

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORTINET, INC.,

Petitioner,

v.

NETSKOPE, INC.,

Patent Owner.

U.S. Patent No. 8,543,710

PTAB Case No. IPR2026-00042

PATENT OWNER'S PRELIMINARY RESPONSE

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EXHIBIT LIST

No.	Exhibit Description
Ex. 2001	Scheduling Order for <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG, pending in the United States District Court for the Northern District of California.
Ex. 2002	Fortinet Inc.'s Preliminary Invalidity Contentions in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG, pending in the United States District Court for the Northern District of California.
Ex. 2003	Sections of Fortinet Inc.'s Claim Charts in Preliminary Invalidity Contentions in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG, pending in the United States District Court for the Northern District of California.
Ex. 2004	Plot from Docket Navigator – Profile of Judge Haywood S. Gilliam Motion Success To Stay Pending IPR
Ex. 2005	Plots from Docket Navigator – Profile of Judge Haywood S. Gilliam Time to Milestones (annotated)
Ex. 2006	Website blog on Fortinet.com, titled: “Fortinet is Leading Innovation in the Security Industry with More Than 1,500 Patents” https://www.fortinet.com/blog/business-and-technology/fortinet-is-the-security-innovation-leader-more-than-1500-patents-either-awarded-or-pending
Ex. 2007	Website article on Wikipedia.org, titled: “Fortinet” https://en.wikipedia.org/wiki/Fortinet
NEW EXHIBITS	
Ex. 2008	Declaration of Dr. Angelos Stavrou
Ex. 2009	Annotated Roskind Reference and Comparison to Roskind Provisional

I. INTRODUCTION

Fortinet, Inc. (“Fortinet” or “Petitioner”) filed a petition for *Inter Partes* Review (“IPR”) against Claims 1-20 (“Challenged Claims”) of U.S. Patent No. 8,543,710 B2 (the “’710 patent”) based on six grounds. As this Patent Owner Preliminary Response shows, Petitioner has failed to show a reasonable likelihood that any of the Challenged Claims is invalid.

Petitioner’s invalidity grounds fall woefully short for many reasons that include failing to meet a threshold condition: key sections of the Roskind reference used in Grounds 1-2 and 5 are not prior art with respect to the Challenged Claims, and Petition’s other two references, Gleichauf and Short, were already considered by the Patent Office during the original examination of the ’710 patent.

Additionally, each of Petitioner’s grounds suffer from significant shortcomings and fail to anticipate or render obvious any of the Challenged Claims. The purported motivation to combine Roskind with Short or Gleichauf with Short are mere speculations that attempt to combine divergent teachings of Short with those in Roskind and Gleichauf.

The Petition is also substantively flawed because it fails to properly delineate its anticipation and obviousness arguments, and further impermissibly relies on the knowledge of a person of ordinary skill in the art (“POSITA”) for limitations that the Petition’s references fall short of disclosing or teaching.

Because the Petition has failed to demonstrate a reasonable likelihood that Petitioner would prevail in showing that any of the Challenged Claims is unpatentable, institution should be denied under 35 U.S.C. § 314.

II. OVERVIEW OF THE '710 PATENT AND THE PETITION'S REFERENCES

A. The '710 Patent

The '710 patent entitled "Method and System for Controlling Network Access," was filed on March 10, 2005, claiming priority to a provisional application filed March 10, 2004, and was issued on September 24, 2013. Ex. 1001, front page. Petitioner contends that the '710 patent is only entitled to the priority date of March 10, 2005. Petition, 11-12. While not agreeing with Petitioner, for the purposes of this Preliminary Response, Patent Owner assumes a priority date of March 10, 2005.

The '710 patent discloses systems and methods for controlling a network device's access to a network and for confining the device's access to a specific region on the network. *Id.*, Abstract, 1:59-60. In Figure, an environment for employing an embodiment of the patent is described with clients **1, 2, 3, 4** on a LAN network 10 that are connected to Internet 13 via gateway 11. *Id.*, 4:22-40. A gateway 11 network traffic is inspected to identify the traffic as associated with a client, and in "one embodiment the traffic can be directed to, assigned to, or associated with, one of or more sets of client-specific (or group-specific) access

rules. Each access rule set serves to specify “walled garden” 20, 30, 40; definitions that consists of specifically allowed locations in an outside network.” *Id.*, 4:46-62.

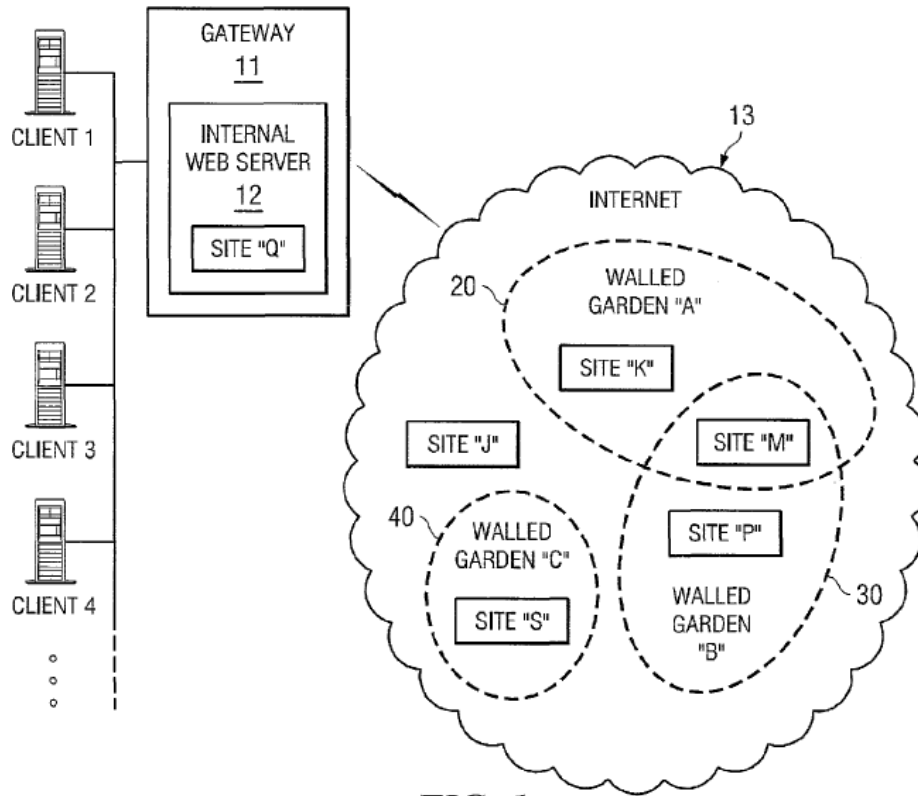


FIG. 1

“Clients 1, 2, 3, 4 who are assigned to a walled garden 20, 30, 40 and whose traffic is not addressed to a location in an access list corresponding to the assigned walled garden 20, 30, 40 may have the traffic dropped, denied, or redirected by gateway 11.” *Id.*, 4:66-5:3. If a client is, for example, infected with a worm (e.g., observed by detecting suspicious behavior in the network traffic), the gateway 11 may assign to client to a walled garden reserved for infected users, and traffic from

this client to destinations outside the walled garden becomes restricted. *Id.*, 5:54-64. When the quarantined client attempts to access the Internet, the gateway redirects the web request to a cooperating web server such as an internal web server on the gateway” by rendering a web page that informs the client of the infection and, for example, links to anti-virus vendors. *Id.*, 6:1-8. “In one embodiment, all In one embodiment, all network requests from a client in network protocols other than HTTP are denied if they emanate from a constrained client.” *Id.*, 6: 17-21.

Representative claim 1, with labeling convention used by Petitioner, is reproduced below.

[1pre]: A method of network traffic quarantine control, comprising:

[1a]: at a network access gateway device between a local network and the Internet, selecting a client device in a first network segment of the network;

[1b]: at the network access gateway device, performing a plurality of quarantine control functions over the client device, wherein the plurality of quarantine control functions comprises:

[1b(a)]: a) restricting all network traffic emanating from the client device to one or more network destination addresses that are not in or Subordinate to the first network segment;

[1b(b)]: b) restricting all network traffic emanating from the client device to an allowed network destination address to

Selected one or more network protocols; and

[1c]: rendering a web page to display on the client device from the network access gateway device, wherein the web page contains an offer for a user of the client device to perform an action in order to obtain unrestricted access to the Internet responsive to implementation of one of the plurality of quarantine control function of the client device.

B. Roskind (Ex. 1005)

Roskind (U.S. Patent No. 9,398,037B1) describes analyzing routing information to identify and intercept unauthorized, unwanted, and/or otherwise malicious communications. Ex. 1005, Abstract. Figure 1 illustrates a method for reducing an anti-contagion update interval during periods of suspicious network activity is shown (*id.*, 3:46-4:15), and Figure 3A, illustrates a method for contacting an anti-contagion Source and optionally getting an update is described. *Id.*, 4:52-5:20.

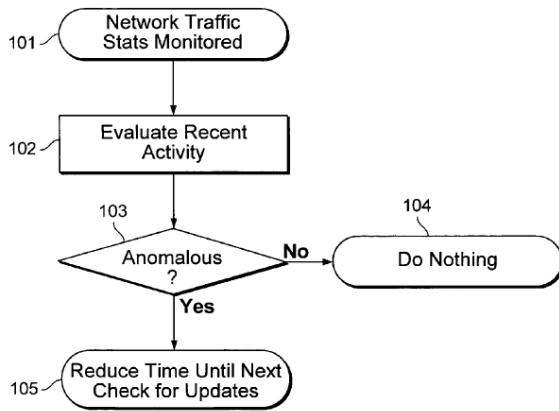


FIG. 1

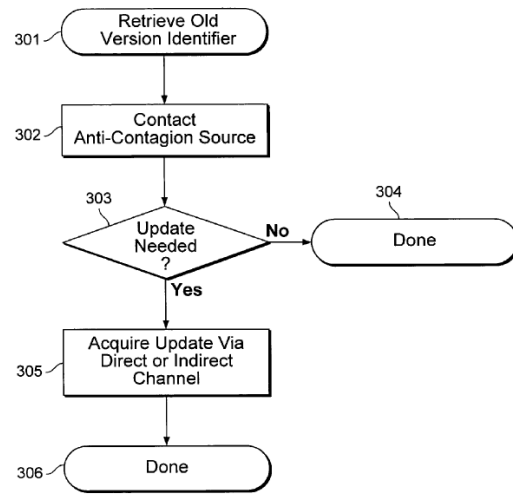


FIG. 3A

Roskind additionally shows a flow diagrams a computer based on detection of outbound traffic from the system (Figure 14), and for quarantining inbound traffic to the system (Figure 15), which can result in rerouting the computer's outbound request to a quarantine server (step 1407 in Figure 14). *Id.*, 14:27-15:35.

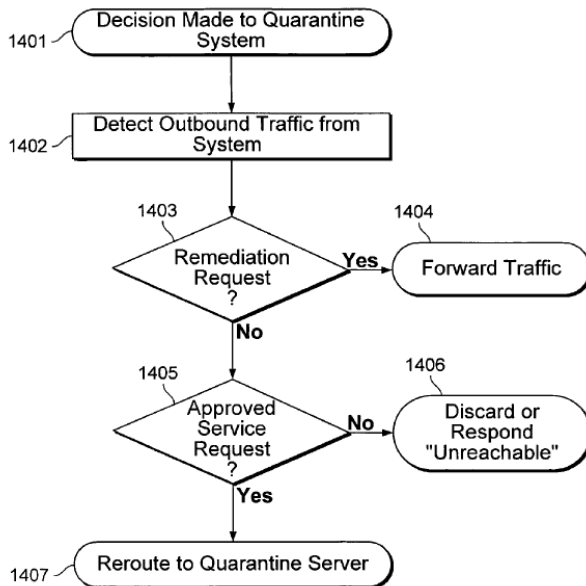


FIG. 14

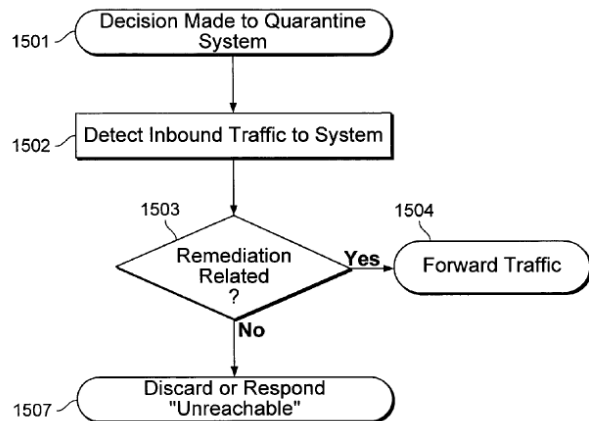
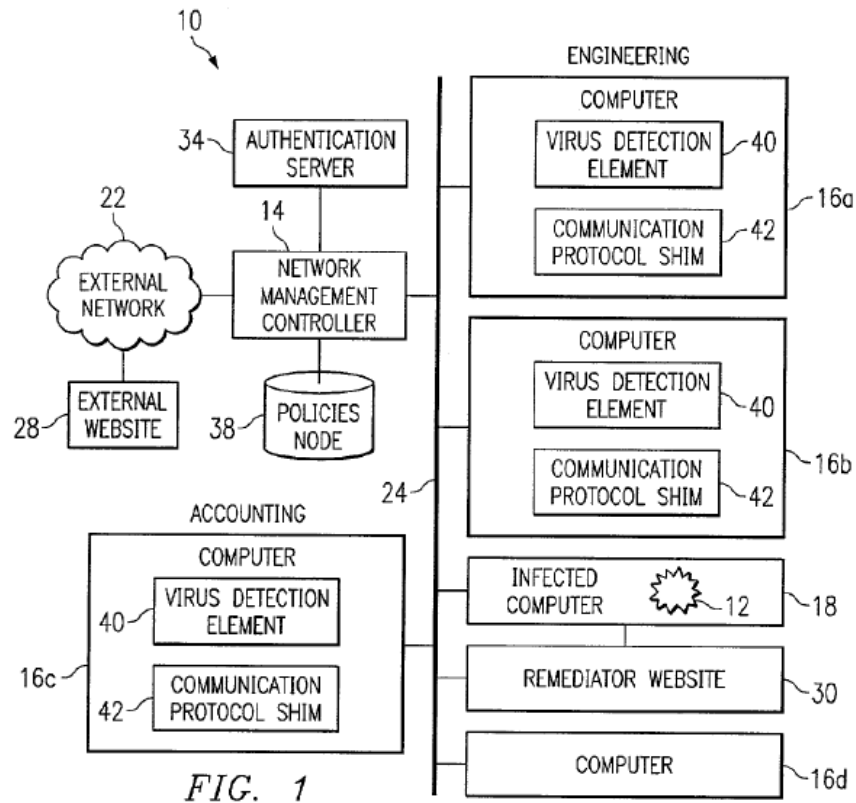


FIG. 15

C. Gleichauf (Ex. 1007)

Gleichauf describes a method for detecting an infective element by relying on peer computers to detect the infective element and provide alerts to the rest of the system; Gleichauf explains “[t]his community monitoring approach allows for the quarantine of malicious traffic immediately after it is discovered within the network architecture.” Ex. 1007, ¶ 20; *see also* Abstract, ¶¶18-19.

In Figure 1, Gleichauf illustrates a communication system 10 for detecting an infective element 12 in a network environment, as well as peer computers 16a, 16b and 16c, an infected computer 18 and its infective element 12. *Id.*, ¶17. A network management controller 14 receives the signals from the peer computers indicating the infective element has been identified; the network management controller may then disable the infected computer or implement actions to “sandbox, siderail, or otherwise disable infected computer 18 from communicating further.” *Id.*, ¶19.



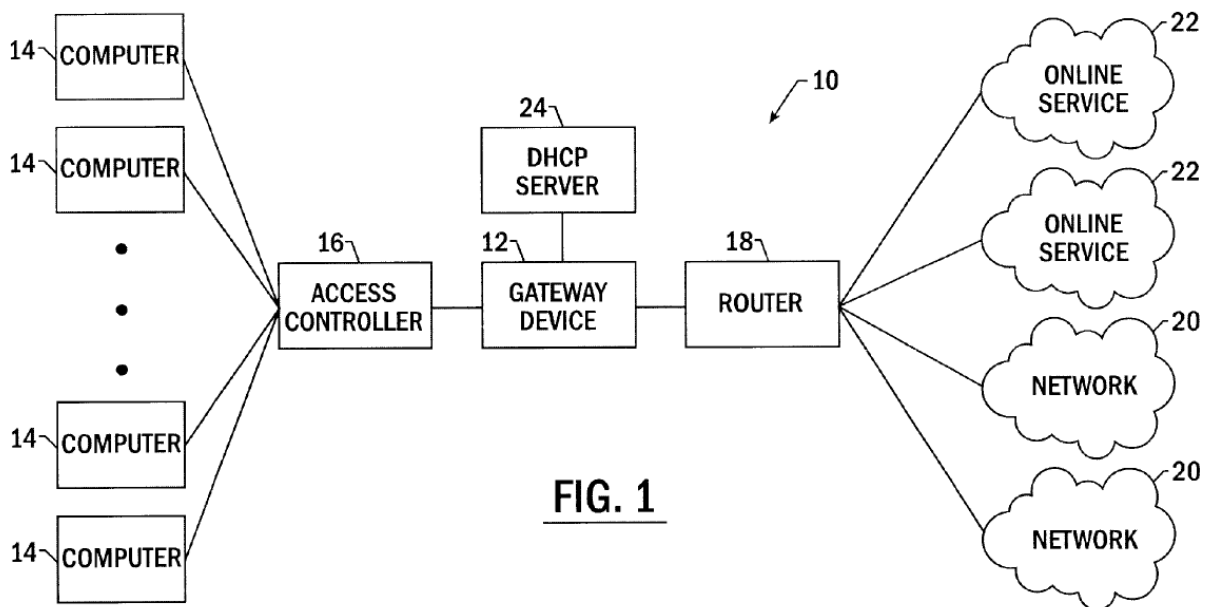
D. Short (Ex. 1008)

Short describes systems and methods for dynamically creating new users having transparent computer access to a destination network. Ex. 1008, Abstract. Short explains that often a user with a mobile device, such as a laptop or a cellphone, needs to connect to a network, such as the user's employer network, outside of the work environment, including at home, at an airport, or a hotel. *Id.*, 1:33-65.

To address this issue, Short's solution "enables *a user transparent access to a computer network* employing a gateway device where the computer network can provide access to users and direct the users to portal pages established by the user,

network administrator or another entity, where the direction is preferably based upon attributes associated with a user, such as the user's location, identity, computer, or a combination thereof.” *Id.*, 3:27-34 (emphasis added).

In some cases, the user is redirected to a login page (which can be on a webserver local to the gateway device) which allows the user to be directed to the proper destination. *Id.*, 4:14-30. Short includes one figure (Figure 1 below) showing a number of computers 14 connected to an access controller 16, which connects to a gateway device 12, a router 18, and to online services 22 or other networks 20. *Id.*, 6:9-45.



III. LEVEL OF ORDINARY SKILL IN THE ART AND CLAIM CONSTRUCTION

The Petition describes a POSITA as “an individual with either (1) at least a

bachelor's degree in computer science or computer engineering or an equivalent field plus at least one year of experience working on computer networking and/or computer security, or (2) at least 3 years of experience working on computer networking and/or computer security, even without a formal degree.” Petition, 13-14.

For the purposes of this Preliminary Response, Patent Owner relies on the definition proposed by Petitioner because Petitioner has not shown that any Challenged Claim is unpatentable even under this level of skill. Ex. 2008, ¶50.

Regarding claim construction, the Petition contends that the term “subordinate to” does not have a clear meaning¹ but continues to further explain that “a POSITA would understand from the specification that, at minimum, a general Internet website is not a network address "subordinate to" the first network segment.” Petition, 14-15; Ex. 1003, ¶24.

¹ Aside from the discussion of the term “subordinate to,” the Petition acknowledges no claim construction is needed for the remaining claim terms. Petition, 15. Petitioner, however, takes a contradictory position in the parallel District Court Litigation purporting that 5 other claim terms and phrases are indefinite. See IPR2026-00042, Paper 6, 7-9; Ex. 2002, 60-61.

While Patent Owner disagrees with Petitioner's assertion regarding indefiniteness of the term "subordinate to," for the purposes of this Preliminary Response, Patent Owner believes that all claim terms should be construed according to their plain and ordinary meaning. Further, Patent Owner believes Petitioner's invalidity grounds fail to establish that any of the challenged claims are unpatentable regardless of any interpretation for the term "subordinate to." Ex. 2008, ¶¶51-52.

IV. GLEICHAUF AND SHORT WERE CONSIDERED BY THE EXAMINER AND ROSKIND IS NOT PRIOR ART

The Petition fails when considering threshold issues that (1) both Gleichauf and Short were already in front of the Patent Office during the original examination of the '710 patent, and (2) the Petition relies on key sections of Roskind that cannot be prior art with respect to the Challenged Claims.

A. The Patent Office Has Already Considered Gleichauf and Short in the Original Examination of the '710 Patent

The Director should not institute the instant IPR, whether for discretionary considerations under 35 U.S.C. § 325(d), or based on lack of technical merits of Gleichauf and Short, which were already in front of the Examiner that allowed the '710 patent. Notably, both Short and Gleichauf are listed under the "References Cited" section of the '710 patent (partially reproduced and annotated below). Ex. 1001, pp. 2-3.

In fact, the Examiner of the '710 patent herself cited the Gleichauf reference as part of the Notice of Allowability mailed August 2, 2013. Ex. 1002, 1076. Short was provided to the Office in an information disclosure statement filed March 10, 2005 (*id.*, 472) and acknowledged by the Examiner on August 13, 2013. *Id.*, 1103.

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Despite the clear existing record of examination of the '710 patent in view of Gleichauf and Short, Petitioner is relying on the same two references again in this Petition without any explanation as to whether or why the Examiner may have erred. As Sections VI and VII of this Preliminary Response show, these references fall significantly short of teaching or suggesting the Challenged Claims. These factors altogether warrant denial of the Petition.

B. Key Sections of Roskind Used in the Petition are Not Prior Art

The '710 patent was filed on March 10, 2005, claiming priority to a provisional application filed on March 10, 2004. Ex. 1001, front page. The Petition asserts that the Challenged Claims have a priority date of no earlier than March 10,

2005, and are not entitled to early priority date of the provisional application. Petition at 11-12. Patent Owner does not agree with Petitioner's assertions regarding the priority date of the Challenged Claims. But even if Petitioner is assumed to be correct, the Petition relies on sections of Roskind that were not part of the Roskind Provisional, and thus Petitioner's invalidity grounds based on Roskind necessarily fail.

Specifically, Roskind was filed on September 27, 2005, claiming priority to a provisional application ("Roskind Provisional"), filed September 27, 2004. Ex. 1005, front page. Because Roskind was filed after the '710 patent's priority date, only those portions of Roskind that were described in the Roskind Provisional can be prior art against the Challenged Claims. In evaluating the prior art status of Roskind, Petitioner conducts an unnecessary *Dynamic Drinkware* analysis (Petition at 4-9)² in concluding that Roskind is prior art under pre-AIA 35 U.S.C. § 102(e). *Id.*, 9, 17. Petitioner then incorrectly asserts: "Roskind Provisional "also provide[s] written description support for the specific portions of the patent specification

² This type of analysis is only relevant to AIA patents and not to pre-AIA patents like the '710 patent. *See Penumbra, Inc. v. RapidPulse, Inc.*, IPR2021-01466, Paper 34 at 32-33 (Mar. 10, 2023).

identified and relied on in the prior art rejection” and exemplary cites thereto will be included in the analysis below.” *Id.*, 9.

The Petition, however, contradicts Petitioner's statement. Roskind includes numerous sections that were not described in the Roskind Provisional, including at least 1:14-44; 2:54-58, 3:10-23, 3:24-31, 4:11-15, 4:43-51, 5:21-65, 6:27-36, 6:51, 6:57-7:59, 11:57-12:13, 16:34-38, 16:60-63, 18:38-43, 19:21-51, and Figures 2B, 3B, 3C, 3D, 4B, 4C, 10B and 19B.³ Patent Owner has highlighted the sections of Roskind that were not part of the Roskind Provisional with yellow highlights in Ex. 2009; the second section of Ex. 2009, starting on page 41, shows the differences between Roskind and Roskind Provisional that were generated using an automated software tool to compare the two documents. See Ex. 2009; Ex. 2008, ¶¶53-55.

The Petition relies on some of these very same sections of Roskind that were not in Roskind Provisional (“non-prior art sections of Roskind”) to argue anticipation or obviousness of the Challenged Claims. The following provides a few examples of the Petition's use of non-prior art sections of Roskind:

- Grounds 1-2, Claim [1pre]: relies on Roskind 1:14-19 (Petition, 20);
- Grounds 1-2, Claim [1a]: relies on Roskind, 11:57-12:3 and FIG. 10B

³ The citations represent col./line nos., e.g., 2:54-58 represents col. 2, lines 54-58.

(*id.*, 22-23);

- Grounds 1-2, Claim [1c]: relies on Roskind, 7:2-13 (*id.*, 33);
- Grounds 1-2, Claim [1c]: relies on Roskind, 6:63-7:23 and FIG. 4B (*id.*, 34);
- Grounds 1-2, Claim [1c]: relies on Roskind, 11:57-12:13 (*id.*);
- Grounds 1-2, Claim 2: relies on Roskind, 6:63-7:23 (*id.*, 38); and
- Grounds 1-2, Claim [8pre]: relies on Roskind 2:47-60 (*id.*, 44).

The use of non-prior art sections of Roskind similarly extends to independent claims 8 and 15, as well as dependent claims 9 and 16 of the '710 patent, because the Petition merely refers back to its analysis of claims 1 and 2 for those additional claims. Petition, 44-46.

As explained in Section V of this Preliminary Response, Petition's reliance on non-prior art sections of Roskind is fatal to the Petition's Grounds. For example, there are no teachings or suggestions in Roskind Provisional regarding element [1c], where the Petition alleges that the quarantine server of Roskind resides on the router/gateway. Petition, 34. The Petition's only support for this assertion is in Roskind 11:57-12:3, a non-prior art section of Roskind with no corresponding explicit or implicit explanation in the Roskind Provisional. Ex. 2008, ¶56. Regarding element [1c], the Petition also relies on other non-prior art sections of

Roskind (i.e., 6:63-7:23 and FIG. 4B (Petition, 34), which are not part of the Roskind Provisional. Ex. 2008, ¶56.

As another example, in its arguments against element 1[a], the Petition relies on Roskind's 11:57-12:3 and Fig. 10B, which are both non-prior art sections of Roskind. Ex. 2008, ¶58.

As yet another example, the relied upon section of Roskind at 2:47-60 against [8pre] includes Roskind's explanation in 2:54-58 (a non-prior art section of Roskind), which describes a processor and a memory for performing the various tasks. Petition, 44. The Petition is also pointing to Roskind Provisional (Ex. 1006, 4:2-9) for this claim limitation; but this section of Roskind Provisional does not have any description about a processor or a memory for performing various tasks. Ex. 2008, ¶59.

Aside from significant flaws in Grounds 1-2 because of the use of non-prior art sections of Roskind, the Petition's lack of clarity as to which of Petition's arguments are actually supported by the Roskind Provisional unfairly shifts the burden of deciphering the comingled arguments and analysis to Patent Owner and the Director. Clearly, Petitioner has the burden of showing that there is a reasonable likelihood that at least one claim is unpatentable. 35 U.S.C. § 314 (a). "Failure to prove the matter as required ... means that the party with the burden of persuasion loses on that point—thus, if the fact trier of the issue is left uncertain, the party with

the burden [the petitioner] loses.” *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378-79 (Fed. Cir. 2015). Therefore, if the Petition fails to particularly point out how the cited prior art meets each of the claimed elements, as is the case here, the IPR should be denied.

The flaws in Grounds 1-2 that stem from relying on non-prior art sections of Roskind carry over to Petition's Ground 5 that uses Roskind in combination with Short (*id.*, 67-72), further illustrating the weakness of the Petition and warranting its denial.

V. GROUNDS 1 AND 2: ROSKIND DOES NOT ANTICIPATE OR RENDER OBVIOUS THE CHALLENGED CLAIMS

A. Roskind Fails to Teach or Suggest Elements [1c], [8b] and [15d] of Independent Claims 1, 8 and 15

Element [1c] recites in-part: “*rendering a web page to display on the client device from the network access gateway device.*” When discussing element [1c], the Petition states the claimed web page is a web page provided by the quarantine server (Petition, 34) and relies on Roskind's 11:57-12:13 to allege that “the quarantine server “resides on the router...and/or gateway.”” Petition, 34. However, this section of Roskind is *not* part of Roskind Provisional, and in fact no explicit or implied explanation that the quarantine server can reside on the gateway/router is provided in Roskind Provisional. Ex. 2008, ¶56. In fact, a text search of Roskind Provisional

shows that the word “gateway” is never mentioned. *Id.*, ¶57. Without this critical disclosure in Roskind provisional, Petitioner’s anticipation and obviousness grounds both fail. Notably, the Petition relies on Roskind’s quarantine sever to meet the limitations of [1c], which are neither described in Roskind, nor are obvious, to a POSITA as being part of Roskind’s gateway or router.

The Petition further argues that the web page in element [1c] can be rendered by “the "special quarantine server" [that] is "an ISP web server."” Petition, 34. But the Petition does not explain why Roskind’s gateway 1028 or router 1026 would include an ISP server. *See* Petition, 22. Not only did Roskind fail to describe the ISP server as part of the gateway, this would also not have been an obvious choice to a POSITA. As Patent Owner’s expert, Dr. Stavrou explains, if “an ISP web server” were part of the customer-side gateway, both the web server software and its content would have to be maintained for every customer separately by the ISP, and it would have additionally raised ownership and liability questions for the ISP. *Ex. 2008*, ¶57. There would have been no reason for a POSITA to make such non-obvious and problematic choices. *Id.*

Petitioner’s arguments against element [1c] are also flawed because they rely on Roskind’s 6:63-7:23 and FIG. 4B (Petition, 34), which are clearly non-prior art section of Roskind. *See* Section IV.B; *Ex. 2008*, ¶56. These sections describe architecture and constituent components of Roskind’s client system, and illustrate

another instance of Petitioner's use of non-prior art sections of Roskind against element [1c].

The Petition relies on the same arguments, and the same sections of Roskind, in Grounds 1-2 against claim elements [8b] and 15[d]. Petition, 45. Therefore, Petitioner's arguments against elements [8b] and [15d] suffer from the same flaws as those for element [1c].

B. Roskind Fails to Teach or Suggest Elements [1a], [8a] and [15c] of Independent Claims 1, 8 and 15

Element [1a] recites in-part: “*at a network access gateway device between a local network and the Internet, selecting a client device in a first network segment of the network.*” In asserting that this element is anticipated or rendered obvious by Roskind, the Petition again relies on non-prior art sections of Roskind (11:57-12:3 and FIG. 10B). Petition, 22-23. FIG. 10B and the associated description are used in the Petition to show the position of the gateway within Roskind's network architecture and the assertion that the “[G]ateway 1028 comprises a gateway, router, firewall, or other device configured to provide and control access between a protected network and the Internet.” *Id.*, 22.

The Roskind Provisional, however, does not include any figure that corresponds to Figure 10B of Roskind, and the sections of Roskind Provisional cited by the Petition in this regard (*id.*, 23 citing Ex. 1006, 24:13-17, 27:4-10) fall woefully

short of anticipating or rendering obvious element [1a] because the two disparate locations in Roskind Provisional fail to provide an explicit, an inherent or even an implicit explanation that *at a network access gateway device between a local network and the Internet, a client device in a first network segment of the network is selected*. Notably, Roskind Provisional at 27:4-10 describes “a configuration based quarantine during an installation of an operating system, such as Microsoft Windows,” which is unclear how such an OS or default installation relates to the operations of a gateway or a router. Ex. 2008, ¶58.

The Petition relies on the same arguments, and the same sections of Roskind, in Grounds 1-2 against claim elements [8a] and 15[c]. Petition, 44. Therefore, Petitioner's arguments against elements [8a] and [15c] suffer from the same flaws as those for element [1a].

VI. GROUNDS 3 AND 4: GLEICHAUF DOES NOT ANTICIPATE OR RENDER THE CHALLENGED CLAIMS OBVIOUS

A. Gleichauf Fails to Teach or Suggest Elements [1b(b)], [8a(b)] and [15c(b)] of the Challenged Claims

Element [1b(b)] recites: “restricting all network traffic emanating from the client device to an allowed network destination address to selected one or more network protocols.” The Petition relies on Gleichauf's paragraphs [0049]-[0050] and [0057]-[0058] that describe the use of TCP/IP and Gleichauf's use of a “policy

node.” Petition, 50-51. However, paragraphs 49-50 of Gleichauf not only fail to teach or suggest “restricting all network traffic emanating from the client device ... to selected one or more network protocols,” but they actually describe the opposite, i.e., enabling the outbound traffic in a versatile and flexible scheme that allows many different network protocols to be used. Ex. 2008, ¶¶63-66.

The relevant sections of paragraphs 49 and 50 recite: “[e]*xternal network 22 implements a transmission control protocol/internet protocol (TCP/IP) communication language protocol in a particular embodiment of the present invention; however, external network 22 may alternatively implement any other suitable communication protocol for transmitting and receiving data packets within communication system 10 ... Internal network 24 implements a TCP/IP communication language protocol in a particular embodiment of the present invention; however, internal network 24 may alternatively implement any other suitable communication protocol for transmitting and receiving data packets within communication system 10.*” Ex. 1007, ¶¶49-50.

This description is not about restricting the outbound traffic to any particular network protocol, and a POSITA would have understood that Gleichauf is advocating for a flexible system in which any suitable communication protocol can be used—opposite to what element [1b(b)] requires. Ex. 2008, ¶¶63-64.

Additionally, the above description in paragraphs 49-50 of Gleichauf does not relate to restricting the outbound traffic *for the selected (infected) device*. But rather describes using any suitable communication protocol for all computers, whether infected or not. *Id.*, ¶65.

Turning to Gleichauf's paragraphs [0057]-[0058], these sections describe Gleichauf's policy node 38, without any description that can be reasonably construed as pertaining to restricting infected device's outbound traffic to an allowed network address to a selected one or more network protocols. Gleichauf's paragraph 57 explains that "[t]he policies included within policies node 38 may be items such as: quality of service, access/authorization privileges, high availability, priority, or any other suitable network enhancement or communications feature." Ex. 1007, ¶57. In paragraph 58, Gleichauf merely describes the network manager accessing the policy node to disable the policies or services provided to the infected computer. *Id.*, ¶58. These disclosures provide no teachings, suggestions or guidance to a POSITA regarding restricting outbound traffic to selected one or more network protocols, as required in element [1b(b)]. Ex. 2008, ¶66.

The Petition relies on the same arguments, and the same sections of Gleichauf, in Grounds 3-4 against claim elements [8a(b)] and [15c(b)]. Petition, 65-67. Therefore, Petitioner's arguments against elements [8a(b)] and [15c(b)] suffer from the same flaws as those for element [1b(b)].

B. Gleichauf Fails to Teach or Suggest Elements [1c], [8b] and [15d] of the Challenged Claims

Element [1c] recites: “*rendering a web page to display on the client device from the network access gateway device, wherein the web page contains an offer for a user of the client device to perform an action in order to obtain unrestricted access to the Internet responsive to implementation of one of the plurality of quarantine control function of the client device.*” While this limitation clearly requires “rendering a web page on the client device from the network access gateway device,” most of Petition’s arguments focus on “signals” that are generated by peer computers of Gleichauf. Petition, 58-60. Petitioner’s arguments fall short of establishing anticipation or obviousness of element [1c].

First, contrary to the recited [1c] limitation of a web page, Gleichauf describes “signals” not webpages. *See e.g.*, Ex. 1007, ¶¶44, 48, 60. Gleichauf does not describe a webpage that is rendered on the infected device that contains an offer for a user of the client device to perform an action in order to obtain unrestricted access to the Internet, as required in [1c]. Ex. 2008, ¶¶66-68. Petitioner attempts to conceal this shortcoming by pointing to Gleichauf’s paragraph 27. Petition, 58. But this paragraph describes that a device may, for example, be infected by a virus when viewing a webpage on the Internet:

For example, an end user of infected computer 18 may use infected computer 18 to view pages on the Internet with a web browser. Thus, infective element 12 may be roaming somewhere within the Internet, where it can be downloaded directly, inadvertently communicated, or otherwise transmitted indirectly to infected computer 18. *For example, infected computer 18 may wish to communicate with external web site 28 in order to retrieve some file or some piece of data. In communicating the data or file back to infected computer 18, external website 28 may intentionally or inadvertently pass a harmful element, such as infective element 12, through external network 22, internal network 24, and on to infected computer 18.*

Ex. 1007, ¶27 (emphasis added). In this paragraph Gleichauf describes viewing an external webpage and the risk that it can infect a viewer's computer; this section, however, provides no teachings or suggestions that a webpage is rendered, by the network access gateway device, on the infected device that contains an offer for a user of the client device to perform an action in order to obtain unrestricted access to the Internet. Ex. 2008, ¶68.

Furthermore, element 1[c] recites that a webpage to be rendered by the network access gateway device. As Patent Owner's expert, Dr. Stavrou, explains, Gleichauf's focus is on cooperative or community monitoring that relies on peer

computer devices to detect and signal the presence of an infected device; this is evident by Gleichauf's description that Shim (42) elements, i.e., components on the peer computers 16a, 16b, 16c, generate and transmit those "signals." Ex. 2008, ¶69; Ex. 1007, ¶¶45, 59. The signals that are described in Gleichauf and relied on by Petitioner warn other computers that an infected computer has been detected, and even provide the type of infection, computer's IP address and remedial measures. Ex. 1007, ¶¶32, 47, 48, 60; Ex. 2008, ¶69. But Gleichauf does not describe that the network management controller 14 sends a webpage (or a signal) to the infected device that includes an offer for a user of the client device to perform an action in order to obtain unrestricted access to the Internet. *Id.*

The Petition relies on the same arguments, and the same sections of Gleichauf, in Grounds 3-4 against claim elements [8b] and [15d]. Petition, 65-67. Therefore, Petitioner's arguments against elements [8b] and [15d] suffer from the same flaws as those for element [1c].

VII. GROUNDS 5 AND 6: THE COMBINATION OF SHORT WITH ROSKIND OR WITH GLEICHAUF DO NOT RENDER THE CHALLENGED CLAIMS OBVIOUS

A. Short Describes Enabling Seamless Communications of Devices Outside of their Native Environment and its Combination with Roskind or Gleichauf would not have been Obvious

Short describes systems and methods for dynamically creating new users having transparent computer access to a destination network. Ex. 1008, Abstract. For example, when a user with a mobile device (e.g., a laptop or a cellphone) ventures outside of the work environment, such as when the user is at home, or at an airport or a hotel, Short describes methods and systems to that allows the mobile device to easily connect to the desired locations. *Id.*, 1:33-65; Ex. 2008, ¶¶44-48, 71.

To this end, Short proposes a solution that “enables *a user transparent access to a computer network* employing a gateway device where the computer network can provide access to users and direct the users to portal pages established by the user, network administrator or another entity, where the direction is preferably based upon attributes associated with a user, such as the user's location, identity, computer, or a combination thereof.” Ex. 1008, 3:27-34 (emphasis added).

Short has therefore a significantly different objective than either Roskind or Gleichauf, which describe either completely disabling or severely restricting all communications of a device (i.e., device that is infected with viruses) to network locations that the device would normally access. Ex. 2008, ¶71. Notably, a text

search of the contents of the Short reference fails to find any references to a virus, a malware or equivalent, any explanations about limiting or disabling a user device's network access. *Id.* For at least this reason, a POSITA would not have been motivated to, and in fact would have been dissuaded from combining Roskind or Gleichauf with Short, which described the exact opposite of what Roskind or Gleichauf sought to do, namely, or disable or limit a user device's access to practically all network locations. *Id.*

Accordingly, Grounds 5 and 6 fail.

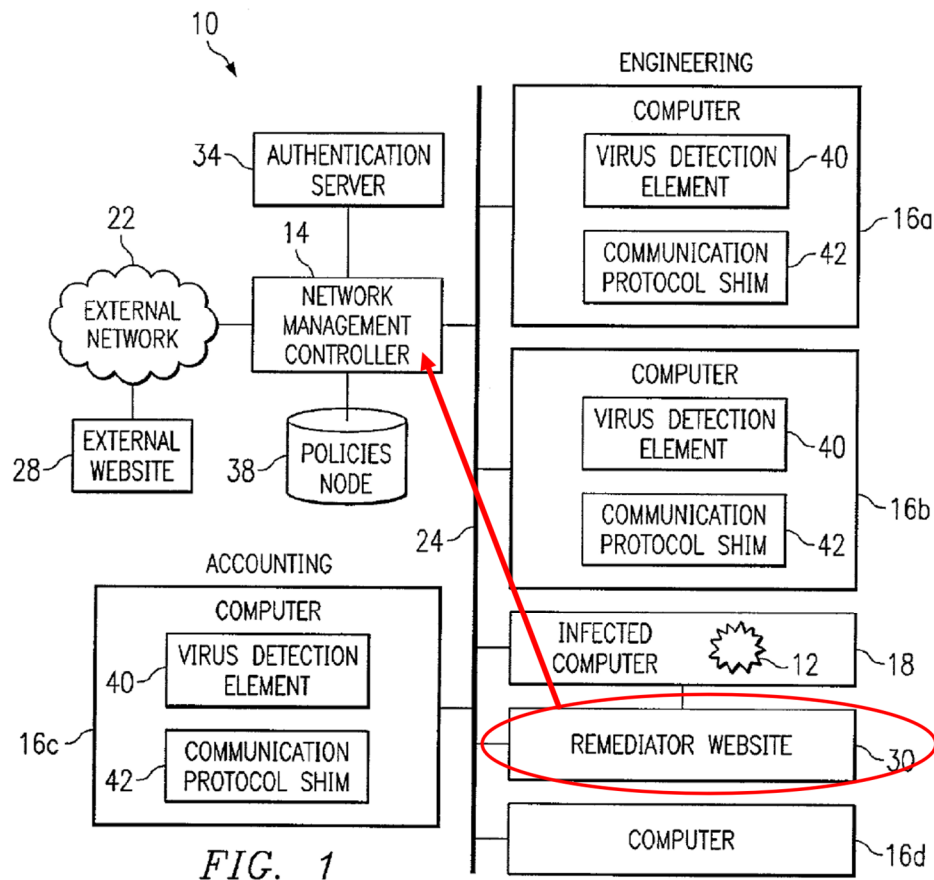
B. The Combination of Short with Roskind or Gleichauf would have Required Significant Architectural Changes to Roskind and Gleichauf that would not have been Obvious to a POSITA

The Petition purports that in the combination of Roskind with Short, it would have been obvious for Roskind's gateway to host a webserver local to the gateway. Petition, 69. Petitioner's position is incorrect, and it fails to account for significant architectural modifications that such a combination would have required. Notably, even assuming a POSITA would have selected Short for a hypothetical combination with Roskind, the architectural and data flow management required in such a combination would not have been obvious to and would not have been within the capabilities of a POSITA.

Notably, the gateway device described in Short and Roskind have different functionalities and purposes. Ex, 2008, ¶72. Short's gateway device 12 generally

performs a packet translation function that is transparent to both the user and the network by altering the outbound traffic from the client computer to the gateway and changing attributes of those packets (e.g., source address, checksum, and application specific parameters). Ex. 1008, 7:29-39. “In addition, the outgoing packet includes an attribute that will direct all incoming packets from the accessed network to be routed through the gateway device. In contrast, the inbound traffic from the computer network or other online service that is routed through the gateway device undergoes a translation function at the gateway device so that the packets are properly formatted for the user's host computer.” *Id.*, 7:37-44. This is in contrast to Roskind, which does not require any packet translation or modification of packet fields. Ex. 2008, ¶¶72-73. This important distinction makes implementation of Short's gateway in Roskind impractical and detrimental because all external communications in Short use the gateway's IP address as the source, stripping the internal network client's IP address from the communication, and altering other packet characteristics. *Id.* This critical functionality of Short is antithetical to the network quarantining implemented by Roskind. *Id.* A POSITA with no college degree and 3 years of experience, or with a four-year degree and one year of experience, as Petitioner proposes, would not have found this change obvious by any means. *Id.*

Petitioner's position regarding the combination of Gleichauf with Short is even less compelling. Notably, in this combination, a POSITA would have had to make a fundamental change in the design of Gleichauf's system to incorporate a webserver into Gleichauf's network management controller, as the Petition proposes. Petition, 71 (*"A POSITA would have been motivated to look to references including short for well-understood details such as hosting the quarantine server local to the gateway [of Gleichauf] for efficient and fast redirection, as well as offers to the user for gaining (or re-gaining) access to network services, including the Internet."*) Petitioner's conclusory statement ignores the actual changes that would have been required in Gleichauf. Ex. 2008, ¶¶74-76.



As annotated Figure 1 of Gleichauf (above) illustrates, Gleichauf's remediator website 30 is connected to internal network 24 (Ex. 1007, ¶17) and is not mediated by the network management controller 14 at all. Ex. 2008, ¶75. Thus, access to the remediator website is uninhibited within the internal network. *Id.* Moving the remediator website 30 to be hosted by the network management controller 14 would not have been obvious to a POSITA given that it would have resulted in significant changes to Gleichauf's architecture's control and management of traffic by the network management controller 14. *Id.* For example, the network controller would

have to be able to respond to web requests, and serve TCP/IP and HTTP packets capability. *Id.* Making those changes to what Gleichauf describes as “a communication interface operable to receive data” (Ex. 1007, ¶30) would **not** have been within a POSITA’s capabilities as set forth by Petitioner. *See* Petition, 13-14; Ex. 2008, ¶75.

Furthermore, Petitioner identifies no deficiency in Roskind or Gleichauf that would prompt a POSITA to look to Short, and no deficiency in Short that would be addressed by Roskind or Gleichauf. Absent such an articulated rationale, the proposed combination lacks the required rational underpinning and weighs strongly against institution. Petitioner’s expert declaration (e.g., Ex. 1003, ¶¶164-165) similarly provides only conclusory statements that such a combination, for example, would have resulted in “efficient, fast redirection, and providing user offers to obtain or regain network access, including Internet access.” But these statements are modeled after claim 1’s limitations and are not corroborated by any other rationale or evidence. Ex. 2008, ¶77.

VIII. THE PETITION’S GROUNDS FAIL TO RENDER OBVIOUS ANY OF THE CHALLENGED CLAIMS

As explained above, all of the Petition’s invalidity assertions against independent claims of the ’710 fail because each ground, whether based on anticipation, based on a single-reference obviousness, or obviousness based on a

combination with Short, fail to teach or suggest several limitations of those independent claims, or those independent claims as a whole. Furthermore, the Petitioner's purported motivations to combine Short with Roskind or Gleichauf are based on conclusory statements that fail to meet the *KSR* standard, while also defying common sense in trying to combine references with opposite teachings.

Because the Petition has failed to show that there is a reasonable likelihood that any one of independent claims 1, 8 or 15 is unpatentable, the challenged dependent claims likewise remain patentable.

IX. THE PETITION FAILS TO MEET MULTIPLE LEGAL REQUIREMENTS OF UNPATENTABILITY

A. The Grounds Fail to Delineate Between § 102 and § 103 Arguments or Properly Assert Either Category

Grounds 1-2 and 3-4 of the Petition assert unpatentability under the anticipation standard of § 102 and the obviousness standard of § 103, respectively, but are presented together in a manner that fails to fully or clearly articulate either theory. *See* Petition, 17 (“A. Grounds 1 and 2: Claims 1-20 Are Anticipated Or At Minimum Rendered Obvious Over Roskind”); *see also id.*, 46 (“B. Grounds 3 and 4 – Claims 1-20 Are Anticipated Or At Minimum Rendered Obvious Over Gleichauf.”). Due to this lack of clarity, the grounds of the Petition are substantively

deficient and noncompliant with 35 U.S.C. § 312(a)(3),⁴ thereby favoring denial.

First, it is unclear whether the Petition intends to raise both § 102 and § 103 arguments. Within this combined hetero-ground, the Petition impermissibly conflates anticipation and obviousness, shifting theories across the same parsed claim elements without coherent analysis.

For example, in claim 1, the Petition uses the phrase “Roskind discloses, or at minimum renders obvious, [the claim limitation]” for each of elements [1a], [1b(a)], [1b(b)] and [1(c)] (Petition, 22, 28, 32, 33),⁵ provides quotations from certain sections of Roskind, and then repeats the same statement that “Roskind discloses,

⁴ 35 U.S. Code § 312(a) Requirements of Petition.—A petition filed under section 311 ***may be considered only if***— . . . (3) the petition identifies, in writing ***and with particularity***, each claim challenged, ***the grounds on which the challenge to each claim is based***, and the evidence that supports the grounds for the challenge to each claim, (emphasis added).

⁵ Petitioner’s strategy of using “[Reference] discloses, or at minimum renders obvious” persists throughout the Petition for both Roskind and Gleichauf Grounds, and for both independent and dependent claims. *See e.g.*, Petition, 37, 42, 43, 49-50, 52-53, 55, 57, 60-61, 64-66.

and at minimum renders obvious [the claim limitation].” *See e.g., id.*, 33-34. While, in some instances, the Petition goes on to provide a contrived rationale for obviousness based on practically identical statements in Fortinet’s expert declaration (*see e.g., id.*, 34-35; Ex. 1003, ¶100), there is no explanation as to why those claim limitations are anticipated, or what is the deficiency in Roskind that prompted the Petitioner to shift to obviousness rationale.

Petitioner cannot have it both ways. If it proceeds on anticipation, it must identify where Roskind or Gleichauf disclose **each and every element and limitation** of the challenged claim. It does not. That failure is dispositive under § 102, and the anticipation theory collapses at the threshold. If instead Petitioner proceeds on obviousness, it must do far more than gesture at the prior art. It must demonstrate a clear teaching, suggestion, motivation or reasoning for every claimed feature and supply a coherent rationale explaining why a POSITA would have combined those teachings to arrive at the claimed invention with a reasonable expectation of success. Petitioner does neither. Its obviousness case is devoid of a feature-by-feature showing and untethered to the factors articulated in *Graham v. John Deere Co.*, 383 U.S. 1 (1966) and reiterated in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The court has “repeatedly emphasized that an obviousness inquiry requires examination of all four *Graham* factors and that an obviousness determination can be made only after consideration of each factor.”

Nike, Inc. v. Adidas AG, 812 F.3d 1326, 1335 (Fed. Cir. 2016). Here, the Petition lacks articulation of the second *Graham* factor (ascertaining the differences between the claimed invention and the prior art). While arguing such differences risks undercutting one's anticipation arguments, Petitioner in this case chose to avoid taking the risk at the expense of ignoring the legal standard of obviousness.

The improper ground not only requires Patent Owner to respond to multiple incomplete arguments but also would impel the Director and the Board to analyze multiple unarticulated invalidity grounds under multiple legal standards. Thus, Patent Owner is forced to respond to both anticipation and obviousness arguments, despite neither theory being sufficiently explained for Patent Owner to appropriately rebut. Petitioner has improperly shifted the burden to the Director and to Patent Owner, which warrants dismissal of the Petition.

Further, as explained in Section IV of this Preliminary Response, Petition's Grounds 1-2 (and by extension Ground 5 that relies on Roskind) rely on several non-prior art sections of Roskind for key limitations in the Challenged Claims. This comingling of prior art and non-prior art sections in Petitioner's arguments provides another impediment in analyzing whether Petitioner intends to show anticipation of the Challenged Claims (which woefully fails because of the use of non-prior art sections of Roskind), or obviousness of those claims (which also fails due to deficiencies in the references' technical teachings and a lack of requisite obviousness

analysis). By improperly shifting Petitioner's burden to Patent Owner, the Director and the Board, Petitioner has failed to comply with the requirements of 35 U.S.C. §§ 312(a)(3) and 314(a), further warranting denial of the Petition.

B. Petitioner Improperly Relies on POSITA's Knowledge Instead of Disclosure or Teaching in the Prior Art Reference

On July 31, 2025, the Director's office issued a memorandum (the "July Memorandum") putting all practitioners on notice that the Office "will enforce and no longer waive the requirement of 37 C.F.R. § 42.104(b)(4) (Rule 104(b)(4)) that a petition for inter partes review (IPR) "must specify where each element of the claim is found in the prior art patents or printed publications relied upon"" and prohibiting reliance on "applicant admitted prior art (AAPA), expert testimony, common sense, and other evidence that is not "prior art consisting of patents or printed publications" ... to supply a missing claim limitation." July Memorandum, 1. The July Memorandum makes clear that reliance on a "general knowledge," such as by a POSITA, to fill in missing claim limitations from prior art reference(s) was impermissible and is limited to supporting motivation to combine and demonstrating the knowledge of a POSITA. *Id.*, 1-2. This change applies to any petition filed on or after September 1, 2025 (*id.*, 3) and, thus, applies to the instant Petition.

Petitioner disregarded the Director's instructions, and in direct contradiction

to 35 U.S.C. §311(b),⁶ by impermissibly relying on the knowledge of a POSITA to substitute for significant gaps in the references used against the Challenged Claims.

For example, in connection with element [1a], the Petition contends “A POSITA would have thus understood Roskind Provisional discloses, and at minimum renders obvious, a router as a network access gateway device between a local network and the Internet. EX1003, ¶¶83-84.” Petition, 24. But the Petition relies on non-prior art sections of Roskind (11:57-12:3 and Fig. 10B), which as explained in Sections IV and V, find no corresponding description in Roskind provisional. Therefore, Petition’s arguments solely rest on the knowledge of a POSITA which is substituted for the missing description in Roskind.

As another example, Petitioner’s arguments against element 1[c] include: “[a]t minimum, a POSITA would have understood, and found it an obvious choice to place the quarantine server within the gateway so as to better control infected traffic while restricting the quarantined computer from communicating with

⁶ 35 U.S.C. § 311(b): “A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent *only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications*” (emphasis added).

unauthorized hosts.” Petition, 35. Petitioner further contends that rendering a webpage at the server would have been a “simple design choice.” *Id.* In both assertions, Petitioner once again fails to provide any descriptions in Roskind and instead impermissibly relies on what a POSITA would have found an “obvious choice.”

Regarding element [1c] in Grounds 1-2, Petitioner's arguments have even a larger gap than its reliance of a POSITA's purported design choice, as Roskind Grounds completely fail to teach or suggest rendering a webpage to display on the client device from the network access gateway device, as explained in Section V of this Preliminary Response.

Petitioner's improper reliance on the knowledge of a POSITA persists through Petition's assertions against dependent claims and other grounds of the Petition. For example, regarding claim 4 in Grounds 1-2, Petitioner cites to no sections of Roskind, and while referring to claim 1, entirely backfills the required operations in claim 4 with the knowledge of a POSITA. Petition, 40-41. This pattern of improper substitution of a POSITA's knowledge continues for claim 5 (*id.*, 41) and claim 6 (*id.*, 42), and further in Grounds 3-4 for claim 1, element [1(a)] (*id.*, 55), element [1b(b)] (*id.*, 57), element [1c] (*id.*, 59-60), and claim 6 (*id.*, 64-65). As explained above in Section VI of this Preliminary Response, Gleichauf Grounds include significant shortcomings, which cannot be cured even under Petition's substantial

reliance on the knowledge of a POSITA.

The July Memorandum was clear that failures like this cannot be covered up by reliance on a POSITA's knowledge. Petitioner's disregard for Rule 104(b)(4) provides a compelling reason for denial of the Petition.

X. CONCLUSION

For the reasons discussed above, Patent Owner respectfully requests that the Director deny Petitioner's Petition for *Inter Partes* Review of the '710 patent.

Dated: January 20, 2026

Respectfully submitted,

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CERTIFICATE OF WORD COUNT UNDER 37 CFR § 42.24(d)

Under 37 C.F.R. § 42.24(d), the undersigned certifies that the word count for this Patent Owner's Preliminary Response to the Petition for *inter partes* review totals 7,525 words, excluding the parts exempted by 37 C.F.R. § 42.24(a). The word count was made using the built-in word count function in the Microsoft® Word software used to prepare this document.

Dated: January 20, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE and accompanying exhibits by email to the electronic service addresses for Petitioner on the date indicated below:

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Respectfully submitted,

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