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11   **UNITED STATES DISTRICT COURT**
12   **NORTHERN DISTRICT OF CALIFORNIA**
                     SAN FRANCISCO DIVISION
13

14 PACKET INTELLIGENCE LLC,   Case No. 3:19-cv-04741-WHO

          Plaintiff,   **PLAINTIFF PACKET INTELLIGENCE**
15   **LLC'S REPLY CONSTRUCTION BRIEF**

          v.
16

17 JUNIPER NETWORKS, INC.,   **DEMAND FOR JURY TRIAL**

          Defendant.
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I.   INTRODUCTION

Last week, the Federal Circuit issued its opinion in *Packet Intelligence LLC v. NetScout Systems, Inc., et al.*, No. 2019-2041 (Fed. Cir. July 14, 2020), addressing these disputed terms. The Court: (1) affirmed the jury verdict of willful infringement; (2) affirmed the validity of the asserted claims under §§ 101, 102(a), and 102(f); and (3) affirmed all damages-related findings other than pre-suit damages.

The Court described the inventions of the patents-in-suit[1] as follows:

> [The asserted patents] teach a method for monitoring packets exchanged over a computer network. A stream of packets between two computers is called a connection flow. '789 patent col. 2 ll. 43–45. Monitoring connection flows cannot account for disjointed sequences of the same flow in a network. *Id.* col. 3 ll. 56–59. The specifications explain that it is more useful to identify and classify "conversational flows," defined as "the sequence of packets that are exchanged in any direction as a result of an activity." *Id.* col. 2 ll. 45–47. Conversational flows provide application-specific views of network traffic and can be used to generate helpful analytics to understand network load and usage. *See* '751 patent col. 3 l. 2– col. 4 l. 11.

Packet Intelligence LLC v. NetScout Sys., Inc., No. 2019-2041, slip op. at 3 (Fed. Cir. July 14, 2020) [hereinafter *NetScout Appeal*]. In affirming the infringement verdict, the Court addressed the following term from representative claim 19 of the '789 Patent: "a memory for storing a database comprising none or more flow-entries for previously encountered conversational flows, each flow-entry identified by identifying information stored in the flow entry." *See id.* at 8. The Court held that "the claims do not require the joining of connection flows into conversational flows." *Id.* As detailed below, in so holding, the Court rejected Juniper's positions for the "flow-entry database" terms as well as the "flow/existing flow/new flow" terms. The Federal Circuit's holding is binding in this proceeding. *Markman v. Westview Instruments, Inc.,* 517 U.S. 370, 390-91 (1996) ("[T]reating interpretive issues as purely legal will promote (though it will not guarantee) intrajurisdictional certainty through the application of *stare decisis . . . .*").

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[1] The *NetScout* appeal related to the '725, '751, and '789 Patents. However, the parties in this case have not disputed that like terms across the patents warrant like constructions. Thus, the Federal Circuit's analysis is binding as to terms at issue in this case.

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PI'S REPLY CLAIM CONSTRUCTION BRIEF   CASE NO. 3:19-CV-04741-WHO

II.   DISPUTED TERMS FOR CONSTRUCTION

A.   *"conversational flow" / "conversational flow-sequence"*

Claim Term	Packet Intelligence's Construction	Juniper's Construction
"conversational flow"/ "conversational flow-sequence" '099 claims 1, 5 '725 claims 10, 17 '646 claims 1, 7, 16; '751 claims 1, 17; '789 claims 1, 19, 44	the sequence of packets that are exchanged in any direction as a result of an activity—for instance, the running of an application on a server as requested by a client—and where some conversational flows involved more than one connection, and some even involve more than one exchange of packets between a client and server	"The sequence of packets that are exchanged in any direction as a result of specific software program activity, where such packets form multiple connection flows that are linked based on that activity"

Juniper argues the "Court should construe this term to differentiate 'conversational flows' from 'only connection flows.'" ECF No. 62 at 3 ("Response"). But as Packet Intelligence explained in its opening brief, the patent specification defines both terms. Juniper refuses to accept that "the sequence of packets that are exchanged in any direction as a result of an activity" might include only a single connection. ECF No. 57 at 9 ("Opening"). This is analogous to the idea that while most English words consist of multiple letters, that does not prohibit some letters—alone—from being identified as a word as well, for example: "A" and "I." Juniper cannot rewrite the specification definitions to its liking. The Court should adopt the express specification definition, which another district court and the PTAB have already adopted.

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