

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

PORTSMOUTH NETWORK CORP.,
Patent Owner.

IPR2024-01450
Patent 7,596,088 B2

Record of Oral Hearing
Held: February 9, 2026

Before JUSTIN T. ARBES, CHARLES J. BOUDREAU, and
PETER D. SHAPIRO, *Administrative Patent Judges*.

IPR2024-01450
Patent 7,596,088 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

CALMANN J. CLEMENTS, ESQ.
THEODORE M. FOSTER, ESQ.
Haynes and Boone, LLP
6000 Headquarters Drive
Suite 200
Plano, TX 75024
(972) 739-6900
calmann.clements.ipr@haynesboone.com
theo.foster@haynesboone.com

ON BEHALF OF THE PATENT OWNER:

KATHERINE D. CAPPAERT, ESQ.
Steptoe LLP
1330 Connecticut Avenue NW
Washington, D.C. 20036
(202) 429-3000
kcappaert@steptoe.com

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P R O C E E D I N G S

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JUDGE ARBES: This is the oral hearing in Case IPR2024-01450, involving Patent 7,596,088.

Can Counsel please state your names for the record?

MR. CLEMENTS: My name is Calmann Clements, representing Petitioner, Cisco. With me here today is my colleague, Theo Foster.

JUDGE ARBES: Counsel for Patent Owner?

MS. CAPPAERT: Kate Cappaert, from Steptoe, representing Patent Owner, Portsmouth Network.

JUDGE ARBES: Thank you. Per the Trial Hearing Order, the parties each will 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 sur-rebuttal. 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 sur-rebuttal, responding to Petitioner's rebuttal arguments only.

One reminder before we begin, we have the parties' demonstratives and are able to view them on our screens. To ensure that the transcript is clear and everyone can follow along, please try to refer to your demonstratives by slide number. Any questions from the parties before we begin?

MR. CLEMENTS: No.

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

1 MR. CLEMENTS: I'll reserve 20 minutes for rebuttal, Your
2 Honor.

3 Good afternoon. My name is Calmann Clements, representing
4 Petitioner, Cisco Systems. I'll turn directly to Slide 2.

5 So there are three main points I want to talk about today. And the
6 first is that the prior art teaches the same bandwidth sharing technique that is
7 claimed in the '088 Patent.

8 Turning to Slide 3, the '088 Patent relates to selecting a candidate
9 route for a new connection. And as shown here, there are two potential
10 candidate routes for that new connection, between nodes A and E. The red
11 route goes clockwise through nodes A, B, C, and E. The blue route goes
12 counterclockwise through nodes A, D, C, and E.

13 Now, to determine which route is best, the '088 Patent takes into
14 account the ability to share bandwidth with an existing connection. And an
15 example of an existing - or one or more other connections is what is
16 claimed. An example of that is shown here in purple.

17 Turning to Slide 4, now, the ultimate goal here is to select the route
18 that will require the least amount of additional bandwidth reservation. So in
19 order to determine that, the system looks at the amount of additional
20 bandwidth that would have to be reserved along each segment in that route.
21 So for each segment, the system determines whether it needs to reserve new
22 additional bandwidth, or if you can share bandwidth with an existing
23 connection.

24 So let's take a look at the example here. So in segment AB, the -
25 the first candidate route requires 50 units of bandwidth, and the other
26 connection, which is shown in purple, has 100 units of bandwidth already
27 reserved. So in this case, the maximum amount required between this new

1 connection and the existing connection is 100. So no new additional
2 bandwidth needs to be reserved along that first segment. Now, along the
3 segment between B and C, there's no connection there to share with, so for
4 that new connection of 50 units of bandwidth, 50 new units of bandwidth
5 would have to be reserved.

6 Turning to Slide 5 - or sorry, turning to Slide 6, the prior art,
7 likewise, describes selecting between - or - apologies, I'm - going to Slide
8 5. So for the first candidate route, there's no need to reserve any additional
9 bandwidth along that segment AB because the new segment can share - can
10 share bandwidth with that segment. But for the second route, we have to
11 reserve 50 - or 50 units of bandwidth in both segments, segment AD and
12 segment DC. So because we're only reserving an additional 50 units of
13 bandwidth for the first route, the red route, that is the preferred route. And
14 so ultimately, that route becomes the selected route, and that's the route that
15 is actually established.

16 All right. Now turning to Slide 6 with the prior art. So the prior
17 art, likewise, describes selecting between different candidate routes to
18 provide an - for a new connection that is to be established. So Dziong,
19 shown here, we've got one candidate route shown in red that goes through
20 SRLG 3 and then SRLG 5, and then there's another candidate route shown in
21 blue that goes through SRLG 1, SRLG 2, and SRLG 5.

22 Now, for purposes of the example, we're going to focus on the
23 connections that use segment AB. And as we can see here, there's a solid
24 line that represents a primary path of 12 units of bandwidth. There are also
25 three dotted lines that represent protection paths.

26 JUDGE ARBES: Counsel, can I ask a - a few questions about
27 Figure 6A?

1 MR. CLEMENTS: Yes.

2 JUDGE ARBES: So my understanding is that the solid line that
3 you have colored orange in - on Slide 6, that is 15 units of bandwidth that is
4 being used for SRLG 4 on the link between A and D, right?

5 MR. CLEMENTS: Between A and D, yes.

6 JUDGE ARBES: Okay. And the protection path for that, the
7 dotted line in blue, from A, B, C, D, that is a path that would protect that 15
8 units, right?

9 MR. CLEMENTS: That's correct.

10 JUDGE ARBES: Okay. So I see your point, that is a candidate to
11 be an alternate path for what's in orange there. Why is the red candidate -
12 why is the red path a candidate to also be that connection between A and D?
13 Because that appears to me to be protecting a different 24 units of
14 bandwidth.

15 MR. CLEMENTS: So the connection between A and D the - is 15
16 units that it's looking to protect. And in this example, this is showing the
17 final setup of what it was actually - what was actually established. It's not
18 showing the potential routes that it could have considered. So when we're
19 identifying the potential candidate routes, we're looking at Dziong's overall
20 teachings to say, okay, when Dziong sets up this final picture that we're
21 looking at, here's the routes it could have considered.

22 So that red route - so you're correct. Right now, it doesn't show
23 that there's a connection established for that candidate route. We've
24 identified these two routes as possible candidate routes based on how
25 Dziong describes selecting candidate routes. But the picture itself is the
26 final setup where everything has already been - all the connections are
27 established.

1 JUDGE ARBES: Okay. So your point is not so much that it is
2 that specific dotted lines that are shown in red, but it's just a connection
3 between A, C, and D then?

4 MR. CLEMENTS: That's right. This what we're looking at is the
5 final setup of what was actually selected and chosen. It's not showing -
6 well, when we identify these candidate routes here, these are the potential
7 candidate routes that it could have considered before it actually selected one.

8 In this example, it ultimately selected the A, B, C, D route. That's
9 where the actual protection connection goes for that - for those 15 units that
10 we've identified in orange.

11 JUDGE ARBES: I see. So what is your best disclosure in Dziong
12 that in assessing different protection paths for the line in orange there, that
13 Dziong would have considered A, B, C, D, and also A, C, and D? That it -
14 that there are multiple - that these are different choices that could have been
15 - could have been picked?

16 What's your best disclosure in Dziong for that?

17 MR. CLEMENTS: So I would go back to the petition for the
18 limitation, I believe it's 1.2, where Dziong describes - or sorry, 1.1, where
19 it's talking about the candidate routes.

20 And this is where Dziong is - so it - it's calculated - so in that
21 first paragraph - or second paragraph under section 1.1, we explained that
22 Dziong provides a link detour path that's calculated using link state and link
23 state cost functions to determine the minimum cost detour path that takes
24 into account the link sharing capabilities. And so it's these detour paths that
25 Dziong is calculating, those are the candidate routes.

26 JUDGE ARBES: Okay. I think there may be some confusion
27 though, because on page 29 of the petition there, you referred to the

1 requested bandwidth of 15 units, and then again, on page 16 of the reply,
2 you say that there may be two candidate protection routes to protect a 15
3 megabits per second connection between nodes A and D.

4 What I'm perhaps maybe a bit confused about is that what you
5 show in red there is not protecting that 15 units of bandwidth. It's protecting
6 the 24.

7 MR. CLEMENTS: So - yeah, when - the thing that we're
8 showing in red is this theoretical possible candidate route that Dziong
9 considers. When you look at Dziong's teachings in general, it calculates all
10 these linked detour paths that could be considered. And so what we're
11 saying here is that you could establish a path between A and D, and then C
12 and D, even though Dziong doesn't illustrate that in this figure.

13 When it - when Dziong describes link detour - or calculating the
14 link detour path and the costs, those are all the different available paths.
15 And if we see - if we look at this figure here from A to D, there's two - we
16 can see that there's two different routes to get for a protection path -

17 JUDGE ARBES: Yes.

18 MR. CLEMENTS: - from A to D. You know, the main path is
19 just A to D. But if we're looking for a protection path, there's two options
20 here. There's the blue route, which goes all the way around the entire ring,
21 and then there's that red route which goes through the middle.

22 So turning to Slide 7. Dziong also describes considering
23 bandwidth sharing when selecting a candidate route, and this Figure 6B of
24 Dziong illustrates the various connections, both primary and protection, that
25 go through link AB. So link AB provides a protection path for segment AC
26 and segment CD, and these protection paths, 48 and 36, would provide 48
27 and 36 units prospectively.

1 Turning to Slide 8. And just like what is claimed in the '088
2 Patent, Dziong considers the maximum amount of bandwidth among certain
3 connections for a particular segment. So the RSRV-XC, that's the actual
4 amount of bandwidth that needs to be reserved on link AB to protect against
5 any one of these SRLG failures in the network, and it corresponds to the
6 maximum of the protection bandwidths required by each of these, SRLG 3,
7 SRLG 4, and SRLG 5, which all have protection paths going through link
8 AB.

9 And in Dziong's example, the potential new connection is 15 units
10 of bandwidth, and the maximum of that connection and all these other
11 connections is 48. So because these protection paths can share bandwidth,
12 Dziong is considering the total amount of bandwidth allocated for protection
13 to be the maximum of those respective connections, and that's what we have
14 identified as the total bandwidth allocated, which is that RSRV-XC.

15 JUDGE ARBES: Counsel, Patent Owner raised a point regarding
16 Dr. Olivier's testimony regarding this figure that an SRLG is not a
17 connection to be established. It's just an attribute that is assigned to a group
18 of links or ports. So what's shown in red on Slide 8 there, that is what needs
19 to be reserved on link AB to protect against a failure of SRLG 4, the link
20 between A to D, right?

21 MR. CLEMENTS: Yes. So when we say - when I'm saying
22 SRLG 4, I'm referring to that entire link, but there's multiple connections
23 that are on that link. So there's the protection connection and then there's the
24 - or the - there - there's the primary connection, but there's also the
25 protection connections.

26 So what we're looking at here when we talk about an SRLG
27 failure, it would be the failure of that - the primary connection on SRLG 4,

1 that 15 units.

2 JUDGE ARBES: Between A and D?

3 MR. CLEMENTS: Between A and D. That would have to go -
4 that would then have to be rerouted to that segment AB. And segment AB is
5 also providing protection for other units of bandwidth on the other
6 connection. So when it says 48, that's providing a protection connection for
7 link AC, I believe, the one that goes through the middle. And then the
8 SRLG 5, that's the connection between D and C that it's providing that.

9 JUDGE ARBES: I guess what - what's a bit confusing about how
10 you map it there, the portion in red that you have mapped to bandwidth
11 allocated to the new connection, that 15 units of bandwidth is what needs to
12 be covered to protect SRLG 4 between A and D. So it's the dotted line
13 around the circle from A, B, C, to D.

14 So what is the new connection exactly there?

15 MR. CLEMENTS: So in Dziong, Dziong illustrates it as if these
16 connections at all were all finally set up. But what we did in our petition is
17 we explained that, well, there was a time where one of these hadn't yet been
18 set up in this example of the SRLG - the 15 units of connections between A
19 and D.

20 So let's say that hadn't been set up yet. What would Dziong do to
21 set that up? Because Dziong walked through the process of doing all this
22 link calculation. And so assuming that that had not yet been set up, that's
23 what we've identified as the new connection. So we're looking to establish a
24 new connection, which is a protection path for link AD.

25 So the new connection would be the dotted line that goes around to
26 provide protection for the connection between link A - or between node A
27 and D.

1 JUDGE ARBES: And the one that is chosen is from A to B to C to
2 D then?

3 MR. CLEMENTS: That's correct.

4 JUDGE ARBES: Okay.

5 MR. CLEMENTS: So turning to Slide 10. As shown here,
6 Dziong also teaches the final limitation of the claim, which recites that the
7 new connection is established.

8 Turning to Slide 11. We move on to the first main point of
9 contention in this case, and that is the Patent Owner has disputed that
10 Dziong's linked detour paths teach the connections as claimed.

11 So turning to Slide 12. Patent Owner has argued in their Patent
12 Owner response that the claimed connections are working paths or primary
13 paths, or that they must be active connections rather than those for failure
14 protection.

15 So turning to Slide 13. We responded to this argument in our
16 Petitioner reply. We note that the interpretation of connection should at least
17 include connections that are intended for failure protection, and there are at
18 least two reasons why that is the case. First, through claim differentiation.
19 We can see here on the bottom left that Claim 5 says that the other
20 connections are established to protect one another against a failure.

21 And then the specification itself also explains that the new
22 connection may be set up to protect the existing connection against failure.
23 So because of that, the claim should be interpreted to include connections
24 that are established for protection, not - and are not limited to active
25 connections.

26 JUDGE ARBES: Well, Counsel, I don't think Patent Owner
27 disagrees with you on the first point, that it - they can be - they can have

1 the purpose of failure protection, but I believe Patent Owner's taking the
2 position that they need to be established connections.

3 MR. CLEMENTS: So that -

4 JUDGE ARBES: So what's your response to that?

5 MR. CLEMENTS: So that's correct.

6 So moving on to Slide 14. In their sur-reply, they've clarified their
7 argument on this. They say that they don't dispute that it's for failure
8 protection, but it must be an established connection rather than one that is
9 merely calculated but not actually set up.

10 And we don't dispute that the claim's required that the new
11 connection is eventually established. Indeed, the preamble says a method
12 for establishing a connection. And then the final limitation of the claim is
13 that those connections are eventually established.

14 So it's not - we don't necessarily dispute their position that the new
15 connection must be established at some point, but it doesn't distinguish the
16 prior art by pointing out that the claim to connections must be established
17 connections. That does not sufficiently distinguish Dziong, because Dziong
18 affirmatively teaches actually establishing these link detour paths.

19 And turning to Slide 15, we showed in our petition that Dziong's
20 link detour paths are indeed established. Dziong explicitly states that the
21 link detour paths are established here, that it says in that top quote, to
22 establish the primary path and link detour paths for the connection. And
23 then in that bottom quote, what we identified is Dziong even explains how
24 this is done, by sending a full setup message along the full link detour path.

25 So because these paths are actually established, they're not merely
26 calculated. They are -

27 JUDGE ARBES: Does that take place after failure?

1 MR. CLEMENTS: So the calculation step happens when we're
2 looking to decide which of these routes we want. That's the point where
3 we're still selecting them. But once we've selected a route, then they can be
4 established. Whether that's before failure or after failure, I don't think the
5 claims really limit it to either one. I'll also note that Dziong does teach
6 failure - or teach establishing the paths both before failure and in response
7 to a failure.

8 So turning to Slide 16. We move on to the second point of
9 contention, which is that Dziong's determination of linked detour paths
10 considers the total amount of bandwidth allocated for protection.

11 So turning to Slide 17. Patent Owner argues that the term
12 allocated means that the new connection or the other connections are active
13 established paths, and this argument relates to the previous argument that the
14 connections must be established.

15 But with this interpretation of allocation, Patent Owner attempts to
16 distinguish Dziong's link detour paths as merely reserved paths and not
17 allocated paths. And again, we disagree. Dziong is allocating bandwidth for
18 failure protection in the same way that the '088 Patent designates bandwidth
19 for failure protection.

20 Turning to Slide 18 -

21 JUDGE BOUDREAU: Counsel, the claim uses both terms
22 allocated and reserved, and I'm wondering if you can explain to us what your
23 understanding of the difference is between allocation and reservation -.

24 MR. CLEMENTS: So -

25 JUDGE BOUDREAU: - in the context of the '088 patent?

26 MR. CLEMENTS: Yeah. So there - in the '088 Patent, it seems
27 to be using the word - when it says the additional bandwidth reservation to

1 be allocated to the new connection, it seems to be suggesting that an
2 additional bandwidth reservation becomes an allocation upon success. In
3 other words, once it's - once you've officially reserved it, then it becomes
4 allocated.

5 When it - when the claim first uses the term allocated, we're still
6 in this calculation phase. It's still when we're trying to figure out which of
7 these candidate routes we're going to take. The route - the new connection
8 hasn't been established yet, but it's looking at the total bandwidth allocated.
9 Or in other words, the total amount of bandwidth that is reserved for
10 protection, or dedicated to protection. Or otherwise, off the table for any
11 other use.

12 It - it's looking at the total amount for that. It - the - when it uses
13 reservation, it looks at how much additional bandwidth would have to be
14 reserved. So the best answer I can give there is that it appears to be using
15 bandwidth reservation as the act of reserving it and the allocation as the
16 successful reservation, or the - you know, a completed reservation.

17 JUDGE BOUDREAU: So in the context of Dziong, would you
18 say that the routes that you've identified represent reservations, but not
19 necessarily allocations until - after the failure has been detected?

20 MR. CLEMENTS: I wouldn't characterize it that way. The routes
21 in Dziong are actually reserved and they're allocated because they're - they
22 relate to paths that are actually set up. It's not just - so there's the act of
23 reserving them, but then they're actually allocated because the paths are
24 actually set up. So I would say Dziong teaches both reservation and
25 allocation as they are used in the '088 Patent.

26 JUDGE BOUDREAU: Thank you. And is there any difference
27 then between an active connection as opposed to just a reserved - let me see

1 the term that was used - an established connection, that was the term that
2 Patent Owner used in the sur-reply.

3 Is there any distinction between an established connection and an
4 active connection?

5 MR. CLEMENTS: So the claims don't recite active connection.
6 But when it says as established connection, it's a path that actually exists. It
7 may not be active in the sense that it's a primary working path that's actually
8 using the bandwidth, but it's a path that exists that is set up and it - because
9 it's a protection path, its bandwidth is able to be shared. In other words, you
10 can have multiple paths - multiple protection paths that are sharing the same
11 designated set of bandwidth.

12 So like in the example we looked at in the '088 Patent, where
13 there's that other connection that has a hundred units of bandwidth, it's there
14 that can share its connection, because it's a protection path and not a - not an
15 active primary path, it can share its connection with the new protection path.

16 Similarly, in Dziong, when we look at the different SRLGs that are
17 set up, you have one that's 48, one that's 15, and one that's 36, these aren't all
18 added together. Instead, they - we look at the maximum amount of these
19 bandwidths that tells us the total amount of bandwidth that we need to
20 dedicate for protection for all of these connections, both the other claimed -
21 other connections and the new connection.

22 JUDGE BOUDREAU: So would you say, then, that as long as
23 there's a physical connection, that there's an established connection, even if
24 there isn't any data that's flowing over that connection?

25 MR. CLEMENTS: I think the system would have to know
26 somehow that there's a connection there. I wouldn't say just that there's
27 bandwidth available. But Dziong actually teaches establishing these link

1 detour paths with the setup message. So they are known in advance and that
2 would be a connection within the claim scope of the '088 Patent.

3 JUDGE BOUDREAU: Thank you.

4 JUDGE ARBES: Counsel, can I ask about Figure 4 of Dziong,
5 and specifically step 406 that recites, calculate LD paths for candidate
6 primary path? At that point in time, let's say we're trying to find different
7 potential LD paths for SRLG 4 and it's doing those calculations.

8 Those paths are not established at that point. We're just doing
9 calculations, right?

10 MR. CLEMENTS: At that point in Dziong, in Dziong's Figure 4,
11 yes, it is calculating the link detour paths for a candidate primary path along
12 with the protection path that go with that.

13 JUDGE ARBES: And then I'm going to select a primary path, and
14 that's going to have associated link detour path or paths?

15 MR. CLEMENTS: That's correct.

16 JUDGE ARBES: Okay. Based on the - on those calculations.
17 But that - the LD paths are not a - are not established connections at that
18 point?

19 MR. CLEMENTS: So for this particular connection, you know,
20 it's calculating LD paths for a candidate primary path. So in the example
21 that we've provided, the other connections have already been established.
22 The connections for SRLG 3 and SRLG 5 have already been established in
23 our example.

24 And if we were to apply this 406 step here for the new SRLG 4,
25 we're calculating the - we're calculating the primary path and the link detour
26 paths that go along with it. And at that time, the other connections have
27 been established. They've been set up. And so -

1 JUDGE ARBES: Those are other connections, but they're
2 protecting different things. They're not protecting SRLG 4?

3 MR. CLEMENTS: That's correct. They're protecting other things.
4 And so when we look at Figure 6A of - or 6B of Dziong, and we see those
5 bandwidth bars that are reserved for each of the SRLGs, those are indicating
6 that bandwidth has been reserved for each of those connections. So they're
7 established connections that it's referring to there.

8 JUDGE ARBES: I guess what I'm wondering about for this step
9 of performing the calculations, considering different potential LD paths, I
10 believe Patent Owner argues that there is no bandwidth that's actually
11 allocated to a connection there.

12 Patent Owner says it exists in a fluid state and can be shared
13 between connections in the event of a failure. That there is no actual
14 allocation at that point when I'm doing the calculations. Is that - why is that
15 wrong?

16 MR. CLEMENTS: So they're relying on a specific meaning of
17 allocation that is not supported in - by the '088 Patent. And so we can see
18 that there's - if we look at Figure 6B, we can see that there's available
19 bandwidth on that AV-XC line. So all this bandwidth that Dziong is
20 showing, this 48 units that has - it has reserved, it's got some that's
21 remaining, that available bandwidth.

22 So we know that this reserved bandwidth has already been taken
23 off the table. It's unavailable for use. It's not within that pool of available
24 bandwidth. It's actually been dedicated to the task of protection.

25 Whereas - so it - so if we look at the total capacity here, which is
26 96, it's got its own primary path that it shows on the far left of that 12 units
27 that it's dedicated to its primary path. It's got 48 that it has dedicated to

1 protection, and that's what we have identified as the total bandwidth
2 allocated. And then this available bandwidth here is everything else.

3 So this bandwidth that has been reserved, it is not just a pool of
4 available bandwidth. There's - there already is available bandwidth that is
5 the pool. What we're relying on is the reserved bandwidth, the - what it
6 says BR=48 or RSRV-XC.

7 JUDGE ARBES: Okay. So is it your position that everything that
8 is not taken up by either demand on that link or available is allocated then?

9 MR. CLEMENTS: It's allocated in the sense that the '088 Patent
10 uses it. We were looking at the total bandwidth that has been dedicated to
11 protection, so it's been allocated for use for protection. It - it's - there's
12 been no paths that have been established and set up.

13 They - they're computed, they're known in advance, they're off the
14 table for any other use. They're not just this pool of available bandwidth,
15 which there is that, but what we've identified is that RSRV-XC, which is
16 allocated for protection.

17 JUDGE ARBES: And that's not just reserved bandwidth, it's
18 allocated in your view?

19 MR. CLEMENTS: It's allocated in the sense that the '088 Patent
20 uses that term, yes.

21 So returning to Slide 20. Just kind of a sum up of everything we've
22 talked about, looking at Dziong's two figures together. We have a - we
23 have a primary path between link A and D, and there's a protection path that
24 goes through link AB.

25 And AB, there's a lot of connections there. We can see that, as we
26 just talked about, there's the primary connection that it has of 12 units, and it
27 has got three protection paths to protect the different connections through the

1 different SRLGs. And the - again, as - the total amount is 48 that has been
2 reserved or allocated for protection, and that teaches the total bandwidth
3 allocated as claimed.

4 And if there are no further questions, Your Honors, I'll reserve my
5 remaining time for rebuttal.

6 JUDGE ARBES: Thank you.

7 You may proceed. Would you like to reserve time for rebuttal?

8 MS. CAPPAERT: I'll reserve 15 minutes, Your Honor. Thank
9 you.

10 So I think starting with kind of the primary purpose and difference
11 between the '088 Patent and then the claim - or the prior art the Petitioner
12 asserts, I think is one of the main cruxes of what I think the dispute is
13 between the parties. And you heard Petitioner's Counsel get up and talk
14 about failure protection and failure protection, and the focus on failure
15 protection. And I agree that that's what the prior art is focused on.

16 Dziong and Sathyanath are focused on failure protection, but that's
17 not the crux of what the '088 Patent is focused on. Sure, the '088 Patent
18 envisions that you could have multiple connections, your new connection
19 and your existing connection, sharing a path and sharing allocation for the
20 purpose of failure protection. But the main goal of the '088 Patent is for
21 sharing bandwidth allocation between those two connections, the existing
22 connection and the new connection to minimize bandwidth consumption.

23 So I think there's kind of two main disputes between the parties,
24 and I want to start on Slide 4, talking about kind of the sharing bandwidth
25 and the fact that the '088 Patent is focused on sharing bandwidth between
26 existing connections.

27 And if you go to Slide 6 then in the demonstratives, and you look

1 at Claim 1, in the highlighted portion specifically, just drawing the board's
2 attention to the sharing definition specifying one or more other connections
3 which have respective bandwidth and are - which are permitted to share a
4 bandwidth allocation with the new connection.

5 So, again, you have your already existing other connections and
6 then your new connections, so two actual existing connections, and we'll get
7 into this with respect to reservations versus allocations. But I think that
8 there are differences and I think that paths that are theoretical, which is what
9 the prior art I would argue is focused on. Reservations for theoretical paths
10 are not actual established existing connections.

11 So going ahead to Slide 10 -

12 JUDGE ARBES: Counsel, one question before we move on. The
13 claim does say one or more other connections, not existing connections.
14 And I know that there is one dependent claim that I - dependent Claim 20
15 that actually does say the existing connection. So it appears that you're
16 asking us to read in existing connections there -

17 MS. CAPPAERT: I think that it's focusing on other connections in
18 the sense that there are actual connections that have allocated bandwidth or
19 bandwidth that's already been allocated to them as being what the
20 connection already is. So it's not just a reservation, it's an allocation.

21 And I think that if you look at the specification for the '088 Patent,
22 so for example, I think in column 5, in the paragraph that starts at line 4 and
23 then goes to 19, the '088 Patent talks about the new connection and what it's
24 sharing bandwidth with. And if you look at slide - or sorry, column 5, line
25 9, it says, In other words, shared bandwidth may be allocated simultaneously
26 to two or more connections, assuming that not all of those connections will
27 actually use all of the allocated bandwidth simultaneously.

1 So I think it's the idea that you have two connections and there had
2 - a bandwidth allocated to both of those connections is what the claim is
3 trying to focus on.

4 JUDGE ARBES: So if you have bandwidth allocated for a
5 connection, that's what makes it an existing connection or an established
6 connection?

7 MS. CAPPAERT: Or another connection. Like, I would say that
8 other connections in the Claim 1, for example, the one or more other
9 connections is a connection that already has bandwidth allocated to it.

10 JUDGE ARBES: What would you call a connection that does not
11 have bandwidth allocated for it yet? Is that a reservation?

12 MS. CAPPAERT: I mean, it could be a path. It could be - it's a
13 theoretical path, I would say. It's not actually a physical active connection.
14 So I would say there's a difference between kind of reserving and allocating,
15 and I - I'm trying to think of, like, in terms of - I've thought of a few
16 different ways as I was preparing for this in terms of kind of thinking of
17 allocation and reservation, and one of them is, like, if you're at a restaurant
18 and you have a table that's reserved, you know that at some point you're
19 going to have wait staff that have to wait on that table, but they're not
20 actually doing it at that point because there are no people there yet.

21 But if - once people get there, that table is now allocated and that
22 wait - the wait staff are actually having to interact with that table. As kind
23 of the difference between the theoretical, you have space that may be
24 reserved, but nothing is actually flowing through it in terms of kind of
25 consideration taking up actual bandwidth in the system as opposed to kind of
26 your theoretical.

27 JUDGE ARBES: But I can have a connection that has bandwidth

1 allocated and it's not being used, it's not active?

2 MS. CAPPAERT: Correct. But are there -

3 JUDGE ARBES: That's still an established connection, though?

4 MS. CAPPAERT: It - it's still an established connection, because
5 there's the understanding that bandwidth can flow through it if it wants to, as
6 opposed to - and I think looking at the prior art, I think Dziong focuses on
7 kind of your failure protection path.

8 Or Sathyanath, you have your failure protection path and that
9 second path, there's an idea that it could exist at some point, but it's not
10 actually activated until there is a failure. So while there is a path, you're not
11 actually going to have the flow of any data happening through that path until
12 it's formally activated.

13 JUDGE SHAPIRO: So Counsel, is there a -

14 JUDGE BOUDREAU: Counsel, what is the language in Claim 1
15 that you're relying on to say that there needs to be more than one established
16 connection at the outset?

17 MS. CAPPAERT: I think it -

18 JUDGE BOUDREAU: I'm looking at the first limitation of the
19 claim, identifying two or more candidate routes for a new connection having
20 requested bandwidth to be established. So that - to me, that sounds like as
21 though it's saying that the connections haven't been established yet and that
22 you're just identifying potential candidates for - to be established. That's the
23 literal language of the claim.

24 MS. CAPPAERT: And I think that those are - so that - the
25 limitation, Your Honor, that you just referred to as the establishing the two
26 or more candidate routes for that new connection. And then I think in the
27 next limitation, you have the sharing definition that specifies one or more

1 other connections that are going to share the app bandwidth allocation with
2 the new connection.

3 So you have your new connections that are being established,
4 which is discussed in your identifying two or more candidate routes for the
5 new connection, and then you're then looking at sharing definitions with the
6 one or more other connections, which we would argue are the existing
7 connections.

8 JUDGE BOUDREAU: But why doesn't that just mean that you
9 only need to have one established connection and that there are -

10 MS. CAPPAERT: I -

11 JUDGE BOUDREAU: - that the other connections are just
12 potential connections?

13 MS. CAPPAERT: So I think that it's - you - I would say - and if
14 I'm understanding the question correctly, you do only need to have one
15 existing or one already established connection when you're assessing what
16 your route is going to be for setting up your new connection.

17 JUDGE BOUDREAU: And if I understood correctly before, you
18 were saying that the prior art is focused on failure protection and that the
19 additional connections are merely theoretical at that point. But don't they
20 become non-theoretical once an actual failure occurs?

21 MS. CAPPAERT: They become non-theoretical once an actual
22 failure occurs, but I think that the prior art and the sharing of bandwidth that
23 Petitioner is relying on is sharing a - of bandwidth across the theoretical
24 connections as opposed to sharing a bandwidth between the already existing
25 connection and the new connection. That would go into effect once the
26 failure occurs. So it's a different sharing of bandwidth, but different
27 connections that are sharing bandwidth.

1 JUDGE SHAPIRO: So, Counsel, you would agree that in the prior
2 art, it would establish a connection once a failure occurs?

3 MS. CAPPAERT: I think that once a failure occurs, a connection
4 would be established. But I think the sharing that is occurring is different
5 from that, which is contemplated in the claims of the '088 Patent. Going
6 ahead to -

7 JUDGE BOUDREAU: Before you move on, Counsel, is there a
8 distinction between paths that are established as opposed to paths that are
9 active? I think that was a question that I asked Petitioner's Counsel before.

10 MS. CAPPAERT: I think that you can have an established path
11 that does not actually have data flowing through it. So if active means that
12 there is actually data flowing through that path at that given time, then I
13 think that there is a difference between an established connection and a -
14 and an active connection.

15 JUDGE BOUDREAU: And in the context of Dziong, do you
16 dispute that there's an established connection between - well, we'll just say
17 between the red path - the red path and the blue path that are in -

18 MS. CAPPAERT: I think that those are optional paths, but I think
19 that they're theoretical in the sense that they are not actually established
20 because no bandwidth has actually been allocated to them yet. There is a
21 reservation of bandwidth that could potentially be allocated to them in the -
22 to the extent that there is a failure that would warrant it, but it is not actually
23 an established connection until the bandwidth is actually allocated to one of
24 those paths.

25 JUDGE SHAPIRO: So, Counsel, to follow-up -

26 JUDGE BOUDREAU: So Counsel, referring to Figure 6A and
27 referring to the path between A and C, and the path going A, B, C, D. One

1 path is ABCD, the other path is ACD in Figure 6A. So your position is that
2 those are not established paths?

3 MS. CAPPAERT: I think that they are paths that are contemplated
4 in the system, but they are not paths that actually have bandwidth allocated
5 to them to make them a connection.

6 JUDGE BOUDREAU: But they're still existing paths though,
7 that's correct, right?

8 MS. CAPPAERT: They are existing paths and that they are paths
9 that are contemplated by Dziong as being optional paths should there be a
10 failure.

11 JUDGE BOUDREAU: But they're simply not active paths?

12 MS. CAPPAERT: They're not - they are not established
13 connections, I would say.

14 JUDGE SHAPIRO: So, Counselor, is it Patent Owner's position
15 that to be an established path, you have to have bandwidth allocated? Those
16 are coextensive?

17 MS. CAPPAERT: To be an established connection, yes. I would
18 say it's Patent Owner's position that you have to have bandwidth allocated,
19 and that - that's what's contemplated by the '088 Patent in terms of talking
20 about sharing bandwidth allocation between connections.

21 JUDGE SHAPIRO: And is there any difference between those
22 two? Can you have bandwidth allocated but not be an established path, or
23 those are basically synonymous?

24 MS. CAPPAERT: I don't know - I think that in the purposes that
25 we're talking about and with respect to distinguishing the '088 Patent from
26 the prior art, I think that you have your one or other connections, your new
27 connections, and you have bandwidth that you're allocating to both of those

1 and are contemplating the sharing of bandwidth between those two
2 connections, so you would need to have bandwidth allocated to both of those
3 connections. And I would argue that the prior art does not have that.

4 JUDGE ARBES: And so for those two terms, new connection and
5 other connections, the allocation of bandwidth for the new connection takes
6 place at the last step of establishing the new connection, right?

7 MS. CAPPAERT: Right. That's right.

8 JUDGE ARBES: And the allocation of bandwidth for the other
9 connections happened at some previous time?

10 MS. CAPPAERT: Happened at some previous point. And your
11 sharing definition is contemplating what path to choose, taking into
12 consideration the bandwidth that has already been allocated to that already
13 other connection and the bandwidth that needs to be allocated in the last step
14 of the claim.

15 JUDGE SHAPIRO: Counsel, one more question about this. If -
16 in Dziong, why - when a failure happens and then - as I think you
17 mentioned then, then the connection gets established, at that point, would -
18 wouldn't there be a sharing that the - a sharing definition that's looked at in
19 establishing that connection?

20 MS. CAPPAERT: I don't believe that there is, and I don't believe
21 that - that's the sharing definition that Petitioners have identified in their -
22 in the petition. I think that the sharing is contemplated in terms of thinking
23 about how much bandwidth needs to be reserved to cover failure protection,
24 but not actually sharing between your connection should one - when it -
25 should a failure occur when it actually goes into effect.

26 And I think that the prior art, I think if you look at Sathyanath, for
27 example, and I can - I believe it is in slide - give me one moment. Slides

1 21 and 22, in terms of talking about sharing and kind of what is the
2 established path and not an established path. I think that Sathyanath talks
3 about - on Slide 21, Sathyanath at paragraph 82 is talking about that you -
4 your established path physically occupies resources and doesn't allow their
5 sharing until they're released by deleting that optical path.

6 And if you look at Slide 22, and I apologize, there should be a
7 correction. The citation on Slide 22 should say Sathyanath at - and its
8 paragraph 60, not 82, but that excerpt is of paragraph 60, which talks about
9 how the protection bandwidth is reserved and not allocated, which allows for
10 sharing of the bandwidth.

11 So I think the prior art and what Petitioner is relying on is
12 contemplating sharing in a reservation idea of that you have this, and I -
13 Judge Arbes, you mentioned it as Patent Owner's expert and Patent Owner
14 have talked about, this fluid amount of bandwidth that can be shared across
15 different potential paths that may need to go into effect in case there is a
16 failure, but they are not actually allocated and the sharing definition isn't
17 contemplated when the failure occurs. It's already - it's with respect to the
18 sharing of that reserved bandwidth.

19 JUDGE ARBES: And is Sathyanath's use of the terms reservation
20 and allocation consistent with how the '088 Patent uses those terms, or is it
21 different?

22 MS. CAPPAERT: I would - I - Patent Owner's position is that it's
23 consistent. There's this difference between your reservation as being your
24 theoretical and your allocation as being your actual use. And with respect to
25 - I know that Patent Owner - and I don't have the slide in front of me, but I
26 know that - or sorry, Petitioner points to the RSVP-TE definition. But I
27 would argue that those two also talk about differences between reservation

1 and allocation.

2 So I think there are differences between the terms and that kind of
3 an amount that is reserved versus what is actually needed and used in -
4 when it actually goes into effect as being your difference between a
5 reservation and allocation.

6 JUDGE BOUDREAU: Counsel, I'm still trying to understand. In
7 Claim 1, is it your position that each of the candidate routes needs to be
8 allocated, as opposed to just reserved?

9 MS. CAPPAERT: It is the position that the new connection - so
10 the candidate routes do not have to be allocated when they are being
11 assessed to determine whether they will be the new connection, but their
12 bandwidth needs to be contemplated. And when the new connection is
13 established, that bandwidth would be allocated.

14 So you would have the sharing of bandwidth between that
15 whichever candidate route is chosen, which becomes the new connection,
16 and that the - that other connection that already had bandwidth allocated to
17 it. And that your sharing definition is contemplating the other connections
18 already allocated bandwidth, and then the bandwidth that would need to be
19 allocated for that new connection.

20 And that's what - that's the sharing and the math that's going on in
21 that determining step when you're figuring out which of your two or more
22 candidate routes is going to become your new connection.

23 JUDGE BOUDREAU: So it's not until the connection is
24 established that it needs to be allocated?

25 MS. CAPPAERT: Right.

26 JUDGE BOUDREAU: And it's not until the last step of the claim
27 that one of the candidate routes ends up being chosen and established,

1 correct?

2 MS. CAPPAERT: Correct. But it's contemplated, and I think that
3 the '088 Patent specification is it's contemplated that the - that allocation
4 and the sharing is between your already - that other connection that is
5 already existing and your new connection.

6 And I think just looking at kind of the prior art and just going to
7 Slide 17, I think that Dziong - like, it is not actually establishing those
8 connections. Dziong is calculating the potential paths that could, at some
9 point, be a connection if there's a failure, but it's not establishing, it's not
10 doing the allocation. It's that reservation.

11 And I think if you look at Slide 18, it's that idea if you look at kind
12 of you have different failure amounts for SRLG 3, SRLG 4, and SRLG 5,
13 but those established paths can occupy the same resource. So those - the
14 shared protection bandwidth isn't representing actual established paths. It's
15 representing a reservation of bandwidth that could, at some point, become a
16 path. But at one point - at that point, you would only have one path. You
17 wouldn't have multiple paths that were sharing that bandwidth.

18 JUDGE ARBES: So that - the time slot that you have circled in
19 red there, let's say that a failure occurs on SRLG 4, that 12 units of
20 bandwidth will only be allocated on link AB after that failure then?

21 MS. CAPPAERT: Correct.

22 JUDGE ARBES: So it's been reserved before the failure, but when
23 the failure occurs, that specific portion is now an allocation?

24 MS. CAPPAERT: Right. And it would only be allocated for AB
25 for SRLG 4. And I think that if you - the Dziong specification talks about
26 how it only envisions one SRLG failing at a time, and so that's how it's set
27 up. It's not - if multiple failed, this wouldn't work. So it's your - this

1 theoretical reservation of - you have a total amount that is being
2 contemplated that could be shared, but it's not actually allocated until there
3 is a failure.

4 JUDGE ARBES: Okay. And once it is allocated for that failure, it
5 can no longer protect against any failure on SRLG 3 or 5?

6 MS. CAPPAERT: Correct.

7 JUDGE ARBES: I see.

8 MS. CAPPAERT: Just Claim 4.

9 JUDGE SHAPIRO: Well, Counselor, if you had a situation where
10 SRLG 4 - and you had a - you had an SRLG 4 and an SLRG 5 failure,
11 wouldn't you have enough bandwidth to - for both of them to have
12 protection routes?

13 MS. CAPPAERT: You may have enough bandwidth for both of
14 them to have protection routes, but they wouldn't be using the same optical
15 path. I don't think that Dziong envisions what the paths would be in case
16 that happens. And I can find - I believe Dziong says that it only envisions
17 one - it is only anticipating that one SRLG fails at a given time.

18 And then I think just my one last point is - and if we - on Slide
19 26, in talking about the dependent claims, so 4, 11, and 20, Claim 4 requires
20 this new connection, and Petitioner points to SRLG 4 as being a new
21 connection. And we would just admit that an SRLG is - or SLRG is not a
22 new connection. It's an aggregate of link groups, so it's - you have a bunch
23 of links that share some same attribute.

24 You have several paths that all go through one common bridge.
25 And if that bridge failed, it would affect all of those paths, and - but that
26 would promulgate multiple other connections. It's not just a new
27 connection. So an SLRG itself is not a new connection.

1 And a person of ordinary skill would not think of an SRLG - or
2 SLRG, apologies, as being a new connection. Or being a connection at all,
3 really. It's really just an aggregate of link groups.

4 JUDGE ARBES: But the LD path that is protecting SRLG 4 is a
5 connection?

6 MS. CAPPAERT: The LD path is a connection, but the SLRG,
7 which I believe is what Petitioner points to for Claim 4 is not a connection.

8 If Your Honors have no further questions now, I'll reserve the rest
9 of my time.

10 JUDGE ARBES: Thank you.

11 MR. CLEMENTS: So just a couple things I want to note, Your
12 Honors. So Patent Owner has cited the Figure 4 of Dziong and the - and
13 alleged that Dziong only calculates but does not establish the paths. These
14 paths don't become established until they're actually activated upon a failure.

15 But that's not what Dziong is saying. So paragraph 48 of Dziong
16 explicitly states that these link detour paths are reserved and known in
17 advance of the failure. So when Dziong is reserving these paths and
18 establishing these linked detour paths, they are intended to be established
19 before there's a failure.

20 And in that figure of 6B of Dziong where we see all of the
21 different connections that are all sharing that same 48 units of bandwidth,
22 they are established paths - established connections before a failure occurs.

23 JUDGE ARBES: Counsel, does Dziong describe them anywhere
24 at that point as established path? Does he use the word established in that
25 context?

26 MR. CLEMENTS: It does talk about how these paths are
27 established. And so what we've cited to in our petition for both the preamble

1 and for limitation, the final limitation where it actually says establishing the
2 paths, we've cited to that paragraph, I believe it's paragraph 58, that
3 explicitly says establishing the link detour paths.

4 JUDGE ARBES: But that equates to the last limitation of the
5 claim, that you're - you have considered different potential connections.
6 You are establishing the new connection, you're picking one of them.

7 MR. CLEMENTS: That's correct.

8 JUDGE ARBES: Okay. What - assume for the moment that we
9 agree with Patent Owner that the other connections have to be established
10 connections. They have to have allocated bandwidth. Does Dziong disclose
11 that?

12 MR. CLEMENTS: So that same teaching there in paragraph 58 is
13 referring to the establishment of all of these linked detour paths. They're
14 eventually all established. What we've done with our mapping is given the
15 example where the other two have been set up first and then the protection
16 path for SRLG 4 is then established. In that case, the other ones are
17 established connections that are already - have already been set up.

18 JUDGE ARBES: What are the other ones?

19 MR. CLEMENTS: The other ones would be the protection paths
20 that provide protection for the connections through SRLG 3 and SRLG 5.

21 JUDGE ARBES: The protection paths for SRLG 3 and 5?

22 MR. CLEMENTS: For a connection through SRLG 3 or SRLG 5.

23 JUDGE ARBES: I'm sorry. When you say through an SRLG, can
24 you explain what you mean?

25 MR. CLEMENTS: I'm trying to distinguish that the SRLG is a -
26 the broad term to describe all of the connections there. So when we have a
27 protection path, it's not for the - it - it's for a specific demand or a specific

1 connection. This - like the solid line through AD, the 15 units of
2 bandwidth, there's a protection path for that and that's what's going through
3 link AB.

4 And that's what - when we say SRLG 4, what we're identifying is
5 that connection there. That primary connection is that we're providing
6 protection for.

7 JUDGE ARBES: Okay. But I thought SRLG 4, if we're referring
8 to it as a specific thing, it's the demand between A and D, the solid line, and
9 there is a dotted line that matches right up with that, that goes from A to B to
10 C to D. That is a protection path for SRLG 4.

11 MR. CLEMENTS: Yes. Protection for that 15 units, the solid line
12 in SRLG 4.

13 JUDGE ARBES: Okay. So are the other connections that you're
14 referring to, they are protection paths for SRLG 3 and SRLG 5? I believe
15 that's what you mapped it to in the petition.

16 MR. CLEMENTS: Yes. So more specifically, it's that 48 units of
17 bandwidth of SRLG 3 and that 36 units of bandwidth through SRLG 5.

18 JUDGE ARBES: And those have bandwidth allocated in your
19 view, not just reserved?

20 MR. CLEMENTS: Those protection paths along the link AB that
21 - when we're looking at Figure 6B, it's AB only. Those have been allocated
22 for protection.

23 And so with that term allocation, I also want to address the
24 distinction - the difference between how Sathyanath uses the term
25 bandwidth reservation and allocation, which is a little bit different than how
26 the '088 Patent uses it.

27 So Sathyanath, acting at a lexicographer, uses the term allocation

1 to refer to bandwidth that is then activated upon a failure. And if we look at
2 the clip that Patent Owner showed, it talks about how the - when it makes
3 that distinction, it explicitly says that it's talking about reserved bandwidth
4 so that sharing can be supported. In other words, if it's allocated after a
5 failure, sharing can no longer be supported because it's been activated.

6 And so while Sathyanath uses the terms that way, the '088 Patent
7 does not. In fact, the '088 Patent uses - when it uses the term total
8 bandwidth allocation, it's still contemplating that they're sharing going on.
9 And so Patent Owner's definition would exclude sharing, which would be
10 inappropriate for the claims of the '088 Patent.

11 I also want to note that, you know, Patent Owner has pointed to the
12 language in Sathyanath that describes establishing optical paths and how the
13 - that can preclude sharing. What Sathyanath is talking about in context
14 there is that when you're dealing with optical networks, there's a specific
15 consideration you have to be concerned with. That you're not establishing in
16 the sense that you're reserving the resources, because that would preclude
17 sharing. Instead, you're establishing them in the sense that would allow for
18 sharing.

19 And I'll also note that optical networks is not - I mean, the claims
20 aren't limited to optical networks. While the '088 Patent gives that as an
21 example that you can use for this type of thing, it's not in the claims. And
22 also, even if it were, Dziong explains that - you know, Dziong's example is
23 also optical networks, but Dziong also explains that its teachings can apply
24 to other types of networks, like electrical networks, and that's in paragraph
25 76 of Dziong.

26 JUDGE SHAPIRO: So Counsel, would you disagree then with
27 Counsel for Patent Owner that if SLRG 4 and 5 failed, that they could share

1 the - that there was - there would be enough bandwidth to establish two
2 protection paths?

3 MR. CLEMENTS: So in Dziong's example, it reserves 48 units
4 for protection. The two that you just mentioned, 4 and 5 are 15 and 36, that
5 would be more than 48. So it would be impossible for both of them to share,
6 because once they've been activated, they can't share anymore. And so -
7 and Dziong does contemplate that a system is designed for the event of one
8 failure, not multiple failures.

9 JUDGE ARBES: So it seems -

10 JUDGE SHAPIRO: So just to be clear, even if there was less
11 bandwidth required, it still would - Dziong only contemplates one
12 protection path being activated?

13 MR. CLEMENTS: That's correct. Not all.

14 JUDGE SHAPIRO: Okay.

15 MR. CLEMENTS: That's correct.

16 JUDGE ARBES: So it seems like when you are using the term
17 activated for a protection path, Patent Owner is viewing that as an
18 allocation?

19 MR. CLEMENTS: I think that's the distinction.

20 JUDGE ARBES: That's the dispute between the parties? Okay.

21 MR. CLEMENTS: The last point I want to address that Patent
22 Owner mentioned was in respect to Claim 4 and SRLG 4 being a new
23 connection. In our analysis and in the petition, when we say SRLG 4, we're
24 referring to the specific connection there, that 15 units of bandwidth, similar
25 with SRLG 3 and SRLG 5.

26 When we're identifying these - when we look at Dziong's Figure
27 6B and it shows the different bandwidths, it says SRLG 3 failure, SRLG 4

1 failure, and SRLG 5 failure, and then it shows the amount of bandwidth that
2 it's providing protection for, that's for the specific demand. It equates to the
3 primary path through SRLG 3 and SRLG 4.

4 So when we say new connection and talking about connections,
5 we're not talking about the entirety of the SRLG 3. We're talking about the
6 specific paths that those SRLGs represent in the context of Figure 6B of
7 Dziong.

8 And if there are no further questions from Your Honors, I'll yield
9 the remainder of my time. But I'm happy to answer any other questions you
10 may have.

11 JUDGE ARBES: I don't believe so. Thank you.

12 MR. CLEMENTS: Thank you, Your Honors.

13 MS. CAPPAERT: Your Honors, just very, very briefly. I just
14 wanted to make one point. And that point was with respect to the
15 establishing of a connection, I believe that Petitioner's Counsel pointed to
16 paragraph 58 of Dziong as talking about establishing a connection, and I just
17 wanted to make clear that in that paragraph of 58, it's talking about problems
18 with crankbacks.

19 And so the exact excerpt that's recited - or it - it's pulled from, it
20 says, A crankback is the failure to establish either a primary or protection
21 path based on the unavailability of resources that were anticipated to be
22 available. A crankback can occur, for example, during the reservation of
23 bandwidth along a calculated protection path for a link.

24 And then the sentence that Petitioner includes in its petition is the
25 next one that says, A source node may assume that bandwidth for a new
26 connection is available, and then start to signal to establish the primary path
27 and link detour paths for the connection. However, during the process of

1 establishing those paths, it might be found that one of the links along the
2 paths cannot support the required bandwidths. In that - this case, the paths
3 need to be ripped up and the signaling crankback to the originating source
4 node, which needs to try an alternative path.

5 So I would dispute that that is talking about Dziong actually
6 disclosing creating new connections. I think it's talking about issues with
7 respect to crankbacks in other systems.

8 JUDGE ARBES: Can I ask - let's assume a hypothetical from
9 Figure 6 of Dziong, where protection paths have been established for a
10 failure on SRLG 3, 4, and - 4 and 5. Those have already been established,
11 those particular paths, and now - actually, let me start over.

12 So protection paths have been established already for SRLG 3 and
13 5. Those paths exist, and now I'm trying to determine a protection path for
14 SRLG 4. Why would those not - why would those other paths not be other
15 connections? They have been - bandwidth has been allocated for them.
16 We've already gone through the process for those SRLGs.

17 Why would those not qualify as other connections at that point?

18 MS. CAPPAERT: I think if SRLG 3 and 5 already had paths that
19 were allocated to them, then they would be connections that were already
20 existing. But I don't think that that's what Dziong is thinking about in terms
21 of its disclosure, in terms of its failure protection path.

22 I think it - as Petitioner said, it's thinking about you had one
23 failure, not that you have SRLG 3, and 5, and 4. So in the hypothetical, you
24 could only have had one of those 3, 4, or 5, not all three of them.

25 JUDGE ARBES: Well, I can only protect against one at a time,
26 but is it wrong to read that as Petitioner is, that those protection paths for
27 other SRLGs may have already been established at some point in the future,

1 and now I'm just trying to determine one for SRLG 4?

2 MS. CAPPAERT: I think that that is reading Dziong out of
3 context and stretching its disclosures, Your Honor.

4 JUDGE ARBES: That paragraph 58 is not enough to -

5 MS. CAPPAERT: To -

6 JUDGE ARBES: - to say that?

7 MS. CAPPAERT: Right. I think that paragraph 58 is talking
8 about a different context and isn't enough.

9 JUDGE ARBES: And one last question, it - am I right to
10 understand the dispute between the parties, when Petitioner is using the
11 word activate for a connection, you believe that is the allocation?

12 MS. CAPPAERT: Yes.

13 JUDGE ARBES: Okay.

14 MS. CAPPAERT: That's correct. If there are no further questions,
15 thank you, Your Honors.

16 JUDGE ARBES: Thank you. That concludes the hearing for
17 today. We are adjourned.

18 (Whereupon, the above-entitled matter went off the record at 2:47
19 p.m.)

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Patent 7,596,088 B2

PETITIONER:

Theodore Foster
David McCombs
Eugene Goryunov
Mallika Dargan
Calmann Clements
HAYNES AND BOONE, LLP
ipr.theo.foster@haynesboone.com
david.mccombs.ipr@haynesboone.com
eugene.goryunov.ipr@haynesboone.com
mallika.dargan.ipr@haynesboone.com
calmann.clements.ipr@haynesboone.com

PATENT OWNER:

Richard Baker
NEW ENGLAND INTELLECTUAL PROPERTY, LLC
rbaker@newenglandip.com

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

Yehuda Binder
ORCKIT IP LLC
yehuda@maypatents.com