

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 CROWDSTRIKE, INC.,

6 Petitioner,

7 v.

8 GOSECURE, INC.,

9 Patent Owner.

10
11 Case IPR2025-00070

12 Patent 9,954,872

13
14 REMOTE VIDEOTAPED DEPOSITION OF

15 MARKUS JAKOBSSON, Ph.D.

16 November 11, 2025

17 9:02 a.m. to 12:17 p.m.

18 REPORTED BY ANITA KORNBURGER

19 REGISTERED PROFESSIONAL REPORTER

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A P P E A R A N C E S

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Appearing by videoconference on behalf of the
Patent Owner.

I N D E X

Examination by	Page
Mr. Peters.	5

E X H I B I T S

Exhibit No.	Description	Page	Identified
1001	'872 patent.	62	
1003	Declaration.	23	
1004	Capalik.	67	

(Original exhibits retained by Attorney Peters.)

R E Q U E S T S

(There were no requests made.)

1 TRANSCRIPT OF PROCEEDINGS

2 THE VIDEOGRAPHER: Here begins the remote
3 video deposition of Dr. Markus Jakobsson, in the
4 matter of CrowdStrike, Inc. versus GoSecure, Inc.,
5 in the United States Patent and Trademark Office,
6 before the Patent Trial and Appeal Board, case
7 number IPR 2025-00070.

8 Today's date is November 11, 2025.
9 The time on the video monitor is 9:02 a.m. Eastern
10 time.

11 The remote videographer today is
12 Vane Morrison representing Planet Depos.

13 All parties of this video
14 deposition are attending remotely.

15 Would counsel please voice identify
16 themselves and state whom they represent?

17 MR. HART: Paul Hart with Erise IP for
18 petitioner. With me today is Kevin Rongish, Nathan
19 Byers, and Miguel Gutierrez also from Erise.

20 MR. PETERS: Steven Peters from Cleary
21 Gottlieb Steen Hamilton on behalf of patent owner
22 CrowdStrike. Also with me today is David Hlavka,
23 also of Cleary.

24 today is Anita Kornburger representing Planet
25 Depos. The witness will now be sworn.

1 MARKUS JAKOBSSON, called as a witness
2 herein, having been first duly sworn on oath, was
3 examined and testified as follows:

4 E X A M I N A T I O N

5 BY MR. PETERS:

6 Q. Please state your full name for the
7 record.

8 A. My full name is Bjorn, B-J-O-R-N, Markus,
9 M-A-R-K-U-S, space Jakobsson, J-A-K-O-B-S-S-O-N.

10 Q. Good morning, Dr. Jakobsson. Where are
11 you this morning?

12 A. I'm in the MoFo offices on 55th Street in
13 New York City.

14 Q. Are you in a conference room?

15 A. Yes, a small one.

16 Q. Is anybody else in the conference room
17 with you?

18 A. No.

19 Q. Do you have -- so I assume you are
20 operating on a laptop this morning; is that right?

21 A. That is correct.

22 Q. Do you have any windows open on that
23 laptop besides this deposition window?

24 A. I do not.

25 Q. Do you have any materials related to this

1 case on that laptop?

2 A. Yes, I do. I mean, I have access to my
3 e-mails, but I -- I'm not going to open my e-mails.

4 Q. Do you have -- I believe before you were
5 sworn in you mentioned that you might have PDFs of
6 the record on that laptop; is that right?

7 A. No, I don't. I have three printed
8 documents here. It's Exhibit 101 -- sorry 1001,
9 1004, and 1003.

10 Q. Okay. Do you have any other devices with
11 you?

12 A. I do. I have my personal iPad which I'm
13 using as realtime. And I have nothing else open on
14 it.

15 Q. So you -- sorry. Go ahead.

16 A. And also I have my phone lying here, but
17 I'm not -- it's turned off. Or I should make sure.
18 I just turned off. Now it's turned off.

19 Q. Okay. Do you have any materials from
20 this case on your iPad?

21 A. Yes, I do. In using a document viewer, I
22 have the -- all the materials that I have been sent
23 from the law firm. But I'm not accessing those,
24 and I don't have -- I don't log in to that app on
25 which they're accessible.

1 Q. Okay. So when you say from the law firm,
2 are you referring to Erise?

3 A. Yes.

4 Q. Okay. Were there any materials that you
5 have access to that are not referred to in your
6 declaration?

7 A. There are lots of documents that are not
8 referred to in my declaration but which are not
9 relevant to the case. For example, those related
10 to other cases. I can't think of any document that
11 is not cited in my declaration and which is
12 relevant to the case that is on either one of the
13 devices.

14 Q. Okay. So if I need to share an exhibit
15 with you, I can put it in the chat and you'll be
16 able to open it up on the laptop?

17 A. Yes.

18 Q. Do you have any open channels of
19 communication with counsel right now?

20 A. No.

21 Q. You've been deposed before; correct?

22 A. I have.

23 Q. About how many times?

24 A. Between 75 and a hundred.

25 Q. Okay. So you understand the ground

1 rules.

2 Is there any reason that you cannot
3 testify truthfully today?

4 A. No.

5 Q. What is your understanding of why you're
6 being deposed today?

7 A. I have been retained as the expert by the
8 petitioner in the IPR proceedings related to the, I
9 think '832 patent, and one other patent that we're
10 not -- that is not included for this declaration
11 today.

12 Q. Okay. Did you do anything to prepare for
13 today's deposition?

14 A. I did.

15 Q. What did you do?

16 A. So for one thing, I reviewed my
17 declaration. I reviewed portions of the '872
18 patent. I spoke with counsel. I read opposing
19 expert's declaration, and I read portions of the
20 petition and the papers. I think they're referred
21 to as the papers related to the proceeding.

22 Q. Do you recall which papers you reviewed
23 off the top of your head?

24 A. I don't. I'm sorry.

25 Q. Did you speak with anybody besides

1 counsel in preparing for today's deposition?

2 A. No.

3 Q. Roughly how much time would you say you
4 put in in preparing for today's deposition?

5 A. Let me ask you first. Do you mean after
6 my declaration was filed?

7 Q. Yes.

8 A. On the order of 15 hours, I would say.
9 Maybe 20.

10 Q. Are you -- I know on your declaration you
11 wrote that you're a chief scientist at Artema Labs.
12 Is that still true?

13 A. That is still true.

14 Q. Okay. Did I say that correctly?

15 A. Yes.

16 Q. What does Artema Labs do?

17 A. It's a block chain company that is trying
18 to solve some of the open block chain problems that
19 we see as limiting the safety of and the
20 possibility to adopt technology in the block chain
21 space in market.

22 Q. How long have you been at Artema Labs?

23 A. I think approximately four-and-a-half
24 years.

25 Q. What are your responsibilities at Artema

1 Labs?

2 A. I lead a small team of researchers, and
3 we analyze -- we identify and analyze problems and
4 develop solutions to the extent that we can.

5 Q. I think in your CV -- and I believe you
6 have it with you -- but you mention that you manage
7 research product strategy and patent strategy for
8 Artema Labs; is that right?

9 A. That is correct.

10 Q. What do you mean by managing patent
11 strategy?

12 A. For one example, when we have developed a
13 technology, I determine whether we should file
14 expedited, whether we should file internationally
15 or only domestically. When we get an office
16 action, I work with the attorneys to determine how
17 to respond to the office action, and whether at
18 some point we should abandon it or we should file a
19 continuation.

20 Q. Are you a patent agent or attorney?

21 A. (Witness shakes head.)

22 Q. Sorry, could you answer verbally?

23 A. I said no.

24 Q. Okay. Sorry. Sometimes your one-word
25 answers aren't coming across the audio.

1 You were -- oh, you also mentioned
2 that you manage product strategy. What are Artema
3 Labs's products?

4 A. We have a collection of what's called
5 smart contracts that implement some of our
6 technology. I guide the decision-making of what
7 technology to productize. We have many ideas of
8 things that should be done. Some are more involved
9 to develop than others. And some are more
10 desirable to have developed. And so I am making
11 the assessments related to this to determine which
12 one should be prioritized.

13 Q. You were a professor for some time; is
14 that right?

15 A. Yes.

16 Q. Did CrowdStrike ever fund your research?

17 A. No.

18 Q. Have you ever consulted for CrowdStrike
19 outside of the present IPRs?

20 A. No.

21 Q. You were also chief scientist at
22 ByteDance; is that right?

23 A. That's correct.

24 Q. ByteDance is the parent company of
25 TikTok?

1 A. Yes.

2 Q. And you worked on security issues at
3 ByteDance?

4 A. I did, yes.

5 Q. Do you have any present relationship with
6 ByteDance?

7 A. I do not.

8 Q. You submitted four IPR declarations for
9 CrowdStrike against GoSecure; is that right?

10 A. Yes.

11 Q. All together, how much time did you
12 spend -- well, let me withdraw that.

13 Did you write those declarations?

14 A. I did not write each word, but the
15 opinions are mine. I wrote a whole lot of the
16 essence of it.

17 Q. How much time did you spend writing the
18 declaration in this case?

19 A. I'm sorry, that's hard for me to recall.
20 I would have to look at my billing sheets.

21 Q. Is it easier to recall how much time you
22 spent overall for all four IPR declarations?

23 A. Not really. I mean, it would be easier
24 if I -- if I had started with access to my billing
25 sheets, and then I could just take -- sum up all

1 the time there for all four and I would not have to
2 break it down by the task. But it's not -- I
3 cannot do either without access to my billing
4 sheets.

5 Q. You've written a lot of IPR declarations
6 in the past, haven't you?

7 A. A fair number, yes.

8 Q. About how much time do you usually put
9 into an IPR declaration?

10 A. It varies a lot. Some of them are
11 20 pages. I have had those that are 150. It's not
12 just the writing that takes time, though, but
13 sometimes the concepts are very thorny and requires
14 a lot of analysis. So I can't quite give a
15 generalized answer.

16 Q. For those declarations that are, say,
17 over a hundred pages, are you able to estimate how
18 much time you usually put into such an IPR
19 declaration?

20 A. No. It really depends on the difficulty
21 analysis, the number of prior art references to
22 review, and I would say, in general, the degree of
23 difficult to explain things in a way that can be
24 understood.

25 Q. So in the range of difficulties, where do

1 these four declarations fall?

2 MR. HART: Object to form.

3 THE WITNESS: I could not hear what Paul
4 said.

5 MR. HART: Oh. Object to form.

6 THE WITNESS: It's hard to assess. And
7 this is not something that I'm thinking actively of
8 as I'm working on it. I just know that some cases
9 are straightforward, and others are very difficult.
10 And I haven't really given much thought to where
11 this falls on the scale.

12 BY MR. PETERS:

13 Q. Did you spend more than ten hours working
14 on the IPR declaration that you submitted in this
15 case?

16 A. Most certainly, yes.

17 Q. More than a hundred hours?

18 A. No, I don't think so. I -- I would have
19 to look at my billing sheets, but I don't think
20 more than a hundred.

21 Q. More than 50?

22 A. That's hard to say.

23 Q. I believe that you wrote in your
24 declaration that you're charging \$800 an hour for
25 this case; is that correct?

1 A. If that is what it says, yes.

2 Q. Did you put more time into the
3 declaration for this case than you put into the
4 other three cases, the other three IPRs against
5 GoSecure?

6 A. There's a lot of common work, so they
7 relate to very similar subject matter. So there's
8 a large body of work that is for all of them. That
9 makes it hard for me to answer your question.

10 Q. So in your previous responses about how
11 much time you've put into this IPR declaration, you
12 said certainly more than ten. Is that including
13 the common work or not including the common work?

14 A. So it does not matter which one. Either
15 case is more than ten hours.

16 Q. You also mentioned that it's hard to say
17 whether you put in more than 50. Is that answer
18 including common work or not?

19 A. I did not think of that. I simply don't
20 know about 50.

21 Q. Okay. So even including -- sorry if I
22 interrupted you.

23 A. I'm -- I have not spent a lot of time
24 thinking how much time I've spent on the various
25 aspects and whether they're common or not. I can't

1 really answer that question.

2 Q. Okay. So just to be clear, whether or
3 not we're including common work or not, you're not
4 able to say whether you worked 50 hours on your
5 declaration in this case?

6 A. I don't know with sufficient precision
7 how many hours I worked on this and the others to
8 be able to tell you with precision, either with or
9 without the common portions, how much I've worked
10 on this particular one.

11 Q. How much precision could you provide?

12 A. I think as best -- the best I could do is
13 to say it's more than ten, it's less than a
14 hundred.

15 Q. You couldn't say it's more than 15?

16 A. I really -- I haven't thought much about
17 this, and I would feel uncomfortable speculating.
18 I think I would have to go and look at my billing
19 sheets in order to be sure before I answer.

20 Q. What does it mean to be attached to a
21 network?

22 MR. HART: Object to form.

23 THE WITNESS: I need to look at the
24 context for that. Do you have a particular place
25 in my declaration that you could refer me to?

1 BY MR. PETERS:

2 Q. Well, I just mean in general. You know,
3 as an expert, does just the phrase attached to a
4 network have a meaning outside the, say the
5 def -- the context of the patent?

6 MR. HART: Object to form. Object, lacks
7 foundation. Object, lacks relevance.

8 THE WITNESS: I haven't really given that
9 much thought whether it has a meaning in general.
10 It would depend on the context, I believe.

11 BY MR. PETERS:

12 Q. Okay. So attached to a network can have
13 different meanings depending on the context; is
14 that right?

15 A. That's not quite what I'm saying. I'm
16 saying it might have.

17 Q. What are some of those meanings that it
18 could have depending on context?

19 MR. HART: Same objections.

20 THE WITNESS: Maybe it would mean
21 connected to a network or associated with a
22 network. But it really depends on the setting, and
23 I'm only referring to in general.

24 BY MR. PETERS:

25 Q. Let me give you a little bit of context,

1 just 'cause I'd like to sort of explore the outer
2 scope of this term. Right now I'm on a laptop. My
3 laptop is connected to WiFi network. I'm also
4 using a headset, which it's kind of blurred out,
5 but it has a wire, a USB connection, to my laptop.

6 And my question is is my -- is my
7 wired headset connected to my WiFi -- sorry, let me
8 withdraw that.

9 Is my wired headset attached to my
10 WiFi network?

11 A. Are you asking in the context of the
12 terminology of the '782 patent, or in another
13 context?

14 Q. In the context of the ordinary usage of
15 the term "attached to a network" at the time of the
16 '872 patent.

17 MR. HART: Object to form. Lacks
18 relevance.

19 THE WITNESS: I haven't given this much
20 thought what it would mean in general beyond the
21 usage in the context of the '872 patent.

22 BY MR. PETERS:

23 Q. What about outside of the context of the
24 '872 patent?

25 MR. HART: Object to form. Lacks

1 relevance.

2 THE WITNESS: So I also haven't given it
3 any consideration whether in the context of the
4 other patent asserted, what in particular it means,
5 unless I forget about it and I actually have
6 mentioned it in my declaration.

7 If you mean outside all of the
8 work that we are -- in this case, I haven't quite
9 prepared for that question, and I would have to
10 give it some thought.

11 BY MR. PETERS:

12 Q. Understand. So sitting here today you
13 can't say whether my headset, which is connected
14 via USB to my laptop, is attached to my WiFi
15 network; is that right?

16 MR. HART: Same objections.

17 THE WITNESS: It probably depends on the
18 context. Because attached as used by a layman
19 without any context at all would typically mean
20 physically connected and -- but in computer science
21 and in the technology sphere in general, attached
22 might be ascribed different meanings depending on
23 the context. Well, actually --

24 BY MR. PETERS:

25 Q. Sure.

1 A. -- even in the physical,
2 non-computational world, the word attached could
3 have various meanings. I'm attached to my dog. It
4 doesn't mean that I'm physically connected to my
5 dog. It really depends on the context what words
6 mean.

7 Q. Understood. So in the context of, you
8 mentioned in the technology sphere and computer
9 science. What more context would you need to be
10 able to answer the question of whether my headset
11 is connected to my WiFi network?

12 MR. HART: Object to form. Lacks
13 relevance.

14 MR. PETERS: Sorry, I have to -- I messed
15 up the wording. I'm going to make you say the
16 objection again. I apologize. So I withdraw that
17 question.

18 BY MR. PETERS:

19 Q. In the context of the technology sphere
20 and computer scientists, what more context would
21 you need to be able to answer the question of
22 whether my headset is attached to my WiFi network?

23 MR. HART: Object to form. Lacks
24 relevance.

25 THE WITNESS: I haven't given that any

1 thought at this time.

2 BY MR. PETERS:

3 Q. So you don't know what information you
4 would need in order to make that assessment?

5 A. I would have to think about it.

6 Q. Okay.

7 A. The full context would be helpful.

8 Q. What more context do you need?

9 A. So, for example, if you say in the
10 context of this patent application, then I would
11 have to review the patent application and its
12 citations to prior art in order to understand how
13 they use the term and analyze what the meaning
14 would be so that I could answer your question.

15 Q. Is it fair to say that it's possible that
16 a person of ordinary skill in the art would say
17 that my headset is attached to my WiFi network in a
18 given context?

19 MR. HART: Object to form. Lacks
20 relevance.

21 THE WITNESS: I haven't -- I don't think
22 I have rendered an opinion about that. It would
23 probably depend on the context.

24 BY MR. PETERS:

25 Q. Well, that's what I'm trying to get at.

1 In what context would a person of ordinary skill in
2 the art say that my headset is attached to my WiFi
3 network?

4 MR. HART: Same objections.

5 THE WITNESS: I haven't thought about the
6 precise word -- definition of the word attached in
7 this context in general. And so I might be able to
8 come up with cases where it clearly is or is not
9 attached, but I would not be able to without
10 spending time to analyze what the boundaries are of
11 attached to a particular network, what the general
12 answer of this would be.

13 BY MR. PETERS:

14 Q. Have you spent any time analyzing the
15 meaning of attached to a network in the context of
16 the '872 patent?

17 A. I'm blanking on that right now. If I
18 did, and if the outcome of the analysis was of
19 relevance, I would have included it in the
20 declaration. But I don't have the declaration
21 memorized, and I can't recall one way or the other
22 sitting here today.

23 If you do have a particular portion of
24 my declaration where it is mentioned, I would like
25 to review that and the context in which I say it in

1 order to jog my recollection about this.

2 Q. Can you turn to paragraph 40 of your
3 declaration? And I'm going to just for the record,
4 the benefit of the court reporter, I'm going to
5 introduce what's already been marked as
6 Exhibit 1003 in this case into the chat.

7 A. I am looking at the hard copy of my
8 declaration as opposed to the version you put in
9 the chat.

10 Q. You mentioned -- I'm sorry. Go ahead.

11 A. You said paragraph 40; is that correct?

12 Q. That's right. You mentioned before you
13 were sworn in that the hard copy you have has the
14 page numbers cut off; is that right?

15 A. Yes.

16 Q. Okay. Well, I'm introducing a PDF which
17 you can open which could help you in case we end up
18 referring to page numbers.

19 A. Okay. So are you asking that I also open
20 it?

21 Q. It's up to you. You can use either one.
22 That's fine.

23 A. Okay.

24 Q. But if you have a problem with page
25 numbers, the PDF is there for you.

1 A. Okay. Thank you.

2 Q. Okay. Are you at paragraph 40 of your
3 declaration?

4 A. Yes.

5 Q. Now, in paragraph 40 you state, "I
6 understand the petition proposes the board adopt
7 the interpretation of 'association between the
8 activity source and the activity target' as the
9 action occurring between the activity source and
10 activity target." Do you see that?

11 A. Yes.

12 Q. And then you say, "Accordingly, I have
13 also adopted petitioner's interpretation." And
14 then you say, "I take no position as to which is
15 correct."

16 What is your understanding of
17 association between activity source and the
18 activity target as recited in the claims of the
19 '872 patent?

20 A. So as I mention here, I do not take a
21 position on it. I have simply adopted the -- the
22 petitioner's interpretation. And it's my
23 understanding that there has been an agreement
24 between the two parties as to the meaning of this
25 term, therefore, I have not had to determine this.

1 I have simply said it means the action that is
2 described in that context.

3 Q. So petitioner's counsel asked you to
4 apply the interpretation that they set forth, and
5 you have not done any analysis of what this phrase
6 means of your own; is that right?

7 MR. HART: Object to form.

8 THE WITNESS: I don't recall whether I
9 was spending time thinking about it, but I have no
10 reason to conclude the analysis of this since this
11 was resolved between the parties.

12 BY MR. PETERS:

13 Q. What's your basis for saying that this is
14 resolved between the parties?

15 A. Maybe I'm saying it wrong -- in an
16 incorrect way. I -- I believe that this is an
17 issue that no longer needs to be resolved. Either
18 the board ruled on this or the parties agreed or
19 another event occurred which made it not necessary
20 for me to render an opinion about what it would
21 mean. I don't recall which one. I just recall
22 that I was told I don't need to focus on this.

23 Q. So you haven't focused on this term;
24 right?

25 A. Not as of recently, at least.

1 Q. You at no point between the submission of
2 your declaration and today have you formed an
3 opinion as to the meaning of association between
4 the activity source and the activity target?

5 MR. HART: Object to form.

6 THE WITNESS: I haven't been asked to do
7 that. And apart from the work to prepare for the
8 deposition, I cannot recall having spent any
9 case -- any time on the case before my -- before
10 today and after the declaration was completed.

11 BY MR. PETERS:

12 Q. So you have no opinion about -- well,
13 let's step back.

14 Do you recall that in another
15 declaration you adopted a different interpretation
16 of association, or of the association limitation?

17 MR. HART: Object to form.

18 THE WITNESS: I don't remember this, no.
19 I have spent time recently reviewing the current
20 declaration and material related to that. But it
21 was a while ago that the other declarations were
22 completed and submitted. And I have not -- as time
23 went by, I have forgotten some of the details about
24 what I did with those. And I would have to review
25 those declarations again to jog my memory.

1 BY MR. PETERS:

2 Q. Sitting here today, are you able to
3 provide an opinion as to the meaning of association
4 between the activity source and the activity target
5 as are cited in the claims of the '872 patent?

6 A. So as my declaration said, at the time
7 that this was written, I'm not taking any position
8 on it. As we discussed, I haven't spent any time
9 on it since the declaration was submitted.

10 And I think you're asking me now
11 whether I could, right now, do the analysis. I
12 would have to -- if that is the question, I would
13 have to say that you have to give me time to
14 consider this. And I'm not sure what duration it
15 would be. This is not what I prepared for in terms
16 of the preparation for the deposition today.

17 Q. Understood. So you're not prepared to
18 offer an opinion as to the meaning of association
19 between the activity source and the activity target
20 right now?

21 A. Right now I don't think I could do that
22 without reviewing the context further and thinking
23 about this.

24 Q. Go to paragraph 34 of your declaration.

25 A. Give me a moment, please. Yes, I've

1 reviewed paragraph 34.

2 Q. And just for some context, I think you
3 probably flipped through, but you saw this is in
4 the section you've titled Overview and Legal
5 Standards, which is on page 27. Do you see that?

6 A. Yes. It starts with paragraph 29.

7 Q. That's right. Did you write this section
8 of your report?

9 A. No, this I did not write.

10 Q. Did you write paragraph 34?

11 A. No. But I understand it. I understand
12 all the paragraphs here.

13 Q. In paragraph 34 you say, "I also
14 understand that an obviousness determination
15 includes the considerations of various factors such
16 as" -- and skipping the first three, four -- "the
17 existence of secondary considerations such as
18 commercial success, long felt but unresolved needs,
19 failure of others," and so forth. Do you see that?

20 A. Yes, I do.

21 Q. Did you consider any what you call
22 secondary considerations when forming your opinions
23 in this declaration?

24 A. I don't think I wrote any paragraphs that
25 described this in the declaration. But if I'm

1 mistaken, and you're referring to those positions,
2 I would be able to correct myself and -- after
3 having reviewed those paragraphs.

4 Q. Okay. Why don't you look at paragraphs
5 36 and 37 and see if that helps.

6 A. I understand what it says here, but this
7 is just -- this -- this is not the analysis that
8 I'm referring to, whether it exists or not in my
9 declaration. This is my understanding of the --
10 the law as presented to me.

11 Q. You read paragraph 37?

12 A. Right.

13 Q. Okay. If you had considered secondary
14 considerations when forming your opinion in this
15 declaration, you would have put that consideration
16 into your declaration; is that right?

17 A. If I found it relevant, I believe I would
18 have.

19 Q. Do you recall considering any secondary
20 considerations that you deemed not to be relevant
21 to include in your declaration?

22 A. So I don't know how to say this in a
23 precise manner, but it is not my opinion that the
24 context -- that the content of the '872, at least
25 the claimed invention of it, is novel. So as for

1 E, bullet E, the unexpected results achieved by the
2 invention, I do not believe that they are
3 unexpected results achieved by the invention. I
4 believe those -- what is achieved by the invention
5 was already known. So I don't think it was an
6 invention in that sense. Not a novel one, at
7 least.

8 I don't think I expressly identify
9 this as a secondary consideration, but it
10 corresponds to my -- the opinions I render in my
11 declaration that I do not believe that there are
12 unexpected results that are achieved by the
13 invention.

14 Q. When you say you don't -- it is not your
15 opinion that the content of the '872 patent is
16 novel, are you saying that it is anticipated by
17 some prior art?

18 A. I think I describe in the declaration
19 various reasons why I do not believe that it's
20 novel. There are several grounds why this would
21 have been obvious. I don't recall now for certain,
22 but I think one of these grounds corresponds to an
23 anticipation argument. But I would have to review
24 this in more detail to verify that I'm not
25 mistaken.

1 Q. Now you say if you had -- if you had
2 considered secondary considerations that you found
3 relevant you would have put them in your
4 declaration; is that right? Do you recall that?

5 A. So I don't mean only technically
6 relevant, but relevant in the context of the
7 process. So I understand that, for example, the
8 patent owner hasn't described their understanding
9 of secondary considerations.

10 It is my understanding that I
11 can, if that is done, then render my opinion on
12 those statements. So in the absence of those
13 statements, it is not relevant to speculate since I
14 will be given an opportunity later, in my
15 understanding, to render an opinion and analyze
16 after analyzing their arguments.

17 Q. So essentially it was your understanding
18 that it's not your burden to construct a secondary
19 consideration and then sort of pre-vet them in your
20 declaration, your first declaration; is that fair?

21 A. That is my understanding. So I have not
22 been -- I have not been asked to render opinions
23 about these things.

24 Q. Have you formed any opinions about
25 secondary considerations before today?

1 MR. HART: Object to form.

2 THE WITNESS: Well, as I mentioned to
3 you, implicitly in my -- my declaration I am
4 arguing that they're not unexpected results that
5 are achieved, because I'm arguing that this was
6 either obvious or anticipated, and therefore the
7 results that were achieved, if any, are not
8 unexpected. They're known or would have been known
9 to a POSITA.

10 BY MR. PETERS:

11 Q. Now, you say implicitly you're arguing
12 that they're not unexpected results. Where do you
13 make that implicit argument that there's not
14 unexpected results?

15 A. So maybe I'm using the wrong terminology
16 now, and I apologize. So I'm looking at the E
17 portion here. That's secondary consideration
18 includes unexpected results achieved by the
19 invention. And I'm trying my best to answer your
20 question.

21 I haven't been asked to render
22 opinions related to the secondary considerations,
23 but as I'm being asked this question by you, I
24 realize that my declaration contains lots of
25 opinions and analysis describing why the '872

1 patent is not novel, why it is either anticipated
2 or would have been obvious. And therefore the way
3 I understand your question -- and maybe I'm
4 mistaken, and then I'm asking you for
5 clarification -- that is -- those opinions
6 correspond to a belief that they're not unexpected
7 results that are achieved, because I don't believe
8 that the claimed invention is novel.

9 Q. And just to clarify some terminology.
10 When you say novel, do you mean that it is
11 anticipated, full stop, or are you including
12 anticipated or obvious when you say not novel?

13 A. So of course you know I'm not an
14 attorney, and so I might use the word novel in the
15 wrong manner. So what -- what I should say instead
16 of talking about novelty is that I express a belief
17 of mine that the claimed invention is either
18 obvious or anticipated based on the prior art
19 described and referenced in this declaration.
20 And therefore I believe it's fair to say that it's
21 not unexpected.

22 But I would like to leave out the word
23 novel if that has specific legal meaning that I
24 would otherwise abuse.

25 Q. Yeah, that's fair in terms of the word

1 novel.

2 Is it fair to say if you had knowledge
3 of copying of the patent, that would have been a
4 relevant secondary consideration at the time you
5 wrote your declaration?

6 MR. HART: Object to form.

7 THE WITNESS: I would have to look at
8 this to make a determination.

9 BY MR. PETERS:

10 Q. So if you were given information about
11 copying, you would still make -- you would still
12 have to make some determination as to whether that
13 copying was relevant; is that right?

14 A. I would have to make a determination
15 that, first, whether I believe it's copying. I
16 haven't given much thought to what you're asking me
17 now. So I don't know the exact process I would
18 have gone through. And I can't say directly what
19 the outcome would have been.

20 But I could see that I would have
21 been -- if I've been given information like you
22 describe, I would have wanted to read it before I
23 render an opinion and think about it carefully to
24 make sure that I believe this is relevant.

25 Q. What do you mean by relevant in that

1 context?

2 A. So I'm not sure I understand when you're
3 saying the invention was copied, what it means if
4 in my belief it's already either anticipated or
5 obvious. I don't understand what you're exactly
6 referring to, because that seems to correspond
7 to me to there are public records that are
8 accessible by anybody. And it's not theft to
9 consider those public records, in my understanding,
10 and making -- making inventions that relate to
11 them.

12 So that's what I mean that I would
13 have to analyze the relevance of it to see whether,
14 first of all, this is copying, and second of all,
15 whether it's copying of this invention or if it is
16 basing knowledge on prior art that is prior art to
17 this invention and could have influenced this
18 invention, and as well as could have influenced the
19 work you're referring to.

20 That would not be copying the
21 invention. That would have been being influenced
22 by the history, the prior art. So in order to
23 answer your question, I would need more information
24 about what your question really means, and I would
25 also need more information about the context of

1 what you would call copying in order to even speak
2 about it in a meaningful way.

3 Q. Okay. And all of that, those factors,
4 the consideration that you just listed out, are you
5 saying you would have made a judgment on all of
6 those factors whether it's copying the invention or
7 copying the prior art or whether it's copying or
8 not, you would have made all of that judgment and
9 then decided not to put any of that in your
10 declaration?

11 MR. HART: Object to form.

12 THE WITNESS: So I think you're saying I
13 would have if I had been presented with the
14 secondary considerations; is that correct? It's a
15 hypothetical to me, because I don't think I have
16 been presented with the secondary considerations.
17 So I don't know for sure what I would have done.

18 I have tried to answer your
19 question as precise -- precise as I could, but I am
20 speculating when I'm answering it because I
21 don't -- I haven't been in that situation.

22 BY MR. PETERS:

23 Q. Well, I think this stems from your
24 previous answer of when I asked you if you would
25 put it in your report. You answered that you would

1 put it in your report if it's relevant. And I
2 guess what I'm trying to get to the bottom of is
3 whether, to you, relevant means it completely
4 changes your analysis or it's relevant to the
5 patentability of the claims, or something else.

6 I'm not asking if it would change your
7 mind. I'm not asking if you would conclude
8 therefore the claims are patentable. I'm trying to
9 figure out your threshold for what's relevant or
10 not to include in your declaration.

11 MR. HART: To the extent --

12 THE WITNESS: So --

13 MR. HART: -- the question, I object to
14 form.

15 THE WITNESS: So at the very -- the very
16 first consideration would be if it is relevant for
17 me to speak of it. And given the process as I
18 understand it, this is not something I would be
19 asked to opine on until secondary considerations
20 have been presented. So since they haven't, that
21 tells me it is not relevant for me to speak of
22 them.

23 If it becomes relevant for me to
24 speak of them because I have been presented with
25 information, then I would have to say is this

1 relevant in con -- technical context. Does it make
2 sense. Do I believe in it. I would not get to
3 those questions until it's time for me to start
4 considering it which, according to my
5 understanding, is not something that has happened
6 in this case.

7 BY MR. PETERS:

8 Q. You have not been shown any evidence of
9 copying in this case; is that right?

10 A. I am not aware of any evidence of copying
11 in this case. The most I could say is that I'm
12 aware of allegations related to, I think a board
13 member. But that has not been presented to me in
14 the form that I believe it requires me to render an
15 opinion, and I haven't been asked to render an
16 opinion. So I'm kind of focusing my efforts on
17 what I'm asked to render an opinion on. And this
18 has not been one of the things.

19 Q. So you say you're aware of allegations
20 related to a board member. Have you been shown any
21 documents that are not in the record of this case
22 in relation to those allegations?

23 A. No, I've not been shown any records at
24 all. I know of this very vaguely, that there is
25 some form of acrimony in the case. And that's

1 pretty much the amount of detail that I have. I
2 have not been shown documents.

3 MR. PETERS: Well, there's no acrimony
4 here between me and you, so why don't we -- why
5 don't we take a break, if that's all right.
6 Everybody on board with that? How about -- let's
7 go off the record.

8 THE VIDEOGRAPHER: We are going off the
9 record. The time is now 10:06 a.m.

10 (Break taken.)

11 THE VIDEOGRAPHER: Here begins media
12 number two. We are going back on the record. The
13 time is 10:20 a.m.

14 BY MR. PETERS:

15 Q. Welcome back, Dr. Jakobsson. During the
16 break did you speak with counsel?

17 A. I did, yes.

18 Q. Did you speak about the content of your
19 testimony?

20 A. No.

21 Q. Were you able to obtain coffee?

22 A. Actually, I settled for hot chocolate.

23 Q. Okay. Good substitute. Let's see.

24 Could you turn to paragraph 27 of your declaration?

25 A. Would you -- you said paragraph 27?

1 Q. That's correct.

2 A. Yes.

3 Q. In paragraph 27, the last sentence you
4 state, "In developing my opinions relating to the
5 '872 patent, I've considered the materials cited or
6 discussed herein, including those listed below."
7 Do you see that?

8 A. I do.

9 Q. Is the list you've provided below
10 paragraph 27 a comprehensive list of every document
11 you considered in forming your opinions in your
12 declaration?

13 A. To the best of my knowledge, yes, it is.

14 Q. Do you know who Dmitri Alperovitch is?

15 A. Would you spell the last name?

16 Q. I might be saying it wrong. It is
17 A-L-P-E-R-O-V-I-T-C-H.

18 A. I think I've heard the name, but I can't
19 place it. It's not somebody I know well for sure.

20 Q. Have you spoken with -- sorry. Go ahead.

21 A. Maybe I don't know the person at all, but
22 just it's somebody I've seen a publication from.
23 Nothing comes to mind when it comes to this name.

24 Q. Have you spoken with Dmitri Alperovitch
25 in relation to this case?

1 A. No.

2 Q. Are you aware that Mr. Alperovitch is a
3 co-founder of CrowdStrike?

4 A. No. I'm sorry.

5 Q. You're not aware that Mr. Alperovitch was
6 CTO at CrowdStrike?

7 A. I don't know the names of the people at
8 CrowdStrike.

9 Q. You don't know the names of anybody at
10 CrowdStrike?

11 A. If I were to think deeply, I think I
12 could recall the name of their in-house counsel,
13 but that's the extent to which I know somebody at
14 CrowdStrike.

15 Q. Are you aware that Mr. Alperovitch was a
16 member of GoSecure's board of directors at the time
17 he co-founded CrowdStrike?

18 MR. HART: Object to form. Relevance.

19 THE WITNESS: I am not aware of that.
20 But if he is the person that was on the board that
21 I heard of, I am -- I'm familiar with the story
22 vaguely. But I don't know any details, nor do I
23 know that it's him.

24 BY MR. PETERS:

25 Q. The story that you referred to, when did

1 you become aware or vaguely aware of that story?

2 A. I think it was last week in my call with
3 counsel.

4 Q. So it's fair to say that you didn't
5 consider Mr. Alperovitch's involvement with
6 GoSecure when forming the opinions in your
7 declaration?

8 A. I don't think I knew anything about it
9 before I was recently told that there is some -- I
10 think the word that was used acrimony in the
11 context of this case. And I think that took place
12 last week.

13 Q. Were you provided with any information
14 about the acrimony that is not included in the
15 record of this IPR?

16 A. Not more than I've told you.

17 Q. Do you know who Jeremy Gould is? Gould
18 is spelled G-O-U-L-D.

19 A. No, I don't.

20 Q. Do you have an opinion sitting here today
21 as to whether CrowdStrike copied the '872 patent?

22 A. I have not been given any materials that
23 allow me to render an opinion about that.

24 Q. Have you seen any evidence or materials
25 that CrowdStrike did not copy the '872 patent?

1 A. I have not rendered an opinion about
2 anything, and I haven't seen any material
3 suggesting one or the other. I -- I've simply
4 expressed the opinions in the declaration. That's
5 the extent of my involvement.

6 Q. Okay. So you haven't seen CrowdStrike's
7 source code; is that right?

8 A. I have not. This is an IPR; right? I
9 mean, yes, it is an IPR. I'm sorry for asking a
10 dumb question. I don't think -- normally I don't
11 think I get to see any source code in an IPR, and I
12 certainly have not in this case.

13 Q. Have you seen any design documents that
14 are not of record in this case from CrowdStrike?

15 A. No.

16 Q. Have you seen any communications between
17 CrowdStrike employees from, say, the 2013 to 2014
18 timeline?

19 A. No.

20 Q. Have you seen any sales numbers from
21 CrowdStrike?

22 A. No.

23 Q. Have you seen any customer surveys from
24 CrowdStrike?

25 A. Are you asking in the context of this

1 case? I could not hear your answer.

2 Q. Let me think about that for a second. So
3 yes, for the purpose of this case, have you seen
4 any confidential customer surveys from CrowdStrike?

5 A. I have not.

6 Q. Okay. Let's look at paragraph 40 of your
7 declaration. We've already looked at it once.
8 Let's go back to it.

9 A. Yes, I am at that page.

10 Q. At the last sentence of paragraph 40 you
11 say, "For all other claim language, I have applied
12 the plain and ordinary meaning as defined in the
13 preceding paragraph." Do you see that?

14 A. Yes.

15 Q. You don't offer construction of the term
16 computer system in this paragraph, paragraph 40; is
17 that right?

18 A. In paragraph 40 I do not say anything
19 about it.

20 Q. Okay. If you can go to paragraph 143.
21 Let me know when you're ready.

22 A. Let me review the paragraph, please.
23 Yes, I am there, and I reviewed the paragraph.

24 Q. Do you offer a claim construction of
25 computer system in paragraph 143?

1 A. No, I don't offer any claim construction
2 in paragraph 143.

3 Q. In paragraph 144, do you offer a claim
4 construction of computer system?

5 A. I do not.

6 Q. Okay. Going back to paragraph 143. Do
7 you -- in paragraph 143, you don't opine that an
8 IDS is part of a computer system that includes
9 protect network 504; is that right?

10 MR. HART: Object to form.

11 THE WITNESS: I don't explicitly say so.
12 But it is my opinion that it is part of a computer
13 system that includes the network 504.

14 BY MR. PETERS:

15 Q. But you didn't say that in paragraph 143;
16 right?

17 MR. HART: Object to form.

18 THE WITNESS: Let me check if any of the
19 sentences I say here indicates it. I do refer to
20 Figure 5 in the paragraph you're asking about. And
21 Figure 5 does show computer system that includes
22 both the IDS IPS system 542 and three example
23 protect the network devices 536.

24 BY MR. PETERS:

25 Q. Are you saying that your citation to

1 Figure 5 is an explicit expression of your opinion
2 that the IDS is part of a computer system that
3 includes network 504?

4 MR. HART: Object to form.

5 THE WITNESS: Not -- that's not what I'm
6 saying. I'm saying it's evident from Figure 5,
7 which I cite that it is. I'm trying to respond to
8 your question whether I cite the -- the computer
9 system that includes the IDS and the protected
10 network devices, and I refer to that.

11 BY MR. PETERS:

12 Q. So you just checked the realtime history,
13 is that right, when you're answering the question?

14 A. I wanted to make sure I'm using the same
15 terminology as you do.

16 Q. Well, my question that was pending was
17 you didn't say that in paragraph 143; right? And
18 the "that" is that it was your opinion that it is
19 part of a computer system; right? So my question
20 wasn't about citations. It's what you said. And
21 where did you say -- so I'll ask my question again.

22 Where did you state your opinion that
23 the IDS is part of a computer system that includes
24 network 504 in your declaration?

25 A. In my declaration? I would have to

1 remember the entire contents of my declaration to
2 answer that question. I don't know how to find the
3 things.

4 Q. So sitting here today you don't know
5 where you said that?

6 A. I would have to go through it and review
7 to answer this question.

8 Q. Did you say it in paragraph 143?

9 MR. HART: Object to form.

10 MR. PETERS: I'll withdraw that question.

11 BY MR. PETERS:

12 Q. Where in paragraph 143 did you state your
13 opinion that the IDS is part of a computer system
14 that includes the network 504?

15 A. Well, in the second sentence I say the
16 '872 patent explains that -- and here's a
17 quotation -- the decoy network device transmits its
18 fingerprint to the IDS IPS system 142 to prevent
19 future attacks that comprise the same or similar
20 activities on one or more protected devices 136.

21 So given my understanding that the IDS
22 IPS system 142 is connected to the protected
23 network devices 136, which is supported by
24 Figure 5, I do say that it's -- the fingerprint is
25 sent to the IDS IPS to protect the other network

1 devices. So obviously they are part of network
2 that communicates with each other, which is one
3 example of a computer system. So I think I do
4 express it in this sentence.

5 BY MR. PETERS:

6 Q. In the second sentence?

7 A. Among other places. At least I can look
8 if there are additional places where I express
9 this.

10 Q. In the second sentence you're just
11 quoting from the '872 patent; is that right?

12 A. Yes, I am. So in the second sentence, by
13 quoting from the patent, I'm expressing what I
14 believe the patent is disclosing. And it is
15 disclosing the IDS IPS system being con --
16 connected to the protected network devices. And in
17 looking at -- I realize now that the figure I
18 referred to is the wrong one. I need to see --

19 Q. What are you looking at now?

20 A. I'm looking at my declaration for the
21 figure that looks rather like the Figure 5 of
22 Capalik. Just a moment. So I -- in referring to
23 the '872 patent that describes the decoy device
24 transmitting the fingerprint to the IDS IPS system
25 142, that relates to Figure 1 of the '872 patent.

1 I think I mistakenly mentioned a similar looking
2 Capalik Figure 5 before.

3 So the -- in this second sentence I
4 refer to the description in the specs of the '872
5 that explains Figure 1. And in this figure,
6 it's -- you could see that the IDS IPS system is
7 part of the computer system that also has the
8 protected network device 136 one, 136 two, and 136
9 N. So I do believe I describe what you're asking
10 about.

11 Q. So by quoting the '872 patent you were
12 expressing your opinion that the IDS IPS system is
13 part of a computer system that includes the
14 protected network, is that what you're saying?

15 MR. HART: Objection.

16 THE WITNESS: That is not what I'm
17 saying. I'm saying I'm referring to it and looking
18 at Figure 1. It's plain to see that it's part of
19 the computer system. But I don't say it as, you
20 know, it's clearly part of the same computer
21 system. But that is not called out. Just like I
22 don't call out, you know, that these are computers
23 that probably consume electricity. It does not
24 need to be said.

25 BY MR. PETERS:

1 Q. Okay. So where do you equate -- I'll
2 withdraw that.

3 In your previous answer you seemed to
4 be equating the protected network with the -- what
5 you're calling the computer system; is that fair?

6 A. Just to make sure that I answer
7 correctly, when you said computer, when you said
8 protected network, are you referring to 104?

9 Q. I'm referring to 504, Figure 5 of
10 Capalik, which is what you cited to and what you
11 mentioned in your first answer.

12 A. So you're not asking -- okay. Just a
13 moment then.

14 Q. My question is about Capalik.

15 A. Okay.

16 Q. This question.

17 A. Okay. So would you say your question
18 again?

19 Q. Let me step back so the record's clear.
20 Your previous answers, you started talking about
21 Figure 5 of Capalik, and then you switched to
22 Figure 1 of the '872 patent; is that right?

23 A. I think I was unclear about what you were
24 asking. So it is clear -- it is correct what
25 you're saying, but I think I might have

1 misunderstood your question. That --

2 Q. Okay. Here's my question. Where in
3 paragraph 143 do you state your opinion that the
4 IDS or IPS in Figure 5 of Capalik is part of a
5 computer system that includes protected network
6 504?

7 MR. HART: Object to form.

8 BY MR. PETERS:

9 Q. Well, let me withdraw that then.

10 Is it your opinion -- I believe
11 earlier you said it is your opinion that the IDS
12 IPS in Figure 5 of Capalik is part of a computer
13 system that includes protected network 504; is that
14 right?

15 A. I would -- actually, what you're saying
16 sounds strange to me, because I believe that
17 protected computer network 504 includes the IDS IPS
18 542, and it also includes the protected network
19 devices 536. So you're kind of saying it as -- I'm
20 not sure what you're saying.

21 Q. Okay. Let me restate it. Is it your
22 opinion that the IDS IPS in Figure 5 of Capalik is
23 part of a computer system that includes protected
24 network 504?

25 A. Just to make sure for the record, so I

1 don't answer the incorrect question, I do believe
2 that the protected network computer 504 comprises
3 the IDS IPS system 542 and the protected network
4 devices 536. So they're all part of the computer
5 system.

6 Q. You previously testified -- I am quoting
7 verbatim -- "It is my opinion that it is part of a
8 computer system that includes the new network 504."
9 And the "it" is a reference to my question about
10 IDS.

11 So is there some confusion about your
12 previous answer to that question?

13 MR. HART: Object to form.

14 THE WITNESS: I think I misspoke. I
15 think when I said that, I meant to say that it's
16 part of a computer system. And this computer
17 system -- I'm restating it now, so -- to make it
18 clear -- is the protected computer network 504. So
19 it's a part of 504. And 504 also comprises
20 protected network device 536.

21 So it's included in the 504. The
22 IDS system 542 is included in the protected network
23 system 534, as is protected network device 536.

24 BY MR. PETERS:

25 Q. Right. So you're equating the computer

1 system with the protected computer network 504;
2 correct?

3 A. There are many computer systems here, and
4 that is one computer system. I'm trying to answer
5 your question. So a computer system is just one or
6 more computers or, I should say, one or more
7 computational devices. And there are many ways to
8 slice the figure to identify such computer systems.
9 And one of these ways is to look at the protected
10 computer network. That is one such system.

11 It's also true that it's a computer
12 system, when you include everything in Figure 5,
13 the decoy network 502 is a part of that even
14 broader computer system.

15 Q. So under that big box, if you put a big
16 box around everything in Figure 5 and call it a
17 computer system, when the decoy computer network is
18 sending a signature to the IDS library of
19 signatures, it's not sending it to a different
20 computer system, is it?

21 A. So if you call all of this the computer
22 system, then it does not send it to another
23 computer system. But when you -- when you identify
24 where it does send it, it does send it to the IDS,
25 which is part of the protected network computer

1 network 504. And now it sends it -- now that
2 thing sends it to another system. If 502 is one
3 system, D504 is another computer system. So they
4 are -- you could also include the attacker in a
5 system. But it's not relevant for the sending of
6 the information. So --

7 Q. Okay.

8 A. -- there are multiple systems here.
9 Many, many computer systems can be identified.

10 Q. And so in the scenario where -- actually,
11 you identified two scenarios, right, where you draw
12 a box around everything in Figure 5 except maybe
13 the attacker, that's a computer system. And then
14 second scenario is the decoy computer network 502
15 is one system, and the protected computer network
16 504 is a second system; is that right?

17 A. Those are two different ways of seeing
18 this. So --

19 Q. Okay.

20 A. -- in the second interpretation, which
21 they're both -- both of them are -- describe
22 computer system. The computer system is just a
23 collection of computational devices.

24 So in order to understand the claim
25 language, the decoy computer network 502 is one

1 computer system, and the protected computer network
2 504 is another computer system. And the first one,
3 502, sends it to the second one, 504. So when I
4 read the claims, I understand that they're talking
5 about the protected computer network 504 being the
6 computer system that receives something. That is
7 when I'm reading the claims of '872.

8 So of course '872 does not comprise
9 this figure. It comprises a very similar figure.
10 So this would be the analogous -- the analysis of
11 the analogous components and what they would have
12 done in the context of the claim of '872.

13 Q. So in those two scenarios that you laid
14 out, it's the same figure, right? It's just a
15 matter of where you're drawing the box that says
16 this is a computer system or not?

17 MR. HART: Object to form.

18 THE WITNESS: So the Figure one of '872
19 includes the firewall of router which, you know,
20 since that's a very common component, yeah, I would
21 probably have understood that there is a firewall
22 router in the context of Figure 5. But it is not
23 explicitly called out.

24 BY MR. PETERS:

25 Q. Okay. But in Figure 5, the two scenarios

1 you've laid out for a computer network -- sorry --
2 for a computer system and where to draw the boxes,
3 it's the same system in both of those scenarios;
4 right?

5 MR. HART: Object to form.

6 THE WITNESS: I'm sorry, I don't think I
7 understand your question.

8 BY MR. PETERS:

9 Q. Well, we agreed that you laid out two
10 scenarios of what a computer system could be and
11 where we draw the box; right? One, you said let's
12 draw a box around the whole thing. That's a
13 computer system. Do you recall that?

14 A. Yes.

15 Q. And you recall the second scenario where
16 you identified the decoy computer network as one
17 computer system and protected computer network 504
18 as a second computer system. Do you recall that?

19 MR. HART: Objection.

20 THE WITNESS: Yes, I do.

21 BY MR. PETERS:

22 Q. Both of those scenarios don't change
23 anything in Figure 5; right?

24 MR. HART: Object to form.

25 THE WITNESS: What do you mean by

1 changing things?

2 BY MR. PETERS:

3 Q. Okay. If you draw a box around both 504
4 and 502, one big box, does that change the
5 operation of 502?

6 MR. HART: Object to form.

7 THE WITNESS: It's really a matter of
8 identifying and naming things to understand what
9 the claim is saying. So think of computer system
10 as dough. You're baking a bread, right? So
11 computer system could be all of the dough. It's,
12 you know, every computer on earth, and the internet
13 and all the routers of the internet.

14 You could also cut off a piece of
15 your dough, you know, form a bun. That's the
16 computer system that comprises all the devices in
17 your home. Computer system is a little bit like
18 this dough. You could cut it in different places
19 and say identify this portion. This, of course, is
20 dough. This is a computer system. It comprises
21 one or more computational devices.

22 Now, some of these cuts make it
23 kind of hard to explain, you know. So, you know,
24 you can cut it in many, many ways, but you choose
25 to cut it in a way that you can express an opinion

1 or a functionality. Now, claim one expresses a
2 functionality where you say this piece of dough or
3 one piece of dough, and you say another piece of
4 dough. Now you're, I think, are asking about are
5 there different ways of cutting this dough. Yes,
6 there are.

7 But if you want to map the claim to
8 the situation, then the only relevant way of doing
9 it is a way that you could say well, the claim we
10 talk about this part doing that to this part. So
11 I'm saying let's cut the dough in this way. The
12 decoy computer network, of course, is a computer
13 system. It comprises one or more computational
14 devices.

15 The protected computer network 504
16 is another computer system. It comprises one or
17 more computational devices. Now I know from claim
18 one that one computer system sends information to
19 another computer system. In the context of Capalik
20 in Figure 5, that would correspond to the decoy
21 computer network 502 sends information to the
22 computer system that corresponds to the upper
23 portion of the figure.

24 So the future protected computer
25 network 504, which include the three protected

1 network devices 536, the IDS IPS system 542, and
2 also the 534 component, which is the part
3 of -- it's where the IDS IPS system stores
4 information. Stores --

5 BY MR. PETERS:

6 Q. Okay.

7 A. -- I should say.

8 Q. Sorry. I think I cut you off, the last
9 part. I'm sorry. You said stores some
10 information. Is that what you said?

11 A. Yeah. There might be other information
12 stored by the IDS IPS system. The library of
13 signatures is where some of the information is
14 stored.

15 Q. Okay. So if I understand you correctly,
16 you're saying we look at Figure 5, we can cut this
17 a number of ways, many different ways. So we look
18 to claim one of the '872 patent in order to guide
19 us into how we should cut figure five? Is that --

20 MR. HART: Object to form.

21 THE WITNESS: I am not trying to find a
22 construction that satisfy the claim. Rather, I'm
23 saying if the claim says this thing, what would
24 that have been in the context of Capalik.

25 So if I -- if you're thinking of

1 the -- for claim one, and you're pointing to
2 Figure 5 and you would say does this correspond to
3 claim one, I would say yes, because there is a
4 first computer system and it does send information
5 to a second computer system. And I would identify
6 what these computer systems are.

7 So if you're saying but call the
8 other parts computer system, well, those computer
9 system may not correspond to claim one, but the
10 ones I have identified do.

11 BY MR. PETERS:

12 Q. I believe you said a couple times that
13 computer system is just a collection of computing
14 devices; is that right?

15 A. I think I said of computational devices,
16 but we can say computing devices too. So by
17 computing devices or computational devices, I mean
18 things like a laptop, a phone, a router, you know,
19 smart watch, maybe. It -- the things that
20 typically have a processor and performs
21 computation.

22 And a collection of these is a system.
23 It might be a distributed system or it might be a
24 non-distributed system. Like if I hold up my smart
25 card, like the one that is on a credit card, that

1 in itself is a computer system, but I would
2 hesitate to call it a distributed computer system.
3 It could be part of distributed computer system.

4 So a distributed computer system could
5 have that as one part and a card reader as another
6 part. So a distributed computer system is just one
7 form of computer system. And here, when we're
8 looking at Figure 5, we can identify many such
9 computer systems.

10 Q. Is a laptop a computer system?

11 A. A POSITA would understand a laptop to be
12 a computer system. That is one example.

13 Q. Are all computational devices also
14 computer systems?

15 A. For the purpose of the '872, I have not
16 have to answer that question. I haven't rendered
17 an opinion about it. It's clear when I look at the
18 figures that, for example, Figure 1 of '872 has the
19 protected computer network 104. That is, to me,
20 obvious to be computer system.

21 You could also look at particular
22 entity like Client 101-1. That's another computer
23 system. Similarly, when I look at Figure 5 of
24 Capalik, you could say one computer system is
25 everything. Another computer system is 502. And

1 yet another one is 504.

2 So really computer system, if you
3 think about it as a collection of one or more
4 computational devices, it just describes that there
5 is computational capabilities and they might be
6 distributed, but they don't have to be.

7 Q. You mentioned Figure 1 of the '872
8 patent. I don't -- I don't think I've introduced
9 the '872 patent, so I'm just going to introduce
10 what's already been marked as Exhibit 1001 to this
11 proceeding into the chat. But you have a hard copy
12 of it; is that right?

13 A. Yes, I do.

14 Q. Let's take a look at Figure 1. You
15 mentioned that protected computer network is a
16 computer system 104, and that a protected
17 network -- actually, let me withdraw that.

18 You mentioned that protected computer
19 network is -- you said is obvious to be a computer
20 system, and that Client 101 is also a computer
21 system; is that right? Do you recall that?

22 A. Those are just two examples.

23 Q. Is everything in Figure 1 a computer
24 system, one big computer system?

25 A. Yes. A computer system has one or more

1 computational devices. And this describes things
2 with one or more computational devices.

3 Q. Where in the declaration did you provide
4 your opinion that a computer system is one or more
5 computational devices?

6 A. That's commonly understood. I don't
7 think I even said that.

8 Q. I think that's right.

9 A. This is where you would -- a person of
10 skill in the art would know that that's what a
11 computer system would mean. Just like he or she
12 would know what a computational device -- or could
13 at least understand examples of computational
14 devices.

15 Q. And you just expected the board to know
16 that without saying it?

17 A. I think --

18 MR. HART: Objection.

19 THE WITNESS: -- the board knows it. I
20 can't remember expectations, but this is what the
21 term is.

22 BY MR. PETERS:

23 Q. Sorry. Were you finished with your
24 answer?

25 A. Yes. I was just distracted by something

1 outside the window.

2 Q. Oh, sorry. I misunderstood the way you
3 said it. So I thought there was a hanging part of
4 your answer, but there's not.

5 So you thought you didn't have to
6 explain what a computer system is in your
7 declaration; is that right?

8 MR. HART: Object to form.

9 THE WITNESS: I don't remember explaining
10 what a computer system is, and I don't remember
11 thinking that there was a need to explain it. But
12 if I do describe computer systems in one place and
13 forget about it, I would like you to jog my
14 recollection of where I describe it. I don't think
15 it's a term that needs a definition since it's a
16 very well understood term.

17 BY MR. PETERS:

18 Q. Computer systems are well known in the
19 art; is that right?

20 MR. HART: I think there was a yes there
21 that didn't come through the microphone just in
22 case that's what's hanging up the process here.

23 BY MR. PETERS:

24 Q. Yeah, let me ask it again, 'cause it
25 didn't come through.

1 Computer systems are well known in the
2 art; is that right?

3 A. That is correct.

4 Q. I'm going to introduce what has
5 been -- well, it's paper 15 in this case. It is
6 the institution decision, the first one. I'm
7 dropping it into the chat so that you can open it.
8 If you could open it and go to page 15. And let me
9 know when you're ready.

10 Well, first, let's go to -- let's go
11 to the first page. Let me know when you're ready.

12 A. I have the first page of paper 15 in
13 front of me.

14 Q. Have you seen this document before?

15 A. Just a moment. I can't recall.

16 Q. Okay. Let's go to page 15. Maybe that
17 might help your recollection. And let's look at
18 the last paragraph on page 15.

19 A. I have read that now.

20 Q. Does that refresh your recollection as to
21 whether you've seen this document before?

22 A. I don't know whether I've seen this
23 document, but I understand that the board agreed
24 with the petitioner that a distributed computer
25 system is one form of a computer system, and I

1 agree with that view.

2 Q. So you're referring to the last sentence
3 on paragraph -- or on page 15 that spans page 15
4 and 16?

5 A. So what I'm saying is that I'm not
6 certain that I have read the institution decision,
7 or at least this part of it, but I do understand
8 that the board ruled that a distributed computer
9 system is one kind of computer system, which
10 is -- I agree with that opinion. And I -- I
11 understand what this paragraph is saying, I think.

12 Q. What's the difference between a
13 distributed computer system and a computer system?

14 A. A computer system is one or more
15 computational devices. A distributed computer
16 system would require a distribution. So one way of
17 saying it is it's two or more computational
18 devices. But I'm not making a definition now. I'm
19 just trying to explain the -- one way of
20 understanding it.

21 So since every distributed system,
22 which is two or more computational devices, is also
23 one or more computational devices, every
24 distributed system is also a computer system. So
25 in this case, distributed computer systems are

1 computer systems. You could think of it as
2 computer systems that are distributed.

3 Q. But if a computer system -- let's say you
4 have -- well, actually, let's just go to Capalik
5 Figure 5. And I'll introduce Exhibit 1004 into the
6 record.

7 A. I'm sorry, would you refresh my
8 recollection what paragraph we were at before when
9 I looked at Figure 5?

10 Q. 143, I believe.

11 A. Yes, now I found Figure 5.

12 Q. Okay. I'm introducing Exhibit 1004 into
13 the record. But you have a hard copy of that; is
14 that correct?

15 A. No, I don't. I'm looking now at
16 103 -- 1003. So that's my declaration, which cites
17 Figure 5. So I'm looking at the same figure as
18 you're talking about, but not at Capalik.

19 Q. But do you have Capalik handy?

20 A. I don't have it printed out. Is 1004,
21 you said, right?

22 Q. That's right.

23 A. Okay. I do. I'm so sorry.

24 Q. No problem.

25 A. And I've opened it to page 6 now, which

1 has Figure 5.

2 Q. Okay. In Figure 5 we have two computer
3 networks, 502 and 504; is that right?

4 A. Right.

5 Q. Focusing on 504, is 504 -- you previously
6 testified that 504 is a computer system; correct?

7 A. Yes.

8 Q. Is 504 a distributed computer system?
9 Let's assume that there's more than one protected
10 network device 536.

11 A. I would understand that to be a
12 distributed network -- distributed computer system.

13 Q. And if we put a box around this whole
14 thing, then 502 and 504 also form a distributed
15 computer system; is that right?

16 A. That is correct.

17 Q. Okay. So going back to the institution
18 decision, paper 15.

19 A. Yes.

20 Q. The last sentence, the board states on
21 page 15, "Logically, although the language
22 distributed computer system refers to a particular
23 type of computer system, the language computer
24 system omits the modifier distributed, and thus
25 refers to all types of computer systems, including

1 distributed computer systems." Do you see that?

2 Did you answer, sir?

3 A. Yes, I do see that.

4 Q. Okay. Do you agree with that statement
5 by the board?

6 A. Yes, I agree with the board's view that
7 the distributed computer system is one particular
8 kind of computer system. For example, we could say
9 a dark-haired human is a human. A light-haired
10 human is also human. We could break down humans as
11 general in light haired or dark haired, or we could
12 say male versus female humans.

13 This is just a way of qualifying
14 humans to speak of a particular type. Similarly, a
15 distributed computer system is a particular type of
16 computer system, one that has distribution.

17 MR. HART: Steve, if this is a good
18 stopping place, I could use a quick break.

19 MR. PETERS: Yeah, one more question.

20 BY MR. PETERS:

21 Q. When you say has distribution, you just
22 mean that it has two or more computing devices?

23 A. It depends, maybe a little bit, on the
24 context. But yes. So in some situations there
25 might be an assumption that a distributed computer

1 system has the form of communication at least
2 occasionally and temporarily between different
3 components of it.

4 So it -- when I say that it's -- a
5 distributed computer system is two or more
6 computational devices, there may, based on context,
7 be additional assumptions made. Now, I'm speaking
8 about it in general when I say this.

9 MR. PETERS: Okay. Let's go off the
10 record.

11 THE VIDEOGRAPHER: One moment. We are
12 going off the record. The time is 11:18 a.m.

13 (Break taken.)

14 THE VIDEOGRAPHER: We are back on the
15 record. The time is 11:32 a.m. Here begins media
16 three.

17 BY MR. PETERS:

18 Q. Welcome back, Dr. Jakobsson. Did you
19 talk to counsel during the break?

20 A. Just very briefly.

21 Q. Did you discuss the substance of your
22 testimony with him?

23 A. No, I did not.

24 Q. Can you open up the '872 patent? It's
25 Exhibit 1001.

1 A. What page?

2 Q. Go to claim one.

3 A. Just a minute. Okay.

4 Q. You're generally familiar with claim one
5 of the '872 patent; is that accurate?

6 A. I am familiar with it, yes.

7 Q. Can you focus on the transmitting to one
8 or more computer systems limitation that starts at
9 line 53 of column 19?

10 A. Yes.

11 Q. If I refer to everything between lines 53
12 and 59 as the transmitting limitation, would you
13 understand what I mean by that?

14 A. Yes, I would.

15 Q. Okay. Now that we've established that,
16 let's look at column 18, which is on the previous
17 page. And look at line 44.

18 A. Yes.

19 Q. So line 44 of the '872 patent, describes
20 the decoy network device transmits 644 the
21 fingerprint to one or more protected network
22 devices 136 to prevent future attacks that comprise
23 the same or similar activities as indicated by the
24 fingerprint. Do you see that?

25 A. I do see that.

1 Q. Do you agree that transmission of the
2 fingerprint to one or more protected network
3 devices 136 is an embodiment of the transmitting
4 limitation of claim one?

5 MR. HART: Object to form.

6 THE WITNESS: So I see two embodiments
7 here. One is the one that you referred to. And
8 then the second one that I see is the one right
9 below, where it says, "In some embodiments, the
10 decoy network device transmits the fingerprint to
11 the IDS IPS system 142 to prevent future attacks
12 that comprise the same or similar due to one or
13 more protected network devices 136."

14 So those two, I understand, are two
15 embodiments of the specification.

16 BY MR. PETERS:

17 Q. Are you aware of any other embodiments of
18 the transmitting limitation of claim one in the
19 '872 patent?

20 MR. HART: Object to form.

21 THE WITNESS: This is the only place I
22 remember seeing embodiments related to the
23 transmitting. But there may be other portions of
24 the specification that mention other embodiments
25 related to the transmitting. I just don't know it

1 by heart.

2 BY MR. PETERS:

3 Q. Okay. I'm introducing into the chat US
4 patent application publication number 2006/0136720.
5 Please open that up. And just go to the first
6 page, and let me know when you're ready.

7 A. I do see the publication you're referring
8 to.

9 Q. Do you recall if you considered this
10 document when forming your opinions in your
11 declaration? And you can refer to paragraph 27 of
12 your declaration.

13 A. I don't see this listed here. And I
14 don't remember one way or the other whether I've
15 seen this in the past.

16 Q. All right. You can set that aside. One
17 thing I wanted to follow up on was whether you have
18 formed an opinion that the '872 patent claims are
19 anticipated. And you said that you could, you
20 know, check in your declaration whether that's the
21 case.

22 So I'd like you to do that, just to
23 get a clear record of what your opinion is about
24 whether the claims are anticipated in terms of what
25 you put in your declaration. And just for your

1 reference, Dr. Jakobsson, I have dropped
2 Exhibit 1003 in the chat previously. I believe
3 it's searchable, just in case you feel the need to
4 use that.

5 A. So I understand that ground one is
6 an -- it says in the title, just above
7 paragraph 106, that it's an obviousness argument.
8 But I also understand that it's a single reference
9 argument. It seems only to -- there's not a
10 combination. So that's why I'm a little bit hazy,
11 because I don't -- as we've, of course, covered,
12 I'm not an attorney and I -- sometimes I need to
13 ask what exactly, in special cases like this, is it
14 obvious or is it anticipated.

15 So ground one is an obviousness
16 argument as to the statement there. But it has
17 only one reference, which is the prior art
18 reference Capalik. I don't know what to call it,
19 because on one hand it says obvious, and on the
20 other hand, my brain whispers that there's only one
21 reference, and therefore it's anticipation.

22 Would you please explain the terms to
23 me so I get it straight? And then I can answer
24 your question.

25 Q. Do you not have an understanding of what

1 obviousness means in the terms of a single
2 reference ground?

3 A. I'm blanking on it right now. I -- I
4 think it depends on an interpretation by a POSITA.
5 But I don't want to abuse the terminologies. And
6 since I can't recall right now exactly what the
7 formulation is, I'd like to ask you to jog my
8 recollection, and then I will be able to answer
9 your question in a better way.

10 Q. I'm not going to do that. So let's move
11 on.

12 You mentioned -- I don't know if you
13 recall. Previously we talked about copying. Do
14 you recall that?

15 A. I'm sorry, copying?

16 Q. Yeah.

17 A. Oh, yes, I remember you mentioning
18 copying.

19 Q. As a secondary consideration. And I
20 guess I just wanted to be clear of whether you
21 would view copying as relevant to your obviousness
22 analysis.

23 MR. HART: Object to form.

24 THE WITNESS: I don't think I understand
25 your question. Are you saying copying of something

1 that is public?

2 BY MR. PETERS:

3 Q. Copying of the claimed invention.

4 A. So --

5 MR. HART: Object -- object to form.

6 THE WITNESS: I don't know exactly what
7 it is that needs to have happened. But if you copy
8 something that is public, and not proprietary, then
9 I think -- no, I'm sorry, would you -- I'm not sure
10 I understand the question.

11 Copying of the claimed invention.
12 I know that copying of an invention is a secondary
13 consideration. For example, if somebody were to
14 reverse engineer something or learn how it worked
15 and produce the same thing, that would be an
16 indication that they thought it was a good idea to
17 do it, but it doesn't mean that that person who
18 supposedly copies is supporting a secondary
19 consideration argument, because the thing that is
20 being copied is the prior art.

21 Then you're in fact saying that
22 it's -- it's an obvious argument in itself, it
23 seems. That if the material exists in public at
24 the time of the priority date, then the material,
25 the claimed invention, would not be patentable

1 because it's not novel. So I think I need more
2 information about what you mean about copying in
3 order to understand how to answer.

4 BY MR. PETERS:

5 Q. Okay. Well, in paragraph 36 you refer to
6 deliberate copying of the invention by others. Do
7 you see that?

8 A. So that's where I'm speaking about one of
9 the ways of determining secondary considerations.

10 Q. Right. So would you agree that evidence
11 of deliberate copying of the invention by others is
12 at least relevant to your obviousness analysis?

13 MR. HART: Object to form. Lacks
14 foundation.

15 THE WITNESS: So it's a bit of a
16 hypothetical for me. And I haven't, I think,
17 rendered an opinion about this. But if the
18 material that has been copied is public, then that
19 supports the obviousness argument because it says
20 that the copied thing, meaning the prior art, if
21 that corresponds to the invention, then the
22 invention is not novel.

23 So I'm not sure that I'm
24 understanding your question. But it does seem to
25 have relevance if there is -- in other words, it

1 seems to be a way of saying there is prior art of
2 significant relevance, and that seems to affect the
3 obviousness argument, just that it is, in fact,
4 obvious.

5 But this is not something I have
6 rendered an opinion about, I think. If you think
7 I'm mistaken, I'd like to ask you to refer me to
8 the part of my declaration where I do.

9 BY MR. PETERS:

10 Q. Well, I'll refer you to the -- the
11 realtime feed which you have at your disposal. If
12 you could go back to my question and reread it, and
13 confirm that you don't see that I asked you
14 anything about the prior art. Is that right?

15 A. Would you -- in order for me to find it,
16 is that the question starting with "okay" and
17 ending in "see that"?

18 Q. No.

19 A. No. "Right. So you would agree"?

20 Q. Exactly.

21 A. So I say that it's relevant because --
22 I'm not sure what you mean by the copying of the
23 invention. If you copy something that corresponds
24 to the invention, and it corresponds to the
25 invention by being the same thing, more or less,

1 and it's prior art, now you're copying the prior
2 art. That supports that the -- there's an
3 obviousness argument to be made.

4 That -- that -- no, I -- if there's
5 prior art that could be copied, then that same
6 prior art could be relevant to the obvious argument
7 by being relevant prior art in the context that it
8 would describe a similar system. So that would
9 suggest, in that case, that the invention is not
10 novel, because the copy takes would be prior art
11 that would correspond to the same claimed things as
12 the invention has.

13 Q. What does prior art have anything to do
14 with my question, which is --

15 A. So when you're saying copy --

16 Q. Hold on. Let me finish my question.
17 Sorry.

18 What does prior art have anything do
19 with my question, which is: Is deliberate copying
20 of the invention by others relevant to your
21 obviousness opinion?

22 MR. HART: Object to form. Lacks
23 foundation.

24 THE WITNESS: So when you're saying the
25 invention, I am -- I want to say the claimed

1 invention. So that is the supposed invention. Now
2 it's -- in my view, it's an invention if it's not
3 novel. But if we just call whatever is in the
4 claims the invention, whether it's novel or not,
5 set that aside.

6 Now if there's a prior art
7 document -- for example, in the case of '872,
8 Capalik is prior art. So anyone who copies
9 Capalik, which is public at the time of the
10 priority date, would then -- if they were to
11 infringe, supposedly, the claims, then the same act
12 of copying seems to suggest that if they copy
13 something -- for simplicity, say that they copy
14 something verbatim, and that were to cause somebody
15 to say that there's an infringement, and the thing
16 that they copied verbatim is prior art, then that
17 same statement that there is an infringement is
18 saying it's an assertion that the prior art
19 anticipated, or is obvious, at least, or it would
20 not be a matter of copying.

21 So in that sense, if you copy the
22 prior art and that corresponds to the claim in the
23 patent, that copied thing, by the very nature of
24 copying something that is prior art and then being
25 accused of infringing, is a statement by the same

1 person who accuses that -- the prior art renders
2 obvious or anticipates.

3 Now I'm not an attorney, so I don't
4 know how this is ruled on, but I'm just looking at
5 it from a technical perspective about what the
6 information is. And this seems to -- to me, this
7 means that the copying in this case would indicate
8 obviousness. So that's the case where something in
9 the prior -- the prior art is being copied.

10 Now I haven't rendered an opinion
11 about this in general, and I'm just trying my best
12 to answer your question as you ask it. So if there
13 are other aspects of it that I don't consider, I
14 would have to think about that to see that I'm
15 missing -- I'm not missing anything.

16 BY MR. PETERS:

17 Q. So my question was about deliberate
18 copying of the invention by others, and you jumped
19 to copying the prior art. Is it -- have you formed
20 an opinion that you cannot copy the invention in,
21 let's say, claim one of the '872 patent without
22 copying Capalik?

23 MR. HART: Object to form.

24 THE WITNESS: That's not what I'm saying.
25 I break down the question into two options that I

1 see. One is where it's -- the copying is a prior
2 art, and the other one is where the copying is not
3 a prior art.

4 So I mentioned, I think, in one of
5 my efforts to answer your question, that if there's
6 a reverse engineering of something as an example.
7 You invent something, I reverse engineer it, and I
8 build something very similar, that is a secondary
9 consideration, as I understand the rules about
10 secondary consideration. That I found it
11 worthwhile to do exactly what you did, and
12 therefore made an attempt to copy you.

13 But this is just -- it's speaking
14 in general, since I don't -- I have not considered
15 this in the context of this declaration as far as I
16 recall.

17 BY MR. PETERS:

18 Q. Okay. So you haven't formed an opinion
19 as to whether it's possible to copy claim one of
20 the '872 patent without copying Capalik?

21 MR. HART: Object to form.

22 THE WITNESS: That's not what I'm saying.
23 I'm saying I have not rendered an opinion about
24 things related to copying since I have not been
25 asked to. There has been no need for me to think

1 of the secondary considerations since I understand
2 that no secondary considerations argument have been
3 made by the patent owner.

4 So all my answers here is in an
5 attempt to satisfy you by answering your questions,
6 and they're in general. It's not talking about my
7 declaration because I've not rendered an opinion
8 about it.

9 BY MR. PETERS:

10 Q. Right. I'm not sure if you understood my
11 question, so I'll re-ask it. My question was: So
12 you haven't formed an opinion as to whether it's
13 possible to copy claim one of the '872 patent
14 without copying Capalik?

15 MR. HART: Object to form. Lacks
16 foundation. Lacks relevance.

17 THE WITNESS: So I don't see it -- this
18 has not been relevant to my analysis. So I'll --
19 I'll -- with that disclaimer, I'll talk about a
20 general case. So there's a -- somebody files a
21 patent, and the patent issues. Another party reads
22 the patent and decides to make exactly what is
23 being claimed. They're copying now. That is
24 a secondary consideration in my understanding.
25 So -- and that would mean that they found it

1 valuable.

2 Now, I am not aware of, and I have
3 not analyzed any situation in this case, involving
4 copying, and I've not been asked to do that. I
5 have not seen evidence of copying. So it's hard
6 for me to render any opinion at all about what
7 happened in this case without that. So what I'm
8 speaking about now is hypothetical and in general.

9 BY MR. PETERS:

10 Q. Okay. And so in that case, when somebody
11 takes a patent of another party and decides to make
12 exactly what is being claimed, you said that's a
13 secondary consideration. So that would at least be
14 relevant to your obviousness analysis; right?

15 MR. HART: Object to form. Lacks
16 foundation.

17 THE WITNESS: So I'm giving you
18 hypothetical examples to try to answer your
19 question. I would have to think about exactly how
20 those things play in. I understand secondary
21 considerations are not black and white, but they
22 are supportive of a belief. And that claim, that
23 belief, needs to be stated crisply after analysis.

24 This is too hypothetical for me to
25 do without that foundation. So I cannot speak in

1 general in a way that is meaningful in this
2 context.

3 BY MR. PETERS:

4 Q. Just to be clear, you can't speak as to
5 whether direct copying of a patented invention
6 would be relevant to your obviousness analysis?

7 MR. HART: Object to form. Lacks
8 relevance. Lacks foundation. Steve, I'm not
9 entirely sure what we're doing here. He's
10 testified a hundred times that he hasn't rendered
11 any opinions about secondary considerations, and it
12 seems like you're asking him the same question as
13 to whether secondary considerations are generically
14 relevant to obviousness. That's more of a legal
15 question here.

16 So maybe I'm also missing the point
17 of this line of questions, but it seems like you
18 guys are just missing each other. And I'm not sure
19 what you're trying to get at that could possibly be
20 appropriate for cross-examination today.

21 MR. PETERS: That's fine. Your objection
22 is noted, and your improper speaking objection is,
23 well, improper. So let me repeat my question.

24 BY MR. PETERS:

25 Q. Just to be clear, you can't speak

1 today -- and if it's the case, it's fine -- you
2 can't speak today as to whether direct copying of a
3 patented invention would be relevant to -- relevant
4 to your obviousness analysis?

5 MR. HART: Object to form.

6 THE WITNESS: So it depends on what the
7 details are. And I've given you two cases, one
8 where the copying is -- for example, I read the
9 patents and I make exactly the same thing. That
10 seems like it could be relevant. And I would want
11 to ask counsel exactly how to interpret that from
12 the legal perspective I could render technical
13 opinion whether it was actually copying or not.

14 In the other case where the copying
15 is -- for example, would correspond to Capalik in
16 this case, in that kind of scenario, I think
17 the -- it supports an obviousness argument if the
18 copying of prior art is the -- corresponds to the
19 supposed infringement.

20 So I -- I would need more
21 information in order to make any meaningful
22 statement about how exactly copying would affect
23 the obviousness argument. I understand that
24 copying is one aspect that is considered in
25 secondary considerations. And I also understand

1 that the secondary considerations is something that
2 is a case presented. It's not entirely clear.

3 So for example, praise from others.
4 You know, if my wife praises me of a patent I file,
5 you would not assign much value to that. No
6 offense to my wife. On the other hand, if I get
7 some kind of prize from the IEEE for an invention,
8 that would be significant.

9 So just like that, I think all of
10 the aspects of secondary consideration comes down
11 to exactly what was it that happened and how
12 pertinent does that seem to the argument. And we
13 don't have that information here, or at least I
14 don't, so I have not been able to make any such
15 analysis.

16 I can just say I understand that if
17 such information were to be presented, I could
18 review it and see whether I would find it relevant.

19 MR. PETERS: Let's go off the record.

20 THE VIDEOGRAPHER: Sorry, I didn't know I
21 was muted. We are going off the record. The time
22 is 12:05 p.m.

23 (Break taken.)

24 THE VIDEOGRAPHER: We are going back on
25 the record. The time is 12:16 p.m.

1 BY MR. PETERS:

2 Q. Welcome back, Dr. Jakobsson. During the
3 break did you speak with your attorney about the
4 substance of your testimony?

5 A. I did not.

6 MR. PETERS: At this time I have no
7 further questions. I'll pass the witness.

8 THE WITNESS: Thank you.

9 MR. HART: No redirect from petitioner.

10 MR. PETERS: Okay. We're done. Let's go
11 off the record.

12 THE VIDEOGRAPHER: One moment. This
13 marks the end of the deposition of Dr. Markus
14 Jakobsson. We are going off the record at 12:17
15 p.m.

16 COURT REPORTER: Mr. Hart, did you want a
17 copy of the transcript?

18 MR. HART: Yeah, we'll just take a
19 regular time transcript whenever.

20

21

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24

25

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2
3 I, ANITA KORNBURGER, Registered Professional
4 Reporter and Notary Public in and for the State
5 of Wisconsin, do hereby certify:

6
7 That MARKUS JAKOBSSON, Ph.D., the witness
8 whose deposition is hereinbefore set forth, was
9 duly sworn by me before the commencement of such
10 deposition and that such deposition was taken
11 before me and is a true record of the testimony
12 given by such witness.

13
14 I further certify that the adverse party,
15 GOSECURE, INC., was represented by counsel at
16 the deposition.

17
18 I further certify that said deposition was
19 taken remotely, with all parties appearing by
20 videoconference, on November 11, 2025,
21 commencing at 9:02 a.m. and concluding at 12:17
22 p.m.

23
24 I further certify that the deposition of
25 MARKUS JAKOBSSON, Ph.D. was taken remotely,

1 with all parties appearing by videoconference,
2 on November 11, 2025, commencing at 9:02 a.m.
3 and concluding at 12:17 p.m.
4

5 I further certify the inspection, reading
6 and signing of said deposition was not waived
7 on the record by agreement of all parties.
8

9 I further certify that I am not related to
10 any of the parties to this action by blood or
11 marriage, I am not employed by or an attorney
12 to any of the parties to this action, and that
13 I am in no way interested, financially or
14 otherwise, in the outcome of this matter.
15

16 In witness whereof, I have hereunto set my
17 hand and affixed my seal of office at
18 Milwaukee, Wisconsin, this 20th day of
19 November, 2025.
20
21

22 *Anita Kornburger*
23 _____

24 ANITA KORNBURGER, RPR - Notary Public

25 My commission expires June 3, 2029.

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