu.
24 I think as, Your Honor, sort of speaking with Petitioner's counsel about
25 -- Blease is directed to a centralized architecture. Petitioner points to one
26 instance in Blease where the word distribute is used or distributed is used.

1 But there is no additional discussion as to what distributed means or that it is
2 referring to implementing Blease in a distributed architecture, let alone how
3 that would be applied.

4 Now Petitioner's Counsel and Petitioner points to Dr. Olivier's
5 discussions and his declaration in the reexamination procedure. We would
6 argue that's not inconsistent with the position that Dr. Olivier is taking here.
7 There are different architectures that can be implemented. Dr. Olivier
8 referred to as centralized, a decentralized, and a distributed. There's no
9 reason, though, to believe that Blease saying distributed is saying Blease
10 could be a distributed architecture. There's no additional disclosures. And
11 looking at Dr. Hu's discussion of the '394 Patent and distributed in the '394
12 Patent doesn't necessarily mean and doesn't mean, respectfully, that the
13 Blease's use of distributed is the same. I think --

14 JUDGE ARBES: Counsel, just to make sure I understand your
15 position, that -- Blease is using the word distributed, but not meant to refer
16 to a distributed architecture?

17 MS. CAPPAERT: I think that's Patent Owner's position, that
18 there's nothing indicating in Blease that the word distributed is meaning that
19 it would be a distributed architecture. It doesn't say distributed architecture.
20 It doesn't say what would actually be distributed in the different IFCs. And I
21 think that that's a leap that Petitioner's counsel is, or Petitioner is taking in
22 arguing that the single instance of the word distributed means that Blease is
23 disclosing a distributed architecture. I think, as Petitioner's Counsel just
24 pointed out, Blease -- the entirety of the rest of Blease and all of the
25 efficiencies and discussions are talking about a centralized architecture. So
26 saying there's one word in that single instance would mean that you would

1 be motivated to look outside and look to a distributed architecture, in this
2 case Weyman, we would argue that a person of ordinary skill would not be
3 motivated to do so.

4 JUDGE ARBES: Do you agree that distributed router architecture
5 is a term of art that would be well understood?

6 MS. CAPPAERT: I believe that there is a specific distributed
7 architecture in which there would be complete copies of the components
8 moved across the different processing units. But I don't think that any
9 instance or reference to the word distributed in a patent talking about routing
10 technology necessarily refers to distributed architecture. And I think to
11 -- going on to Slide --

12 JUDGE ARBES: And Counsel, just to make sure I understand, the
13 dictionary definitions that you pointed us to, they used the word distributed
14 by itself, or did they refer to a distributed architecture?

15 MS. CAPPAERT: I believe that they use the word distributed by
16 themselves as, respectfully, as how it is written in Blease. Blease also does
17 not use the word distributed architecture in the sentence the Petitioner relies
18 on. It simply says, may be distributed. It doesn't say that the control unit
19 could be a distributed architecture.

20 Additionally, with respect to motivations to combine and why a
21 person of ordinary skill in the art would not have looked to Weyman in view
22 of Blease, there's other -- a few other points that Patent Owner has raised in
23 its briefing. On Slide 13, we talk about one of those, which is that the
24 different interfaces -- again, and many of these relate to the fact that Blease
25 is disclosing a centralized system. So Petitioner is really just saying we like
26 a few parts of Blease, but really, we're relying on Weyman for absolutely

1 everything else just because of the word -- use of the one word distributed.
2 But when it all boils down to it, if you look at all of Blease's disclosures and
3 what a person of ordinary skill would see reading Blease, they would see a
4 centralized architecture and the aspects that relate to a centralized
5 architecture.

6 So for example, on Slide 13, the aspects that relate to having
7 separate interfaces as opposed to a common interface, that's just one
8 example of one of the reasons why a person of ordinary skill wouldn't look
9 at Blease and say, okay. It would have been obvious to implement it in a
10 completely different way that isn't talked about at all in Blease, such as what
11 -- as Petitioner argues is disclosed in Weyman. Additionally, with respect to
12 the addition of Hu, Patent Owner submits that it would not have been
13 obvious, and a person of ordinary skill in the art would not have been
14 motivated to combine Hu with Blease.

15 JUDGE ARBES: Counsel, before we move on to Hu, I'd like to
16 ask you about the argument that you made at page 4 of the Surreply as well,
17 that Blease has certain core principles of sending the one copy of the stream
18 to the switch and then having it replicated there. Why would those not apply
19 if I turned Blease's device into a distributed architecture?

20 MS. CAPPAERT: Because I think that what is being talked about,
21 those three core principles that are discussed on the Surreply and also on
22 slide -- Surreply page 4 and Slide 10 of Patent Owner's demonstratives
23 relates to this centralized mapping. So Blease discloses a very detailed
24 centralized mapping system in which you have requests come in, you map
25 them, and you figure out how you're sending them out. And I think that
26 that's at the core of what Blease is disclosing. I mean, one of the points is

1 this mapping membership request via a centralized map. And I think that
2 taking that, that wouldn't apply in a distributed system or in a distributed
3 architecture.

4 JUDGE ARBES: Why not? If I distributed the processing and I
5 kept the table synchronized, why would that not?

6 MS. CAPPAERT: I --

7 JUDGE ARBES: I guess my question is why do you need a
8 centralized mapping to get the efficiencies that Blease desires?

9 MS. CAPPAERT: Well, I think that it's within the context of
10 Blease itself, which is Blease is talking about how the centralized format
11 provides for these efficiencies. And so I don't know that Petitioner is
12 arguing that you would take those centralized functionalities and have the
13 same efficiencies. Instead, they're saying you would take portions of the
14 control unit and apply it to the different -- in a distributed system, you'd
15 apply it to different processing units. But in terms of the overarching, what
16 you would do, you would really just look to Weyman and do what Weyman
17 is disclosing. So kind of going away from Blease in its entirety and what the
18 core of Blease is, which is tied to this centralized processing.

19 JUDGE ARBES: Maybe it'll be helpful to talk about it in terms of
20 Figure 1 --

21 MS. CAPPAERT: Sure.

22 JUDGE ARBES: -- of Blease. Again, as I understand it, correct
23 me if I'm wrong. As I understand Blease's disclosure that the main idea is to
24 send one copy of the stream on, let's say 14A, to the network switch and
25 have it be replicated there. And that is more efficient than sending multiple
26 copies. If I turn network device 4 into a distributed architecture -- let's

1 assume for the moment that we agree with Petitioner about the meaning of
2 the word distributed. If I turn that into a distributed architecture so there are
3 multiple units that are in synchronization, let's say one unit communicating
4 over 14A, another unit communicating over 14B. It appeared that your
5 position was that that sort of arrangement would contradict Blease's design
6 and not achieve the efficiencies that Blease is going for. Why not?

7 MS. CAPPAERT: I think that our argument is more talking about
8 efficiencies within network device 4 as opposed to going outside of network
9 device 4 and kind of the efficiencies that that control unit provides within the
10 network device as opposed to how it would be -- interact with the external
11 portion, so the network switches and the subscriber devices. And that the
12 mapping that's occurring and that the kind of -- the sending of the stream, I
13 think, is it's all tied kind of to this mapping and this centralized processing,
14 which is occurring within network device 4 and is part of that centralized
15 system.

16 While they're external to network device 4 may still have at a high
17 level kind of the same operations that would be coming out of the network
18 device even if it were distributed, it's looking within that network device, so
19 looking at Figure 4, that is really what we're saying that efficiencies and the
20 centralized mapping aspects are really where that's coming in.

21 JUDGE ARBES: Okay. So the arrangement that Petitioner is
22 proposing is not as efficient as the centralized mapping that Blease talks
23 about.

24 MS. CAPPAERT: I would submit that it goes back to Blease
25 talking about -- yes. At a high level, yes. It goes back to Blease talking
26 about the centralized architecture for the system and how that provides

1 efficiencies with this mapping of membership requests and figuring out
2 when you get in one stream, do you have to act on every stream that you
3 received, or do you only update if you -- if it's a different stream? Kind of
4 the core of Blease's architecture relates to this development of its more
5 complex centralized map.

6 JUDGE ARBES: One last question about Blease. If that sentence
7 that Petitioner is pointing to in column 11 is not referring to a distributed
8 router architecture, what is your view of exactly what that means? I believe
9 you use the phrasing spread across. So the functionality would be spread
10 across the IFCs. What exactly is spread across and how is that --

11 MS. CAPPAERT: Sure. So I mean, I think respectfully, I don't
12 know exactly what Blease is envisioning by the distributed because it doesn't
13 say. And it doesn't provide specifics as to how any specific functionality or
14 what corresponding functionalities would be distributed within the IFCs. It
15 is possible, I mean, purely hypothetically, that you would have 20 percent in
16 one IFC and 20 percent of a functionality in another or that there would be
17 other ways to kind of create a decentralized architecture in which you are
18 taking your centralized control unit and breaking it up and putting it in
19 different IFCs.

20 But I don't think that there's really any additional discussion. I
21 don't know that Petitioner would disagree with that, that Blease doesn't
22 disclose what functionality is distributed or how it would be distributed in
23 any sort of architecture. I don't think Petitioner says that you would have to
24 copy all or only some of the control unit 44 in any distributed architecture
25 system.

26 JUDGE BOUDREAU: This is Judge Boudreau. If I could just

1 follow up on that question. On page 15 of the Patent Owner Response, it
2 looks like you draw a distinction between a control unit that can be spread
3 across IFCs and a control unit that can be copied across IFCs. I wonder if
4 you can drill down on that distinction a little bit.

5 MS. CAPPAERT: Sure. So I think that the point that Patent
6 Owner was trying to make there is that you could have a control unit where
7 you have, let's say, percentages of it are within different IFCs. You have
8 IFCs that are responsible for different aspects of processing as opposed to
9 having your entire control unit, the entirety of it, be copied entirely across all
10 of them. So basically, look the same across all of them versus basically, if I
11 have a piece of a pie, take a quarter of the pie and put it in one IFC and a
12 quarter of the pie and put it in a different IFC. So that was the point that
13 Patent Owner was getting at with respect to distributed versus copied.

14 JUDGE BOUDREAU: How does that bear on whether a person of
15 ordinary skill in the art would modify Blease in view of Weyman?

16 MS. CAPPAERT: I think that it goes to the overarching argument
17 that a person of ordinary skill in the art looking at Blease's disclosures would
18 not have been motivated to look at Weyman because they relate to different
19 architecture types, that Weyman is entirely a distributed architecture and
20 Blease is centralized. So if anything, a person of ordinary skill in the art
21 may look to modify Blease in view of other centralized architecture systems
22 but would not be looking to distributed systems.

23 JUDGE BOUDREAU: Is Weyman itself disclosing an
24 architecture that's copied across the system, as opposed to just being spread
25 across it?

26 MS. CAPPAERT: Um --

1 JUDGE BOUDREAU: I'm trying to understand what --

2 MS. CAPPAERT: Yes.

3 JUDGE BOUDREAU: -- distributed means in this context.

4 MS. CAPPAERT: Yes. I would submit that that is Patent Owner's
5 position, that Weyman is disclosing kind of the more of the entire copying
6 across as opposed to portions being spread across.

7 JUDGE BOUDREAU: What can you point to that supports that
8 interpretation?

9 MS. CAPPAERT: Give me a moment. I mean, I think looking at
10 Weyman as a whole and just kind of how it has its Vbridges set up shows
11 that Weyman kind of has multiple instances of the same architectural
12 structure and the same components duplicated across. So that's why
13 Weyman is synchronizing, because it has this similar components that it is
14 synchronizing across all of them at the same time.

15 JUDGE BOUDREAU: Is that a requirement of a distributed
16 system though? Couldn't a distributed system simply be spread across the --
17 ?

18 MS. CAPPAERT: I think that a distributed architecture -- and I
19 can look. I apologize. I don't have it in front of me right now as to exactly
20 what the expert -- Patent Owner's expert said about it. But I believe that a
21 distributed architecture does have kind of specific aspects of it that are
22 considered and would submit that that is one of them.

23 JUDGE BOUDREAU: Well, we have the testimony of Dr.
24 Olivier, who said that there are three architectures. There's centralized,
25 decentralized, and distributed. So if the control unit were simply spread
26 across the IFCs as opposed to being copied across the IFCs, is it your

1 position, then, that that would be either a centralized or a decentralized
2 architecture rather than a distributed architecture?

3 MS. CAPPAERT: I think that would be more of a decentralized
4 architecture as opposed to a distributed architecture. Yes.

5 JUDGE BOUDREAU: Okay.

6 JUDGE ARBES: Does a decentral --

7 JUDGE BOUDREAU: Go ahead.

8 JUDGE ARBES: Does a decentralized architecture still need to
9 have synchronization between the units, or am I just distributing the
10 processing power?

11 MS. CAPPAERT: Respectfully, I don't know that either of the
12 parties expressly addressed the aspect of the decentralized, but I would
13 submit that you would need to have some level of synchronization
14 depending on how it's implemented. I think a lot depends on how your
15 system is implemented and what your functionality is. So it's hard to speak
16 of entirely in the abstract.

17 JUDGE COURTENAY: Ms. Cappart, this is Judge Courtenay
18 here. I'm sort of looking for a boundary condition. In your own words, how
19 would you describe a network that is not distributed? I mean, if I have a
20 client here and you're the server and we have an ethernet cable we connect,
21 is that a distributed network? If we had two clients, is that distributed?
22 Where's the boundary condition? What's an example of a non-distributed
23 system?

24 MS. CAPPAERT: I mean, I would argue, with respect to the
25 router architecture, it's how the processing is happening and whether the
26 centralized versus decentralized processing is occurring is what's making it

1 --

2 JUDGE COURTENAY: Okay. Is it --

3 MS. CAPPAERT: -- difficult to measure.

4 JUDGE COURTENAY: -- any two computers that connect on the
5 Internet? Is that not a distributed system? Because packets are sent along
6 different paths through different routers, and they're reassembled at the
7 destination. So --

8 MS. CAPPAERT: I mean --

9 JUDGE COURTENAY: -- anything that connects to Internet, that
10 would be a distributed system. Yes or no?

11 MS. CAPPAERT: I would argue that yes, those are distributed
12 between different components. But I think that talking about the distributed
13 architecture as discussed in the patent is different. And we're talking about
14 specific router architectures for centralized versus distributed versus
15 decentralized or really just centralized versus distributed router architectures
16 in this case. And I think that that's really the main focus is the specific
17 router architectures that are being discussed and claimed in the '394 Patent.

18 JUDGE COURTENAY: I have one follow up question. In your
19 own words, do you have any idea why -- and you have to speculate here I
20 realize -- but why Petitioner did the reject -- did the ground, rather, over
21 Blease and Weyman as a secondary reference instead of Weyman as the
22 primary reference and Blease as the secondary reference?

23 MS. CAPPAERT: I do not know the answer to that.

24 JUDGE COURTENAY: Is that a mystery to you or?

25 MS. CAPPAERT: It is a mystery to me. I would submit that I
26 would have -- my arguments would be different if it were switched,

1 respectfully. But I would say that I don't know why Petitioner did Blease as
2 the base reference other than what Petitioner has said here today.

3 JUDGE COURTENAY: And also, I mean, if we assume for
4 purposes of argument that Blease is not centralized but maybe it is a
5 distributed system, why would an artisan have a reason to look to Weyman
6 if Blease arguably already teaches a distributed system? Do you have any
7 response to that hypothetical?

8 MS. CAPPAERT: I think it would depend on kind of what we
9 mean by distributed system. So if we're talking about just a distributed
10 system in the sense that there are multiple components in the system as
11 Blease -- as we were just talking about, Judge Courtenay --

12 JUDGE COURTENAY: Talking about and we've been talking
13 about this for an hour now.

14 MS. CAPPAERT: We've talked about distributed --

15 JUDGE COURTENAY: Both parties (CROSSTALK 00:51:50) --

16 MS. CAPPAERT: -- so as in terms of distributed versus -- I think
17 that a person of ordinary skill in the art wouldn't be motivated to look to
18 Weyman. I think there are too many inconsistencies and differences
19 between Weyman's functionality and Blease's functionality, and a person of
20 ordinary skill would look at what Blease is disclosing and implemented that
21 way as opposed to looking at Weyman's disclosures.

22 JUDGE COURTENAY: Thank you.

23 MS. CAPPAERT: If I can talk about the combination with Hu
24 briefly, I think, just at a very high level with respect to -- Petitioner relies on
25 Hu's link aggregation group and argues that it would be obvious to modify
26 Blease in view of Hu's disclosure of a link aggregation group. And I think

1 just the point that I wanted to note is that Blease is disclosing a single
2 physical connection. There isn't anything to aggregate to have a link
3 aggregation group. So we would submit that there would be no motivation
4 to look to Hu to incorporate a lag in Blease's architecture.

5 Moving on with respect to some of the specific limitations within
6 the challenge claims, so I think going ahead to Slide 20, which relates to the
7 specific limitations in Claims 1 and 11 that you are storing in each
8 processing unit a respective list. I would argue that Blease's mapping table
9 is not a list, and that's what, at a high level, Petitioner tries to -- or Petitioner
10 asserts that there's multicast forwarding information, and Blease is the list
11 limitation. But Blease discloses a mapping table, and Patent Owner submits
12 that is different from the list that is recited.

13 JUDGE ARBES: Counsel, can you explain that a bit more? I
14 mean, neither party has interpreted the term list. Why is Blease's mapping
15 table not a list as used in the claims?

16 MS. CAPPAERT: I think in the claims or at least Patent Owner's
17 view of how the claims are, a list is more of a simpler form at a very high
18 level. If I have a shopping list, I'm shopping for apples, bananas, and
19 oranges. But Blease's mapping table isn't just here's apples, bananas, and
20 oranges. It would be more of apples are coming in here, and they are found
21 in aisle number 12 in the second shelf, more of a mapping than is required
22 for I think just a list, a simplistic list that I think the '394 Patent is trying to
23 -- is at the heart of the '394 Patent. But yes, I agree that neither party has
24 provided any specific instructions. But I think that Patent Owner or Patent
25 Owner's view is that list is more simplistic than the mapping table in Blease.

26 JUDGE ARBES: But limitation 1B says that the list has to

1 indicate two things: all of one or more multicast packet streams that are
2 permitted for forwarding by the network element, and two, which of the one
3 or more ports each multicast packet stream is permitted to be forwarded to.
4 In the combination the Petitioner has proposed with Weyman, why would
5 the mapping table not at least indicate those two things?

6 MS. CAPPAERT: So I think the mapping table includes aspects of
7 that. But I think that it kind of -- the purpose of the mapping table is
8 different than what is being recited or being required in those claims and the
9 purpose of the overarching list within the system and what is being looked at
10 in the '394 Patents claims of this distributed -- it goes back to kind of our
11 earlier part or earlier discussion with respect to the centralized decentralized
12 and the fact that the mapping table in Blease is focused on this centralized
13 system where you have one portion that is mapping all of the routing that
14 needs to occur. And in the '394 Patent, it's this distributed system where
15 you're figuring out where the stream is and which port it can go to. And so I
16 think there's just a fundamental difference between the two is that -- our
17 position.

18 With respect to another aspect of that, I think that Blease's -- how
19 the information regarding multicast packet streams and the updating of lists
20 is handled, we would submit that the combination also does not disclose that
21 element. Looking at Claim 1, you have going down from where Your Honor
22 was just looking at with respect to the lists, you have the receiving from a
23 client a request relating to reception of a given multicast packet stream and
24 then distributing the request among the multiple processing units within the
25 network element and updating the respective list in each processing unit
26 responsibly to the request. We would submit that that Blease does not

1 update its mapping table in response to every stream that it receives. It's
2 only if there is a stream that it doesn't -- has a new stream that it would
3 update. So every request is not -- if you get a request for the same stream
4 multiple times, you're not going to be updating the list or the purported list
5 in the proposed combination.

6 JUDGE ARBES: But why do I need to do it every time, in your
7 view?

8 MS. CAPPAERT: I think that because the claim is tied to the
9 requests and updating the list for the request and because it -- the idea is that
10 you are receiving multiple requests that you're -- each list is indicating
11 receiving from the client a request, distributing the request among the
12 multiple processing units, and updating the list responsibly to the request. I
13 think that it's, when considered with respect to the overarching claim
14 limitation, that there are multiple requests that are coming in, and that's why
15 you have this list that is being updated. That the overarching scope of the
16 '394 Patent and this claim requires that it be updated for each request that
17 comes in, not just one.

18 JUDGE ARBES: But you would agree that the method can be
19 satisfied by a single request?

20 MS. CAPPAERT: Yes. I'm just going to go ahead some and talk
21 a little bit about Claims 8 and 18, which begin -- the discussion begins on
22 Slide 32 of Patent Owner slides. But it relates to this -- Petitioner's reliance
23 on Weyman and how an additional -- whether or not an additional unit is
24 added. Petitioner discussed Weyman's disclosure of -- sorry. One moment.
25 Talking about this default versus non-default aspect, and I just wanted to
26 provide a little bit of clarity that I think that Patent Owner's expert was

1 consistent in that the argument that it would -- that Weyman is talking about
2 non-default.

3 It doesn't make sense when viewed in the context of Weyman and
4 that it would be -- when a new card is held, Weyman's -- the disclosures in
5 Weyman are just talking about how the system processes and handles the
6 new unit being added. And similarly, I just wanted to point out with respect
7 to that, in Petitioner's Surreply, Petitioner has a portion in which it discusses,
8 well, even if Weyman doesn't disclose this expressly, a person of ordinary
9 skill in the art would have understood these disclosures.

10 And I think that the Patent Office has made clear that expert
11 testimony may not be used to supply a missing claim limitation such to the
12 extent the Petitioner is relying on just solely the knowledge of a person of
13 ordinary skill in the art for this limitation and to the extent Weyman doesn't
14 disclose it, which Patent Owner submits it doesn't, as was outlined in the
15 July 31st memo from the Patent Office. Petitioner should not be allowed to
16 just rely on expert testimony for this claim limitation.

17 JUDGE ARBES: The claim limitation you're referring to is the
18 initialization in --

19 MS. CAPPAERT: Yes.

20 JUDGE ARBES: -- limitation f.i?

21 MS. CAPPAERT: Yes. And then, with respect to the last portion
22 of Claims 8 and 18, the activating and deactivating aspect of claims -- of the
23 claims in which Petitioner points to Rao, I think that Rao doesn't deactivate
24 the system. I think that that -- I don't know that Petitioner disputes that.
25 And so I think that, as Patent Owner has explained, Rao doesn't disclose the
26 deactivation and activation steps that are an issue in Claims 8 and 18. And

1 so the combination of Blease, Weyman, and Rao fails to disclose those claim
2 limitations.

3 JUDGE ARBES: Counsel, what in your view is being activated in
4 Rao? It does use that term -- does not use the term deactivated. But what is
5 being activated in Rao?

6 MS. CAPPAERT: I think that in Rao, it is just -- it is bringing this
7 -- a device online. So it has your component in standby, and it is bringing
8 your component back into the system and kind of saying, okay. We've
9 delayed, which I would argue is different from a deactivation activation
10 phase. The delay is not an actual step, and you've waited a period of time
11 and then are moving on. But it is simply -- Rao is basically just saying,
12 okay. This component has failed, and now, your other one that was on
13 standby is being pulled in.

14 JUDGE ARBES: So during that procedure where the standby
15 RPM is being pulled in, what exactly is happening in Rao? There is
16 communication maintained with the master RPM, but there is no other
17 communication on other ports. At least that -- that's Petitioner's position.

18 MS. CAPPAERT: That is Petitioner's position. I think that Rao
19 -- I mean, I think that there is just a period of time while the system -- while
20 the standby RPM is coming into being the new RPM. But I would say that,
21 because it has consistently been running, there is no step of actually
22 activating it. It's more of kind of you're, for lack of a better term, tapping it
23 in and saying, okay. Now, you're the active one. So active in the sense that
24 you had previously been in standby and are now in active mode. But it is
25 different from this deactivation and then activation of ports, as is recited in
26 the claim.

1 JUDGE ARBES: So activation or deactivation of the RPM as a
2 whole is different than activation or deactivation of individual ports to which
3 that is assigned?

4 MS. CAPPAERT: I would say, yes, that those are different. And I
5 think also that there just isn't any deactivation in Rao.

6 JUDGE ARBES: If we assume for the moment that Petitioner has
7 made a sufficient showing as to activation, does activation not imply that
8 there was deactivation at some point?

9 MS. CAPPAERT: I think, if you're looking at Rao, if you're
10 saying that Rao does disclose activation, Rao is also disclosed that the states
11 are constantly in -- if you're saying it is activated, some state between being
12 deactivated and activated in the sense that they are on, and they are in
13 standby mode. And so I would argue that is not necessarily a deactivated
14 state. That is, it's standby. It's neutral, I would say, and that you are doing
15 something active above that. But just because there is an activation step
16 does not ever mean -- does not mean that there has to be a complimentary
17 deactivation, especially a deactivation of the ports to which the new
18 processing unit is assigned, which is what's recited in the claim. If Your
19 Honors have no further questions, I'll reserve the rest of my time.

20 JUDGE ARBES: Just one moment, Counsel.

21 MR. MCKEOWN: Sure. So I'll just take a few minutes to hit a
22 few points. Just to answer the question of Judge Courtenay, why we have
23 Blease. We don't always know what Patent Owner's going to argue. Blease,
24 I think, tracks the IPTB embodiment of the '394 closer. I think it also has a
25 little more detail on the tables than Weyman. So that was why it's combined
26 with Weyman.

1 On the list issue, if I have a grocery list, and I put it in a
2 spreadsheet, and I add a column for tracking my budget and pricing, it's still
3 a grocery list. The table is just a formatted list. The claims don't require any
4 specific list format.

5 We've sort of talked over this distributed stuff again or enough, I
6 should say. But I just want to hit Figure 4 one more time to just emphasize
7 although these sentences are separated on the screen, they are three
8 sentences in a row. So when you talk about an architecture in Figure 4 not
9 being limiting and there being other options, and you call one of them
10 distributed, and there's only three architectures known, and you've got
11 centralized shown in the figure, distributed can't mean decentralized. And
12 patents are written for those of skill in the art. So the fact that the word
13 architecture is not used in every sentence there is not confusing to one of
14 skill in the art. In the context of talking about an architecture and using the
15 word distributed as pointed out in the brief, that meaning is very well known
16 and has numerous characteristics as Patent Owner's own expert has pointed
17 out.

18 There was also a question as to well, why use Weyman if Blease
19 teaches distributed routing? And the simple answer is, well, because
20 Weyman has the details. Just getting back to the point, this passage on
21 Petitioner Slide 4 is written for one of skill in the art. They certainly
22 understand what a distributed router is. But if I were to file that petition and
23 said, well, everybody knows what all these features are, I would not be
24 happy with the result. I don't think so. Weyman just shows the work of the
25 details of what the distributed --

26 JUDGE COURTENAY: Yes. Counselor --

1 MR. MCKEOWN: -- (CROSSTALK).

2 JUDGE COURTENAY: -- yes, Weyman has all the details. But
3 the person of ordinary skill in the art has no prior knowledge of the claimed
4 details.

5 MR. MCKEOWN: Well, I'm not sure I follow. So Blease is
6 teaching, well, this could be a distributed routing architecture. One of skill
7 in the art, understanding what a distributed routing architecture was or that
8 it's in existence would say, okay. I'll look at some prior art that shows a
9 distributed routing architecture, which would be Weyman.

10 So it's teaching that this can be expressed as a distributed routing
11 architecture, which were known. So if you were looking at this and just
12 trying to decide, well, do I want to implement this in centralized or
13 distributed? Maybe you're more familiar with centralized. Now, I can go to
14 Weyman and learn a little more about distributed. Maybe there's efficiencies
15 on both sides. Which one do I want to use?

16 But distributed architects were known. Blease teaches
17 implementing one, and Weyman gives you the additional details on how you
18 would distribute this, specifically the routing tables and the control.

19 JUDGE COURTENAY: But you would agree that the person of
20 ordinary skill in the art would have no prior knowledge of the '394 Patent's
21 description drawings, claims?

22 MR. MCKEOWN: Correct. Yeah --

23 JUDGE COURTENAY: Okay.

24 MR. MCKEOWN:-- so I'm talking about the perspective of Blease
25 in terms of the details not being there. There's no specific figure.

26 JUDGE COURTENAY: So what, in your view, is the strongest

1 motivation to modify Blease with Weyman?

2 MR. MCKEOWN: The teaching itself, which is you can
3 implement it as a distributed architecture. Blease is telling you, you can do
4 it that way. Even under the teaching suggestion motivation test, that would
5 meet even the stricter test. This is a known solution, and you have Blease
6 teaching you yes, you can do it that way.

7 JUDGE BOUDREAU: Patent Owner argued that Blease uses the
8 word distributed but doesn't say what is distributed. Can you address that
9 argument?

10 MR. MCKEOWN: Yeah. I would go back to the point I was
11 making earlier, that you have three sentences in a row here talking about an
12 architecture and the figure and the invention not being limited to that
13 architecture. And they say, oh, by the way, in another embodiment, it could
14 be distributed. And then, we know that distributed architectures were known
15 in the art. Weyman demonstrates that. We also know that there were only
16 three basic architectures because the Patent Owner's expert has said that. So
17 if you're illustrating centralized, and there could be another embodiment, and
18 you're calling it distributed, then you would look to a distributed
19 architecture.

20 JUDGE BOUDREAU: Patent Owner also argued that Blease
21 discloses a control unit that can be spread across IFCs but doesn't disclose a
22 control unit that can be copied across IFCs. And I --

23 MR. MCKEOWN: Well, that --

24 JUDGE BOUDREAU: -- asked Patent Owner's counsel about that
25 during her presentation. Can you respond --

26 MR. MCKEOWN: Yeah, that's ultimately --

1 JUDGE BOUDREAU: -- to those arguments?

2 MR. MCKEOWN: -- the same argument as -- that their expert
3 made, which is, well, I don't know what distributed means. It must mean
4 that I could -- I don't have to have a single processor in each card, which is
5 the hallmark of a distributed architecture. Maybe I have one processor over
6 here, and it's not in every card. But then that would be decentralized. And
7 whatever distributed means, it certainly doesn't mean decentralized.

8 So essentially, they're arguing that, well, I don't understand what
9 distributed means. It could mean decentralized. No, it can't. There's only
10 three architectures. If you say distributed, you mean distributed. Their
11 expert clearly understood that there's only three to choose from, and one of
12 them just happens to be called distributed. So again, patents are written for
13 persons of skill in the art. The record demonstrates that distributed
14 architecture was well known, especially in the context of when you're
15 talking about an architecture figure. And again, it couldn't be any clearer
16 when Patent Owner's expert told the patent office all about it three months
17 before he submitted his declaration claiming he was confused.

18 So it could not be clearer here that Blease teaches a distributed
19 routing environment. It does not provide those details just because these are
20 patents. They're not written to include every detail. Distributed routing
21 architectures were known. Weyman's the example. It's obvious to plug it in.

22 JUDGE BOUDREAU: Do Petitioner's arguments depend on the
23 control unit being copied across the IFCs as opposed to merely being spread
24 across the IFCs?

25 MR. MCKEOWN: I think their argument is that they believe
26 distributed means it could be spread without having a specific processor in

1 each card. And if you don't have a processor in each card, you don't have a
2 distributed architecture. Their expert has also said that in other parts of that
3 same reexam declaration, that one of the components of a distributed
4 architecture is a processor on each card. And so the argument becomes,
5 well, maybe there isn't a processor on each card. Maybe it's sort of just
6 spread around, and processors are sharing functionality. Well, that's
7 decentralized, and it doesn't say decentralized. It says distributed. And one
8 of skill in the art, again, even if the this were the least bit confusing, and I
9 would submit that it isn't, would certainly look at Weyman, which the very
10 title is a distributing routing architecture.

11 Just finally, on the activation deactivation thing, you can't activate
12 something that's not already deactivated, kind of. It's an up and down issue.
13 Can't turn something on unless it's off. So with respect to those aspects of
14 Claims 8 and 18, we would submit that teaching activation implies where
15 you're delaying activation that there is necessarily a deactivation. And if the
16 routing card is not accessible for performing the function that it's provided to
17 do, then it's not activated. The entire point of putting that card in there and
18 putting it on standby is we don't want it working until it has all of the
19 necessary routing tables, because we want the router to actually work as it's
20 designed. So, again, delaying that line card operation until the necessary
21 tables are populated, as pointed out by Rao, is obvious.

22 JUDGE COURTENAY: Counselor, so what is the specific
23 difference between standby mode and something that's deactivated?

24 MR. MCKEOWN: Well, standby is a form of deactivation. It
25 means that there's been at least some rudimentary preparation. It's powered
26 up. It's got some other aspect that allows you to get to activation faster.

1 JUDGE COURTENAY: Thank you.

2 MR. MCKEOWN: Yeah. Unless there's further questions, happy
3 to cede the remainder of my time.

4 JUDGE ARBES: Thank you.

5 MR. MCKEOWN: Thank you.

6 MS. CAPPAERT: Unless the Board has any further questions, I
7 have nothing further, Your Honors. Thank you.

8 JUDGE ARBES: Okay. That concludes the hearing for today.

9 We thank both parties, and we are adjourned.

10 (Whereupon, the above-entitled matter went off the record at 2:16
11 p.m.)

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PETITIONER:

Scott A. McKeown
Michael N. Rader
Victor Cheung
WOLF, GREENFIELD & SACKS, P.C.
smckeown-ptab@wolfgreenfield.com
mrader-ptab@wolfgreenfield.com
vcheung-ptab@wolfgreenfield.com

PATENT OWNER:

James R. Nuttall
Katherine D. Cappaert
Sadaf Misbah
STEPTOE LLP
jnuttall@steptoe.com
kcappaert@steptoe.com
sadaf.misbah2@gmail.com