

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DEPARTMENT OF JUSTICE,  
Petitioner,

v.

ENVISIONIT, LLC,  
Patent Owner.

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Case IPR2017-00160  
Patent 8,438,221

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Before BRYAN F. MOORE, LYNNE E. PETTIGREW, and  
DAVID C. MCKONE, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

## I. INTRODUCTION

Petitioner, the Department of Justice, filed a Petition for *inter partes* review of claim 19 of U.S. Patent No. 8,438,221 (Ex. 1001, “the ’221 patent”). Paper 1 (“Pet.”). Patent Owner, EnvisionIT, LLC, filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition, we conclude the information presented does not show there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claim 19 of the ’221 patent.

### A. *Related Matter*

The parties indicate that the ’221 patent has been asserted in *CellCast Technologies, LLC v. United States*, Case No. 1:15-cv-01307 (Fed. Cl.) (“*CellCast* Litigation”). Pet. 4; Paper 4, 2.

### B. *The ’221 Patent*

The ’221 patent describes “[a] message processing system and method providing a broadcast message to a plurality of user devices located within a geographically defined broadcast target area.” Ex. 1001, Abstract. Figure 1, reproduced below, illustrates an example:

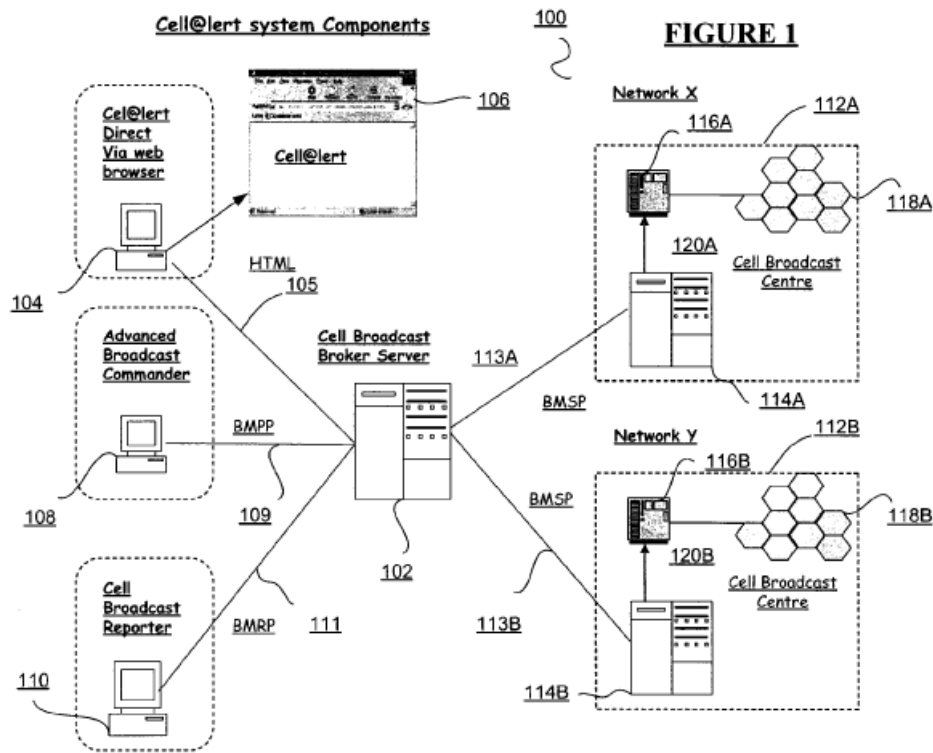


Figure 1 is a block diagram of a public service message location broadcast system. *Id.* at 4:57–59.

The location broadcast system includes a broadcast service bureau (e.g., cell broadcast broker server 102) that receives a broadcast request from an originating broadcast agent associated with one of a plurality of broadcast agent message origination systems (e.g., 104). *Id.* at Abstract. Each broadcast request includes a broadcast agent identification, a geographically defined broadcast target area, and a broadcast message. *Id.* The broadcast service bureau verifies the broadcast request based on the broadcast agent identification including an authority of the originating broadcast agent to send the broadcast message to the broadcast target area. *Id.* The broadcast service bureau processes the verified broadcast request for transmission to one or more broadcast message network systems (e.g., cell broadcast centres

112A, 112B) providing broadcast message alerting service to at least a portion of the broadcast target area.

*C. Challenged Claim*

Independent claim 19, reproduced below, is the only challenged claim:

19. A method of public service broadcast messaging to a broadcast target area, the method comprising:

receiving over an input interface a broadcast request including a broadcast agent identification, a geographically defined broadcast target area, and a broadcast message from one of a plurality of coupled broadcast agent message origination systems;

storing a geographically defined broadcast message jurisdiction for a broadcast agent;

verifying an authority of the broadcast agent identification including an authority of the originating broadcast agent to send the broadcast message to the broadcast target area by comparing the stored geographically defined broadcast message jurisdiction for the originating broadcast agent with the broadcast target area associated with the broadcast message in the broadcast request; and

transmitting the broadcast message over an output interface to one or more coupled broadcast message networks providing broadcast message alerting service to at least a portion of the broadcast target area.

*Id.* at 28:22–41.

*D. Asserted Grounds of Unpatentability*

Petitioner asserts the following grounds of unpatentability (Pet. 7–8):

References	Basis	Challenged Claim
Gundlegård, <sup>1</sup> 3GPP Standard, <sup>2</sup> Sandhu, <sup>3</sup> Rieger, <sup>4</sup> and Zimmers <sup>5</sup>	§ 103(a)	19
Mani, <sup>6</sup> 3GPP Standard, Sandhu, Rieger, and Zimmers	§ 103(a)	19

II. DISCUSSION

*A. Real Party in Interest*

According to Patent Owner, its exclusive licensee, CellCast Technologies, LLC, sued Petitioner for infringement of the '221 patent in the United States Court of Federal Claims based, in part, on development work performed by International Business Machines Corporation (“IBM”). Prelim. Resp. 5. According to a Motion to Notice Third Party filed by Petitioner in the *CellCast* Litigation (Ex. 2002, 3), the contract between

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<sup>1</sup> David Gundlegård, Automotive Telematics Services based on Cell Broadcast (May 8, 2003) (Master’s Thesis, Linköping University, Norrköping, Swed.) (Ex. 1013, “Gundlegård”).

<sup>2</sup> 3rd Generation Partnership Project (“3GPP”), *Technical Specification Group Terminals; Technical realization of Cell Broadcast Service (CBS) (Release 4)*, 3GPP TS 23.041 V4.2.0 (Dec. 2001) (Ex. 1019, “3GPP Standard”).

<sup>3</sup> Ravi S. Sandhu & Pierangela Samarati, *Access Control: Principles and Practice*, VOL. 32 NO. 9 IEEE COMMUNICATIONS MAGAZINE 40–48 (Sept. 1994) (Ex. 1020, “Sandhu”).

<sup>4</sup> U.S. Publication No. US 2002/0103892 A1, published Aug. 1, 2002 (Ex. 1017, “Rieger”).

<sup>5</sup> U.S. Patent No. 6,816,878 B1, issued Nov. 9, 2004, filed Feb. 11, 2000 (Ex. 1018, “Zimmers”).

<sup>6</sup> U.S. Publication No. US 2002/0184346 A1, published Dec. 5, 2002 (Ex. 1014, “Mani”).

Petitioner and IBM regarding the development work included Federal Acquisition Regulation (FAR) Clause 52.227-3, reproduced below:

*Patent Indemnity*

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as *construction work*) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. . . .

48 C.F.R. § 52.227-3 (Apr. 1984). Pursuant to that clause, Petitioner noticed IBM of the *CellCast* Litigation. Ex. 2002. After being noticed, IBM intervened in the *CellCast* Litigation. Pet. 1; Prelim. Resp. 6; Ex. 2003.

A petition for *inter partes* review may be considered only if, among other requirements, “the petition identifies all real parties in interest.” 35 U.S.C. § 312(a)(2). According to the Office Patent Trial Practice Guide, “[w]hether a party who is not a named participant in a given proceeding nonetheless constitutes a ‘real party-in-interest’ or ‘privy’ to that proceeding is a highly fact-dependent question.” 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012). The Trial Practice Guide provides guidance regarding the factors we consider in determining whether a party is a real party in interest. For example, “[a] common consideration is whether the non-party exercised or

could have exercised control over a party's participation in a proceeding.” *Id.* Other considerations may include whether the non-party is funding or directing the proceeding. *Id.* at 48,760.

Patent Owner argues that IBM is a real party in interest in this proceeding by virtue of the indemnity clause reproduced above. Prelim. Resp. 6–9. Anticipating this argument, Petitioner points out that previous panels of the Board have ruled that the mere existence of an indemnification agreement does not establish that an indemnitor is a real party in interest. Pet. 2 (citing, *inter alia*, *Mercedes-Benz USA, LLC v. Proximity Monitoring Innovations LLC*, Case No. IPR2015-00397, slip. op. at 9 (PTAB July 17, 2015) (Paper 18)). Likewise, as Petitioner notes (Pet. 3), a non-party is not necessarily a real party in interest by virtue of its status as a co-defendant or co-member of a joint defense group with a petitioner. *See* Trial Practice Guide, 77 Fed. Reg. at 48,760. Petitioner then represents that IBM has not collaborated with Petitioner in the preparation of the Petition, IBM has not funded or paid the filing fees for the Petition, and Petitioner did not share a draft of the Petition with IBM. Pet. 3. Patent Owner does not offer evidence contradicting these representations.

According to Patent Owner, however, “[t]he relevant issue is not merely the **existence** of an indemnification agreement, but whether the **terms** of the indemnification agreement allow IBM to exercise control over the Petitioner's participation in this proceeding.” Prelim. Resp. 8. Patent Owner argues that because the indemnity clause in this case gives IBM an opportunity to participate in the defense of any suit or action alleging patent infringement, IBM *could* have exercised control over Petitioner's participation in this proceeding, even if it did not actually do so. *Id.* at 7–8.

We are not persuaded by Patent Owner's argument. We generally accept a petitioner's identification of real parties in interest at the time of filing the petition. Petitioner represents that IBM has not funded, directed, or otherwise controlled the preparation of the Petition in this proceeding. Pet. 3. Patent Owner introduces no evidence that reasonably brings into question Petitioner's identification of real parties in interest. Moreover, Patent Owner has not shown persuasively that the indemnification clause at issue, which gives IBM an "opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense," gives IBM an opportunity to direct or control this proceeding.<sup>7</sup>

On this record, we are not persuaded that IBM is a real party in interest.

*B. Prior Art Status of Gundlegård and 3GPP Standard*

Patent Owner contends that Petitioner has failed to establish that either Gundlegård or 3GPP Standard was publicly available before the priority date of the '221 patent and, thus, Petitioner has not established that either is prior art to the '221 patent. Prelim. Resp. 19.

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<sup>7</sup> This Decision is not at odds with the decision in *First Data Corp. v. Cardsoft (Assignment for the Benefit of Creditors), LLC*, Case IPR2014-00715, slip op. at 7–10 (PTAB October 17, 2014) (Paper No. 9), cited by Patent Owner. See Prelim. Resp. 8. In *First Data*, the panel considered not only an indemnification agreement that expressly stated that the indemnitor "shall have the right at its expense to employ counsel . . . to defend against Claims that VeriFone is responsible for . . . and to compromise, settle and otherwise dispose of such Claims," but also considered additional evidence of control, such as communications from the indemnitor to the petitioner in that proceeding, and the indemnitor paying all costs of the petition. IPR2014-00715, slip op. at 7–8.

According to the Federal Circuit, “[b]ecause there are many ways in which a reference may be disseminated to the interested public, ‘public accessibility’ has been called the touchstone in determining whether a reference constitutes a ‘printed publication’” under Section 102. *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (quoting *In re Hall*, 781 F.2d 897, 898–99 (Fed. Cir. 1986)). A reference is publicly accessible “upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008). We assess public accessibility on a case-by-case basis. *See Kyocera*, 545 F.3d at 1350.

In instances of references stored in libraries, for example, “competent evidence of the general library practice may be relied upon to establish an approximate time when a thesis became accessible.” *In re Hall*, 781 F.2d at 899. “In these cases, we generally inquire whether the reference was sufficiently indexed or cataloged.” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016); *accord Voter Verified, Inc. v. Premier Election Solutions, Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012) (“[I]ndexing is a relevant factor in determining accessibility of potential prior art, particularly library-based references.”). In *Hall*, the Federal Circuit found sufficient “a declaration from the university librarian which detailed the library’s procedures for receiving, cataloging, and shelving of theses and attested to the relevant dates that Bayer’s thesis was processed.” 781 F.2d at 899. In contrast, in *SRI International*, in the context of a motion for summary judgment, a document on an FTP server was not shown to have

been sufficiently publicly available, in part, because “the FTP server did not contain an index or catalogue or other tools for customary and meaningful research.” 511 F.3d at 1196. In another example, theses deposited at a library “were not accessible to the public because they had not been either cataloged or indexed in a meaningful way.” *In re Cronyn*, 890 F.2d 1158, 1161 (Fed. Cir. 1989). In *Cronyn*, the theses were cataloged in alphabetical order, by title, and “the student’s name, which, of course, bears no relationship to the subject of the student’s thesis.”

*Id.*

*1. Petitioner has not shown that Gundlegård was publicly accessible*

Gundlegård states on its face that it is a master’s thesis kept at Linköping University in Norrköping, Sweden, and is alleged to have been made available over the Internet. Thus, to determine a date on which Gundlegård was publicly accessible, we look to evidence of the library’s cataloging and indexing practices and any search capability of the library’s website. *See Blue Calypso*, 815 F.3d at 1348; *Voter Verified*, 698 F.3d at 1380; *SRI*, 511 F.3d at 1196.

The Petition does not provide a detailed statement of Petitioner’s arguments as to the public accessibility of Gundlegård. Rather, Petitioner simply states “[a]s documented by the declaration of Amelia Nuss (Ex. 1021), the thesis was published at least as early as October 27, 2003.” Pet. 15. The detailed basis for Petitioner’s contention is stated in the Nuss Declaration. Patent Owner argues that this constitutes an improper incorporation by reference of arguments from the Nuss Declaration into the Petition, in violation of 37 C.F.R. § 42.6(a)(3). Prelim. Resp. 20 n.3. We

share Patent Owner's concern. Nevertheless, we agree with Patent Owner that the Nuss Declaration, even if considered, does not support a finding that Gundlegård was publicly available.

According to her Declaration, Ms. Nuss is a law librarian at the Justice Management Division of the Department of Justice, rather than a staff member of the Linköping University library at which Gundlegård is located. Ex. 1021 ¶¶ 1–2. Ms. Nuss testifies that she “was provided with a copy of” Gundlegård and was “asked to determine the earliest date that the thesis was recorded and made available and accessible to researchers.”

*Id.* ¶ 3.

Ms. Nuss identifies a URL link in Gundlegård (Ex. 1013, 3) and testifies that she followed that link and that Attachment 2 to her Declaration reflects the web page that resulted. *Id.* ¶¶ 3–4. Attachment 2 purports to be a search screen from Linköping University listing bibliographic details regarding Gundlegård. As Ms. Nuss notes, it includes at the bottom the text “**Available from:** 2003-10-02 **Created:** 2003-10-02.” Attachment 2 also includes, at the top right, a link to “fulltext.” According to Ms. Nuss, clicking on that link results in downloading Gundlegård. Ex. 1021 ¶ 4. Ms. Nuss also includes, as Attachment 3 to her Declaration, a screenshot of Attachment 2 purportedly archived by the Wayback Machine on October 27, 2003. Ex. 1021 ¶ 5. According to Ms. Nuss, this “reflects that a copy of this thesis was publically available on the internet at least as early as October 27, 2003.” *Id.* As Patent Owner points out (Prelim. Resp. 24), following the “fulltext” link in the archived version (Attachment 3) downloads a version of Gundlegård archived at later date, March 22, 2004.

Patent Owner contends that Ms. Nuss's testimony is insufficient because she lacks personal knowledge of the source or date of publication of Gundlegård.<sup>8</sup> Prelim. Resp. 21. Patent Owner further argues that Petitioner does not offer any evidence that Gundlegård was indexed or otherwise made available to a member of the public prior to February 13, 2004. *Id.* at 22. We agree with Patent Owner. Ms. Nuss does not claim to have personal knowledge of the general library practices of Linköping University library prior to the critical date of the '221 patent. Nor does Ms. Nuss claim to have personal knowledge of the search capabilities of its website in that time period. For example, Ms. Nuss does not testify as to the procedures, if any, the university used to index or catalogue theses in 2003, or the manner, if at all, in which they were indexed or cataloged (e.g., by author, title, subject, etc.).

Petitioner does not introduce any other evidence of the indexing and cataloging policies of Linköping University library or the search capabilities of its website. Petitioner also does not introduce any evidence that Gundlegård was actually disseminated to any interested skilled artisans. Thus, the evidence in the Petition is insufficient to show that Gundlegård was publicly available as of the earliest priority date of the '221 patent (or, for that matter, prior to the actual filing date of December 5, 2011). Petitioner, therefore, has not established that Gundlegård is prior art to the '221 patent.

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<sup>8</sup> Patent Owner raises various objections to the evidence in Ms. Nuss's Declaration, including authenticity and hearsay objections. Prelim. Resp. 19–24. It is not necessary to rule on these objections for purposes of this Decision, as Ms. Nuss's evidence, if credited, is insufficient to show that Gundlegård was publicly accessible.

## 2. *Prior Art Status of 3GPP Standard*

Patent Owner contends that Petitioner has not established that 3GPP Standard is prior art. Prelim. Resp. 26–28. Because we decide on other grounds that Petitioner has not shown a reasonable likelihood that it would prevail in establishing the unpatentability of claim 19, we do not reach Patent Owner’s arguments as to the prior art status of 3GPP Standard.

### C. *Claim Construction*

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Although the parties propose competing constructions of “broadcast” (Pet. 8–9; Prelim. Resp. 11–18), we need not construe this or any other term for the purposes of this Decision to resolve the parties’ dispute. *See Vivid Technologies, Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

### D. *Asserted Grounds of Unpatentability*

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are “such that the

subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” We resolve the question of obviousness on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations.<sup>9</sup> *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

*1. Level of Ordinary Skill in the Art*

Petitioner, relying on the testimony of its declarant, Mr. Randall A. Snyder, contends that a person of ordinary skill in the art would have had a bachelor’s degree in computer science, engineering, physics, mathematics, or other technical field, along with three to five years of practical cellular network and protocol design and software development experience. Pet. 8 (citing Ex. 1011 ¶ 28). Patent Owner does not propose a level of skill or contest Petitioner’s statement. Petitioner’s proposal is consistent with the level of ordinary skill reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978). For purposes of this Decision, we adopt Petitioner’s statement of the level of ordinary skill in the art.

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<sup>9</sup> The record does not include allegations or evidence of objective indicia of nonobviousness.

2. *Alleged Obviousness over Gundlegård, 3GPP Standard, Sandhu, Rieger, and Zimmers*

For the reasons given above, the evidence in the Petition is not sufficient to show public availability of Gundlegård; thus, Petitioner has not shown that Gundlegård is prior art to the '221 patent. Accordingly, Petitioner has not established a reasonable likelihood that it would prevail in establishing the obviousness of claim 19 over Gundlegård, 3GPP Standard, Sandhu, Rieger, and Zimmers.

3. *Alleged Obviousness over Mani, 3GPP Standard, Sandhu, Rieger, and Zimmers*

a. *Overview of Mani*

Mani is directed to an emergency message notification system for use in a multimedia-capable network. Ex. 1014, Abstract. Figure 5, reproduced below, illustrates an example:

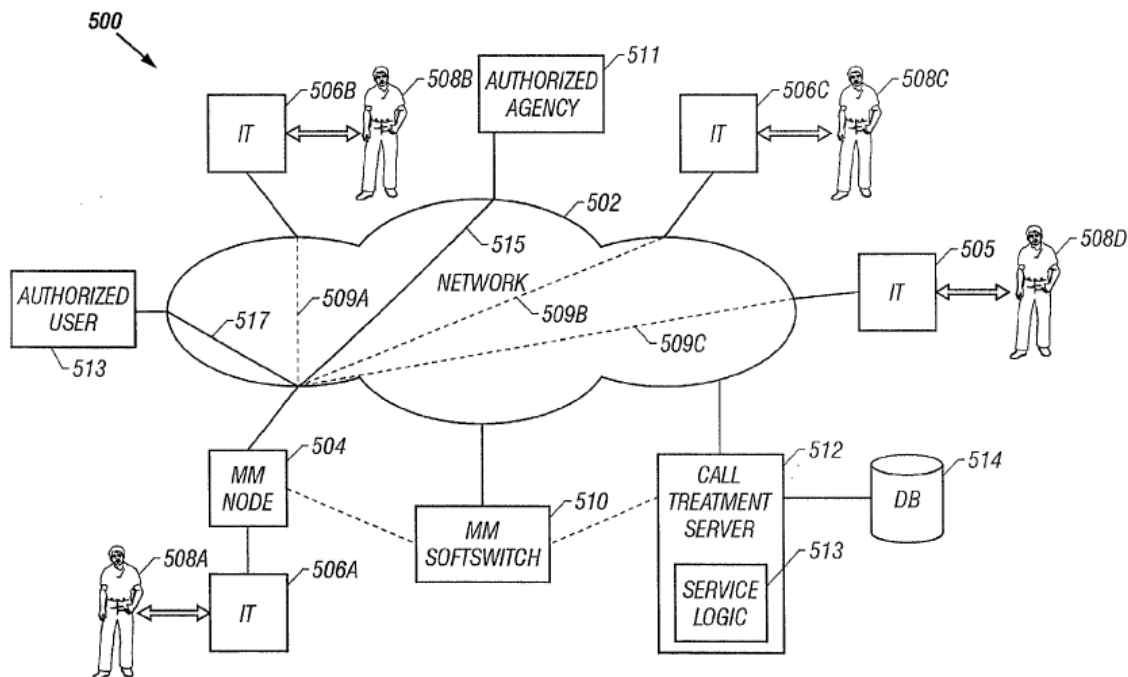


FIG. 5

Figure 5 is a block diagram of a service network that employs a multimedia-based emergency notification system. *Id.* ¶ 17.

Multimedia node 504, coupled to network 502, serves subscriber 508A (operating multimedia IT device 506A) for originating and terminating calls. Other call parties operating IT devices (e.g., call party 508B with IT device 506B and call party 508C with IT device 506C) are similarly coupled to network 502. *Id.* ¶ 39. Softswitch 510 is disposed in network 502 and coupled to call treatment server 512, which, in turn, is coupled to database environment 514. *Id.* ¶¶ 40–41. Database environment 514 stores various emergency notification alert modes, options, restrictions, and policies. *Id.* ¶ 41.

Authorized agency 511 is coupled to network 502. *Id.* ¶ 43. Authorized agency 511 could be a governmental agency, and may generate emergency messages, such as for inclement weather and police action. *Id.* According to Mani,

the emergency messages generated by the agency 511 may also include information regarding the characteristics of the various emergency situations, e.g., type, degree and severity of an emergency, target area to which the message is to be disseminated, indication as to whether recipients of a message are to respond in a particular manner, originating area of the emergency message, override capabilities (wherein a delivery restriction option selected by a subscriber in the target area is superseded by the emergency message to effect delivery), et cetera.

*Id.*

Path 515 illustrates disseminating an emergency message generated by authorized agency 511 with respect to particular subscriber 508A. *Id.* ¶ 45. Mani states that “the emergency message paths may be established

between an authorized entity and the intended recipient without disrupting an ongoing call connection involving the recipient, e.g., call connection 509A, 509B or 509C.” *Id.*

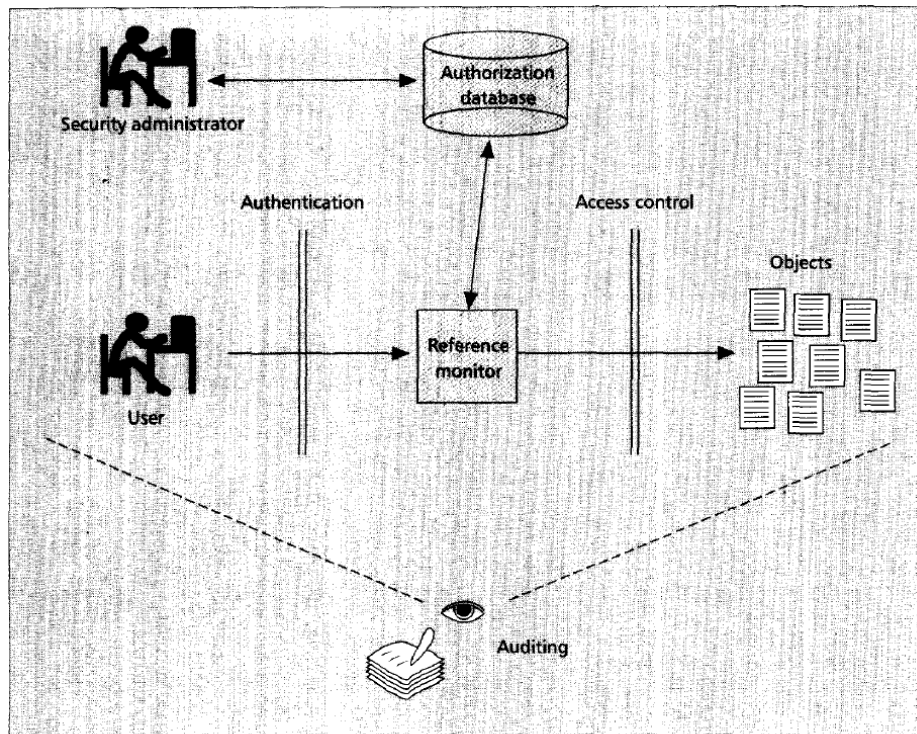
*b. Overview of 3GPP Standard*

3GPP Standard is a technical specification, promulgated by 3GPP, that “[f]or UMTS . . . defines the interface requirements for the Cell Broadcast Center – UMTS Radio Network System (RNS) interface and the radio interface requirements for UMTS Radio Acces[s] Networks to support CBS [Cell Broadcast short message service].” Ex. 1019, p. 6 § 1.

Petitioner relies, in particular, on 3GPP Standard’s specification of message-identifier parameters of CBS messages (Ex. 1019 § 9.3) and the format of CBS messages (*id.* § 9.4). Pet. 34. Specifically, a CBS message includes a “Message Identifier” parameter. Ex. 1019, p. 27 § 9.4.1.2. The Message Identifier parameter “identifies the source and type of the CBS message. For example, ‘Automotive Association’ (= source), ‘Traffic Reports’ (= type) could correspond to one value.” *Id.* at 29 § 9.4.1.2.2. A CBS message also includes a “Serial Number” parameter that includes “a 2-bit Geographical Scope (GS) indicator.” *Id.* at 27 §§ 9.4.1.2, 9.4.1.2.1. A CBS message further includes a “Cell-List” parameter that “identifies a sequence of one or more cells to which the primitives apply.” *Id.* at 21 § 9.3.5.

*c. Overview of Sandhu*

Sandhu is a technical magazine article that “explains access control and its relationship to other security services such as authentication, auditing, and administration.” Ex. 1020, 40 col. 1. Figure 1, appearing on page 41 of Sandhu, is reproduced below:



■ Figure 1. Access control and other security services.

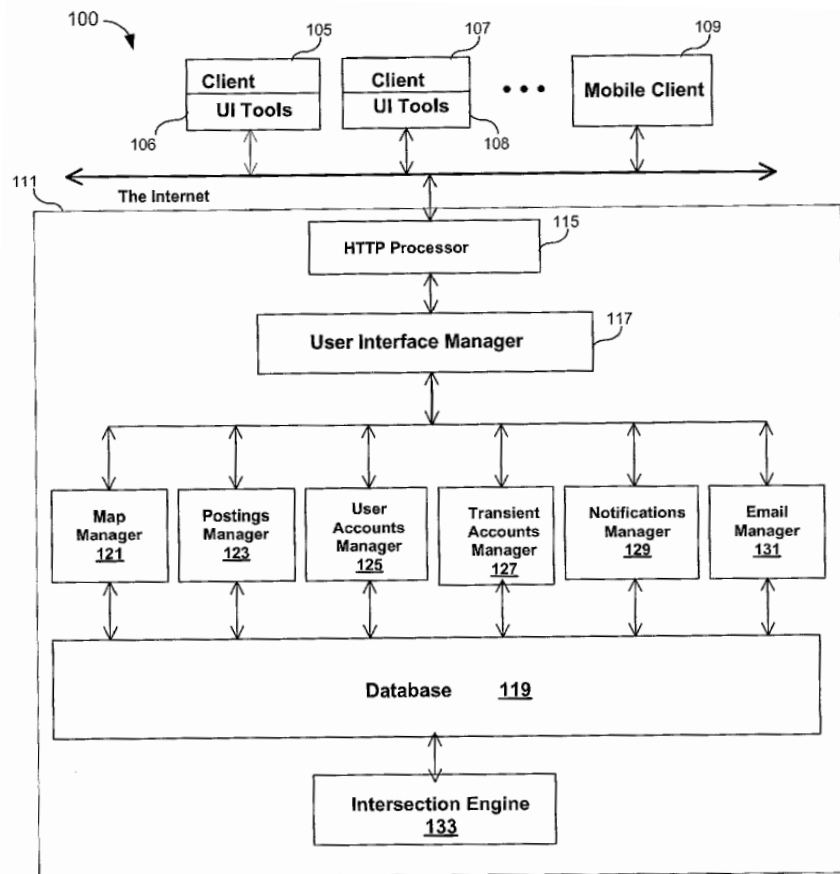
Figure 1 is a block diagram showing the relationship between access control and other security services in a computer system. *Id.* at 40 col. 1.

According to Sandhu, access control “is enforced by a reference monitor which mediates every attempted access by a user (or program executing on behalf of that user) to objects in the system” and “consults an authorization database in order to determine if the user attempting to do an operation is actually authorized to perform that operation.” *Id.*

Sandhu also describes an “access matrix” that defines the relationship between subjects (e.g., users or programs acting on behalf of users) and objects. *Id.* at 41 col. 2. According to Sandhu, “[s]ubjects initiate actions or operations on objects. These actions are permitted or denied in accord with the authorizations established in the system. Authorization is expressed in terms of access rights or access modes.” *Id.* at 41 col. 2–42 col. 1.

*d. Overview of Rieger*

Rieger describes a communications system for posting arbitrary information to a geographic region. Ex. 1017, Abstract. Figure 1, reproduced below, illustrates an example:



**FIG. 1**

Figure 1 is a block diagram of communications system 100. *Id.* ¶ 22. Communications server 111 communicates with mobile clients 109 and stationary clients 105, 107 over a network (e.g., the Internet). *Id.* ¶ 70. Communications server 111 is organized among a series of geographical maps that cover an intended service area, e.g., a county, metropolitan area, state, or country. *Id.* ¶ 71. User interface 117 allows a user to interact, using map manager 121, with the maps. *Id.* ¶ 73.

Postings manager 123 stores and retrieves information about postings on demand from user interface 117. *Id.* ¶ 76. Each posting includes an identification tag that describes, inter alia, who posted it, and an information component (i.e., the content of the posting). *Id.* ¶¶ 77–78. Each posting also includes a broadcast descriptor that identifies the posting’s geographic target region(s). *Id.* ¶ 79. According to Rieger:

Administrators of the communications system 100 can restrict the nature of postings created by any particular user by defining geographic regions into which the user is either authorized or unauthorized to post. Authorized regions can be assigned optional passwords and posting category restrictions that further narrow the user’s posting privileges in those regions. These controls would, for example, permit system administrators to grant specific privileges to a regional authority to create postings of particular categories, e.g., Governmental/Traffic, Governmental/Weather, to particular regions, while excluding all other users from posting those categories to the regions.

*Id.* ¶ 81.

*e. Overview of Zimmers*

Zimmers describes a system for providing alert notifications to a plurality of related geographic regions. Ex. 1018, Abstract. “Alerts may be initiated by authorized personnel via telephone or Internet interaction with the system, or may be generated automatically from data feeds such as the EMWIN system of the National Weather Service. Alerts may be delivered via telephone, pager (voice or text), e-mail, Internet, or other media.”

*Id.* Authorized personnel can include civil defense authorities, school administrators, and managerial employees of business or community organizations. *Id.* at 11:13–18.

Zimmers identifies a problem with prior art solutions in that alerts sent to a large coverage area might be irrelevant for a large percentage of the

recipients. *Id.* at 2:41–59. According to Zimmers, in the example of the National Weather Service (“NWS”), “[t]his results in the situation not unlike the fable of the Boy Who Cried Wolf, in which citizens decide that the warnings are not normally relevant, and either ignore them or turn their NWS receiver off.” *Id.* at 2:59–62.

*f. Alleged Obviousness of Claim 19*

Petitioner does not include in the Petition a meaningful textual explanation of how Mani corresponds to aspects of claim 19. Rather, Petitioner primarily includes quotations from Mani and the other cited references in claim chart form. We detail our understanding of Petitioner’s mapping below.

For example, claim 19 recites “receiving over an input interface a broadcast request including a broadcast agent identification, a geographically defined broadcast target area, and a broadcast message from one of a plurality of coupled broadcast agent message origination systems.” For this limitation, Petitioner cites Mani’s multimedia node 504 that serves a plurality of subscribers, e.g., subscriber 508A operating IT device 506A. Pet. 34 (citing Ex. 1014 ¶ 39). With respect specifically to the recited “broadcast request,” Petitioner appears to cite both Mani’s emergency message and the description in 3GPP Standard of message parameters, including a message identifier and a broadcast target area (e.g., a cell-list or as part of the serial number parameter). *Id.* (citing Ex. 1014 ¶ 54; Ex. 1019 §§ 9.3, 9.4). In addition, Petitioner appears to cite Rieger as teaching receiving over a user interface a broadcast request that includes a broadcast agent identification, a geographically defined broadcast target area, and a broadcast message. *Id.* at 34–36 (citing, e.g., Ex. 1017 ¶¶ 3, 73, 77–79).

Petitioner concedes that Mani does not teach “storing a geographically defined broadcast message jurisdiction for a broadcasting agent.” For this limitation, Petitioner cites both Rieger’s disclosure of a communications system that restricts the nature of postings by defining geographic regions into which the user is authorized or unauthorized to post and Sandhu’s disclosure of storing authorization settings in a database. *Id.* at 36–37 (citing Ex. 1017 ¶ 81; Ex. 1020, 40).

Petitioner further concedes that Mani does not teach the following limitation of claim 19:

verifying an authority of the broadcast agent identification including an authority of the originating broadcast agent to send the broadcast message to the broadcast target area by comparing the stored geographically defined broadcast message jurisdiction for the originating broadcast agent with the broadcast target area associated with the broadcast message in the broadcast request.

*Id.* at 37–39. Petitioner contends instead that Rieger discloses this feature and that Zimmers provides a reason to combine the teachings of Mani and Rieger. *Id.* at 37 (citing Ex. 1017 ¶ 81; Ex. 1018, 2:49–63). Petitioner also cites Sandhu for “background description of basic authorization and auditing concepts well-known in the art.” *Id.* at 37–39 (citing Ex. 1020, 40, 44).

Finally, as to “transmitting the broadcast message over an output interface to one or more coupled broadcast message networks providing broadcast message alerting service to at least a portion of the broadcast target area,” Petitioner cites to Figure 10 of Mani, in particular boxes 1004 (“broadcasting the message over a particular area served by the service network”) and 1006 (“delivering the public emergency message to the served subscribers in accordance with each subscriber’s notification options”). *Id.* at 40–41 (citing Ex. 1014 ¶¶ 39–40). Petitioner also cites

3GPP Standard's disclosure of broadcasting CBS messages to defined geographical areas. *Id.* at 41 (citing Ex. 1019 p. 7, § 2).

We are not persuaded Petitioner has shown sufficiently that the combination of references teaches or suggests all of the limitations of claim 19. In particular, claim 19 recites “receiving a broadcast request . . . from one of a plurality of coupled broadcast agent message origination systems.” It is not clear what teachings in the prior art Petitioner maps to a plurality of coupled broadcast agent message origination systems from which a broadcast request is received. For example, Petitioner cites Mani's disclosure of “a plurality of subscribers, e.g., subscriber 508A operating a multimedia IT device 506A for originating and/or terminating calls.” *Id.* at 34 (citing Ex. 1014 ¶ 39). Petitioner, however, appears to cite Mani's emergency message as corresponding to a broadcast message request. *Id.* (citing Ex. 1014 ¶ 54). But Petitioner does not cite to any disclosure in Mani suggesting that subscriber 508A generates emergency messages that can be received. Rather, it appears that Petitioner cites subscriber 508A as an entity that receives, rather than originates, a broadcast message.

On the other hand, the emergency message referred to in paragraph 54 of Mani is sent by “an authorized entity” in the context of the “service network arrangement 500 depicted in FIG. 5.” Ex. 1014 ¶ 54. Mani describes emergency messages generated by authorized agency 511 of Figure 5. *Id.* ¶ 43 (“Continuing to refer to FIG. 5, an authorized agency (e.g., a governmental entity) 511 is operably coupled to network 502 for generating appropriate emergency messages as may be warranted in different situations such as public safety, inclement weather, police action, and the like.”). Petitioner, however, does not identify authorized agency 511

as a broadcast agent message origination system as recited in claim 19. Moreover, Petitioner does not contend that Mani teaches a plurality of authorized agencies 511 that would correspond to a plurality of coupled broadcast agent message origination systems, as required by the claim.

Although Petitioner also cites 3GPP Standard and Rieger in connection with the “receiving” claim limitation, they are relied on only for details of the broadcast request and an input interface, not the coupled broadcast agent message origination systems. *See* Pet. 34–36. Furthermore, Petitioner does not cite to Sandhu or Zimmers for this limitation of claim 19.

For at least these reasons, Petitioner has not shown sufficiently that the combination of Mani, 3GPP Standard, Sandhu, Rieger, and Zimmers teaches or suggests all of the limitations of claim 19. Accordingly, we determine the information presented does not show a reasonable likelihood that Petitioner would prevail in establishing that claim 19 would have been obvious over Mani, 3GPP Standard, Sandhu, Rieger, and Zimmers.

### III. CONCLUSION

For the foregoing reasons, we determine the information presented does not establish a reasonable likelihood that Petitioner would prevail in showing that claim 19 of the ’221 patent is unpatentable on the grounds asserted in the Petition.

### IV. ORDER

Accordingly, it is:

ORDERED that the Petition is denied as to all challenged claims, and no trial is instituted.

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