

1 UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 NETFLIX, INC., )  
4 )  
5 Petitioner, ) Case No.  
6 vs. ) IPR2020-01582  
7 )  
8 AVAGO TECHNOLOGIES )  
9 INTERNATIONAL SALES PTE ) Patent No.  
LIMITED, et al., ) 8,572,138  
Patent Owners. )  
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13 PTAB CONFERENCE CALL

14 Tuesday, November 23, 2021  
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23 Reported by:

24 Stacey L. Daywalt

25 JOB NO. 203028

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3                               Tuesday, November 23, 2021</p> <p>4                               10:02 a.m.</p> <p>5</p> <p>6</p> <p>7                               PTAB Conference Call, held before</p> <p>8 Administrative Patent Judges Kristen Droesch,</p> <p>9 Melissa Haapala and Kerry Begley, before Stacey</p> <p>10 L. Daywalt, a Court Reporter and Notary Public</p> <p>11 of the District of Columbia.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1   A P P E A R A N C E S:</p> <p>2   (All appearances are telephonic)</p> <p>3</p> <p>4                               SHEPPARD MULLIN</p> <p>5                               Attorneys for Petitioner</p> <p>6                               379 Lytton Avenue</p> <p>7                               Palo Alto, CA 94301</p> <p>8                               BY:   HARPER BATTS, ESQ.</p> <p>9                               JEFFREY LIANG, ESQ.</p> <p>10</p> <p>11                              ADSERO IP</p> <p>12                              Attorneys for Patent Owner</p> <p>13                              8210 SouthPark Terrace</p> <p>14                              Littleton, CO 80120</p> <p>15                              BY:   DANIEL YOUNG, ESQ.</p> <p>16                              CHAD KING, ESQ.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1                               PTAB Conference Call</p> <p>2                               ADMINISTRATIVE PATENT JUDGE: Good</p> <p>3 morning. We're here for a conference call for</p> <p>4 IPR2020-1582.</p> <p>5                               My name is Judge Droesch. Joining</p> <p>6 me on the call are my colleagues Vice Chief</p> <p>7 Judge Haapala and Judge Begley.</p> <p>8                               First we'll do a roll call.</p> <p>9                               Who's on the call for Petitioner?</p> <p>10                              MR. LIANG: Good morning, Your</p> <p>11 Honor. My name is Jeffrey Liang. I'm on this</p> <p>12 call for Petitioner.</p> <p>13                              And also on the line with me is</p> <p>14 Harper Batts.</p> <p>15                              ADMINISTRATIVE PATENT JUDGE: Okay.</p> <p>16 Great.</p> <p>17                              And who's on the call for Patent</p> <p>18 Owner?</p> <p>19                              MR. YOUNG: Yes, Your Honor. This</p> <p>20 is Dan Young. I'll be speaking on behalf of</p> <p>21 the Patent Owner, Avago Technologies.</p> <p>22                              And also with me on the call is Chad</p> <p>23 King.</p> <p>24                              ADMINISTRATIVE PATENT JUDGE: Okay.</p> <p>25 Great. Thank you.</p>	<p style="text-align: right;">Page 5</p> <p>1                               PTAB Conference Call</p> <p>2                               Did either party arrange for a court</p> <p>3 reporter?</p> <p>4                               MR. LIANG: Yes, Your Honor,</p> <p>5 Petitioner arranged for a court reporter, who I</p> <p>6 believe is on the line.</p> <p>7                               THE REPORTER: I am here.</p> <p>8                               ADMINISTRATIVE PATENT JUDGE: Okay.</p> <p>9 Thank you.</p> <p>10                              Whenever you receive the transcript,</p> <p>11 please file it as an exhibit.</p> <p>12                              All right. So we'll start. I</p> <p>13 understand that the parties requested the call</p> <p>14 to seek authorization to file a motion to</p> <p>15 strike portions of the sur-reply and then also</p> <p>16 a responsive motion to strike the reply.</p> <p>17                              Why don't we start with Petitioner's</p> <p>18 counsel and you can tell us why a motion to</p> <p>19 strike portions of the sur-reply would be</p> <p>20 warranted. And then we'll follow up with</p> <p>21 allowing Patent Owners' counsel to respond.</p> <p>22 And we'll do the same for the responsive motion</p> <p>23 to strike.</p> <p>24                              So why don't you go ahead, Counsel</p> <p>25 for Petitioner.</p>

<p style="text-align: right;">Page 6</p> <p>1 PTAB Conference Call</p> <p>2 MR. LIANG: Thank you, Your Honor.</p> <p>3 So the petition presented two</p> <p>4 grounds, and the first one is -- ground 1 was</p> <p>5 based on Khandekar. And the second ground,</p> <p>6 ground 2, was a combination that applied Le's</p> <p>7 teachings of remotely imaging physical</p> <p>8 computers to explain how Khandekar's teachings</p> <p>9 would be implemented.</p> <p>10 The Patent Owner response only spent</p> <p>11 a single page discussing ground 2 and Le.</p> <p>12 That's Page -- you know, starting towards the</p> <p>13 top of Page 64 through the top of Page 65.</p> <p>14 There's no mention in that page of imaging</p> <p>15 physical computers.</p> <p>16 And the reply pointed out this</p> <p>17 deficiency and explained that Patent Owner</p> <p>18 can't attempt to address Le's physical imaging</p> <p>19 teachings for the first time on sur-reply.</p> <p>20 But then that's what Patent Owner</p> <p>21 tried to do with multiple pages of new argument</p> <p>22 in the sur-reply about physical images when</p> <p>23 there was no mention of that before.</p> <p>24 So we met and conferred with Patent</p> <p>25 Owner to see if they would oppose our request</p>	<p style="text-align: right;">Page 7</p> <p>1 PTAB Conference Call</p> <p>2 for a motion to strike, and then Patent Owner</p> <p>3 responded with a tit for tat, saying that if we</p> <p>4 requested a motion to strike, they would do the</p> <p>5 same. But that's basically where we are now.</p> <p>6 I think this is a pretty</p> <p>7 straightforward issue of a new argument being</p> <p>8 raised that was not raised in the Patent Owner</p> <p>9 response, and so that's why we are requesting a</p> <p>10 motion to strike.</p> <p>11 ADMINISTRATIVE PATENT JUDGE: All</p> <p>12 right.</p> <p>13 Counsel for Patent Owner, would you</p> <p>14 like to respond?</p> <p>15 MR. YOUNG: Yes, Your Honor. Thank</p> <p>16 you.</p> <p>17 And this -- our response with</p> <p>18 respect to a motion to strike, their portion, I</p> <p>19 think, is -- these issues are all intertwined,</p> <p>20 so I'll kind of speak to both of them at the</p> <p>21 same time because I don't think it makes a</p> <p>22 whole lot of sense to separate them because</p> <p>23 they are kind of one and the same argument.</p> <p>24 As we set forth in our sur-reply,</p> <p>25 which is Paper 24 at Page 21, this argument</p>
<p style="text-align: right;">Page 8</p> <p>1 PTAB Conference Call</p> <p>2 that Petitioner raises where they say Le</p> <p>3 teaches deploying a physical image -- and I'm</p> <p>4 reading from Page 21 of their reply, so it's</p> <p>5 Page 21 of both briefs, where they say:</p> <p>6 "Deploying a physical images of a host</p> <p>7 computer, including a VMM using Le's teachings,</p> <p>8 booting the host computer and then deploying</p> <p>9 the virtual image of a VM to the host using</p> <p>10 Khandekar's teaching," that argument is nowhere</p> <p>11 to be found in the petition.</p> <p>12 In fact, we call out, in our</p> <p>13 sur-reply on Page 21 of our brief, you can</p> <p>14 search for the terms "physical image," "booting</p> <p>15 the host computer." It's nowhere to be found</p> <p>16 in the petition.</p> <p>17 And in Footnote 7 of our sur-reply,</p> <p>18 we say we extensively questioned Petitioner's</p> <p>19 expert Dr. Shenoy on where in his declaration,</p> <p>20 his original declaration, he supports this</p> <p>21 argument. And it's on the bottom of Page 21,</p> <p>22 Footnote 7, seven pages of testimony. He</p> <p>23 provided no support whatsoever from his</p> <p>24 declaration and ultimately said this is just in</p> <p>25 his sur-reply.</p>	<p style="text-align: right;">Page 9</p> <p>1 PTAB Conference Call</p> <p>2 So we call out, in -- on Page 21 of</p> <p>3 our sur-reply, that this was a new argument,</p> <p>4 and we call it out. And so when we got</p> <p>5 Petitioner's response of saying that, oh, this</p> <p>6 is -- you're not allowed to argue this, for us,</p> <p>7 it was kind of an unbelievable request, when</p> <p>8 they make a new argument, we respond to it</p> <p>9 saying it's a new argument, pointing out</p> <p>10 exactly why it's a new argument, and then they</p> <p>11 say, well, you're not allowed to respond to our</p> <p>12 new argument.</p> <p>13 And when I went back and thought</p> <p>14 about this a little bit further, I think the</p> <p>15 easiest way to -- and there's a lot of</p> <p>16 complication here. There's a lot a disclosure</p> <p>17 in both Le and Khandekar. But if you look at</p> <p>18 the petitions, there are three elements that</p> <p>19 deal with this concept of a virtual machine,</p> <p>20 and not virtual machine manager, but just a</p> <p>21 virtual machine.</p> <p>22 And if you look at Page 90 of the</p> <p>23 petition, it lays out the claim elements of</p> <p>24 1(a) through 1(g). And these virtual machine</p> <p>25 limitations come up in three limitations, 1(d),</p>

<p style="text-align: right;">Page 10</p> <p>1 PTAB Conference Call</p> <p>2 1(e) and 1(g).</p> <p>3 And so 1(d) states that -- I won't</p> <p>4 read the whole thing, but basically when</p> <p>5 executed on the application nodes, the images</p> <p>6 to the virtual machine manager provide, (a),</p> <p>7 plurality of virtual machine. That's the first</p> <p>8 time "virtual machine" is defined in the</p> <p>9 claims.</p> <p>10 And if you go to that limitation in</p> <p>11 their petition -- and counsel for Petitioner is</p> <p>12 right, there are two grounds, ground 1 and</p> <p>13 ground 2. But ground 2 for that limitation</p> <p>14 starts on Page 40, and it starts with a</p> <p>15 sentence that says: "To the extent Patent</p> <p>16 Owner contends each image instances of a VMM</p> <p>17 must provide a plurality of virtual machines,</p> <p>18 the combination of Khandekar and Le rendered as</p> <p>19 obvious."</p> <p>20 We don't make that argument. So</p> <p>21 this whole section -- it's only a page -- is</p> <p>22 not applicable to our argument. So for the</p> <p>23 purposes of element 1(e) -- I'm sorry -- 1(d),</p> <p>24 the only reference they rely on is Khandekar.</p> <p>25 And then the next limitation where</p>	<p style="text-align: right;">Page 11</p> <p>1 PTAB Conference Call</p> <p>2 virtual machine managers show up is 1(e), where</p> <p>3 it says: "Executable on the plurality of</p> <p>4 virtual machines," referring back to the</p> <p>5 element of 1(d).</p> <p>6 And if you go to the --</p> <p>7 ADMINISTRATIVE PATENT JUDGE:</p> <p>8 Counsel?</p> <p>9 MR. YOUNG: Yes, Your Honor.</p> <p>10 ADMINISTRATIVE PATENT JUDGE:</p> <p>11 Counsel, I'm not sure that this at this point</p> <p>12 is, I don't know, applicable to why a motion --</p> <p>13 MR. YOUNG: Well, yes, Your Honor.</p> <p>14 I'm sorry.</p> <p>15 ADMINISTRATIVE PATENT JUDGE: I</p> <p>16 think we understand that there's a dispute</p> <p>17 about what's a new argument versus a responsive</p> <p>18 argument at this point, so --</p> <p>19 MR. YOUNG: Yes, Your Honor.</p> <p>20 My only point was those three</p> <p>21 elements that deal with virtual machine, Le is</p> <p>22 not mentioned.</p> <p>23 And so in our petition, in our</p> <p>24 response, we didn't have to provide extensive</p> <p>25 rebuttal on Le with ground 2, because the</p>
<p style="text-align: right;">Page 12</p> <p>1 PTAB Conference Call</p> <p>2 arguments all overlap with ground 1 and</p> <p>3 ground 2. That's my point.</p> <p>4 ADMINISTRATIVE PATENT JUDGE: Okay.</p> <p>5 MR. YOUNG: And then lastly I would</p> <p>6 just say that we didn't initially ask for a</p> <p>7 motion to strike, because as the Board knows,</p> <p>8 the practice guide refers to a motion to strike</p> <p>9 as an exceptional remedy. And in most cases</p> <p>10 the Board is more than capable of</p> <p>11 distinguishing new argument as part of the oral</p> <p>12 argument in ultimately its decision, so we</p> <p>13 didn't think that a motion to strike was</p> <p>14 necessary.</p> <p>15 But to the extent that they're going</p> <p>16 to ask for a motion to strike our response to</p> <p>17 their new argument, well then we asked for a</p> <p>18 motion to strike as well.</p> <p>19 ADMINISTRATIVE PATENT JUDGE: Okay.</p> <p>20 All right. Great.</p> <p>21 Counsel for Petitioner, do you have</p> <p>22 anything to respond?</p> <p>23 MR. LIANG: Yes, Your Honor.</p> <p>24 I believe that this is in fact an</p> <p>25 exceptional circumstance because as -- because</p>	<p style="text-align: right;">Page 13</p> <p>1 PTAB Conference Call</p> <p>2 the sur-reply contains numerous</p> <p>3 misrepresentations, and many of which have just</p> <p>4 been repeated on this call.</p> <p>5 You know, I point out that the</p> <p>6 petition actually has pictures of a physical</p> <p>7 computer being imaged. And their argument</p> <p>8 about how physical image isn't mentioned in the</p> <p>9 opening papers is just simply wrong, because</p> <p>10 the -- for example, Dr. Shenoy, Paragraph 58 of</p> <p>11 his declaration says "image of physical</p> <p>12 computers." And that's actually the</p> <p>13 explanation. There's significant discussion</p> <p>14 throughout the opening papers. That's the</p> <p>15 explanation of how Le is being combined into</p> <p>16 the combination.</p> <p>17 So while it may not say "physical</p> <p>18 image," it says "image of a physical computer."</p> <p>19 And so when Dr. Shenoy explained this at his</p> <p>20 deposition, which I note he cites -- he points</p> <p>21 out this paragraph, and so it's just a straight</p> <p>22 misrepresentation that he was unable -- he only</p> <p>23 pointed to his reply declaration, because he</p> <p>24 actually pointed to his opening declaration</p> <p>25 which was omitted from the sur-reply.</p>

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1 PTAB Conference Call

2 And so I do think that in that sense

3 this is an exceptional case because of their

4 mischaracterizations of the record, and that's

5 why we are asking for a motion to strike.

6 ADMINISTRATIVE PATENT JUDGE: Okay.

7 Counsel for Patent Owner, did you

8 have any response?

9 MR. YOUNG: Yes, Your Honor.

10 I mean, with respect to Paragraph 58

11 of Dr. Shenoy's declaration, that's not even

12 part of his grounds. That's the motion to --

13 that's the motivation to combine the two

14 references, but it has nothing to do with why

15 the combination of Le and Khandekar teach any

16 individual specific elements of the challenged

17 claims.

18 And that's why I went through

19 elements 1(d), 1(e) and 1(g), because they're

20 part of the virtual machine which they claim is

21 now created in the Le teaching when it reboots

22 the computer. That's nowhere to be found in

23 the petition or in Dr. Shenoy's original

24 declaration.

25 ADMINISTRATIVE PATENT JUDGE: All

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1 PTAB Conference Call

2 right. Thank you very much.

3 We'll be adjourned then. Thank you.

4 (Time Noted: 10:15 a.m.)

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1 PTAB Conference Call

2 right. Thank you.

3 We'll take a couple of moments to

4 confer, and we'll be back on the line in a few

5 moments. Thank you.

6 (Recess was held from 10:13 a.m. to

7 10:14 a.m.)

8 ADMINISTRATIVE PATENT JUDGE: Thank

9 you, Counsel. We're back after conferring.

10 At this point in time, we are unable

11 to authorize Petitioner to file a motion to

12 strike.

13 At this point in time, it seems that

14 the briefing has pointed out the various

15 disputes about the arguments, and between that

16 and the transcript that will be filed, I think

17 that the panel will be able to discern which

18 arguments might be new or not, and at this

19 point in time, we will not be authorizing a

20 motion to strike.

21 Do either parties have any

22 questions?

23 MR. LIANG: No, Your Honor.

24 MR. YOUNG: No, Your Honor.

25 ADMINISTRATIVE PATENT JUDGE: All

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1 District of Columbia, to wit:

2 I, Stacey L. Daywalt, a Notary

3 Public of the District of Columbia, do hereby

4 certify that the proceedings were recorded

5 stenographically by me and this transcript is a

6 true record of the proceedings.

7 I further certify that I am not of

8 counsel to any of the parties, nor an employee

9 of counsel, nor related to any of the parties,

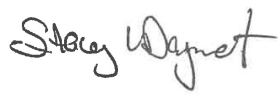
10 nor in any way interested in the outcome of

11 this action.

12 As witness my hand and Notarial Seal

13 this 7th day of December, 2021.

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17 Stacey L. Daywalt, Notary Public

18 My Commission Expires: 4/14/2026

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<b>(</b>	<b>A</b>	<b>Board</b> 12:7,10	<b>counsel</b> 5:18,21,24 7:13 10:11 11:8,11 12:21 14:7 15:9	<b>explain</b> 6:8
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