

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner

v.

UNILOC 2017 LLC,  
Patent Owner

U.S. Patent No. 7,969,925

Filing Date: July 8, 2010

Issue Date: June 28, 2011

Title: Peer-to-Peer Mobile Data Transfer Method and Device

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*Inter Partes* Review No.: IPR2019-00702

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**PETITIONER'S REPLY TO PATENT  
OWNER'S RESPONSE TO PETITION**

Mail Stop Patent Board  
Patent Trial and Appeal Board  
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**Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
1001	U.S. Patent No. 7,969,925 to Lin (“ <b>925 patent</b> ”)
1002	Declaration of Dr. Henry Houh
1003	File History of U.S. Pat. No. 7,969,925 to Lin
1004	File History of U.S. Pat. No. 7,961,663 to Lin
1005	Certified Translation and Original of European Pat. App. Pub. EP 1 009 153 A1 (“ <b>Alos</b> ”)
1006	U.S. Pat. No. 6,847,632 (“ <b>Lee</b> ”)
1007	European Pat. App. Pub. EP 1 385 323 A1 (“ <b>Cordenier</b> ”)
1008	Complaint for Patent Infringement (“ <b>Uniloc Complaint</b> ”)
1009	<i>Declaration of Sandy Ginoza for IETF RFC 1122: Requirements for Internet Hosts - Communication Layers</i> with the exhibit RFC 1122, “Requirements for Internet Hosts - Communication Layers” (“ <b>RFC1122</b> ”)
1010	<i>Declaration of Sandy Ginoza for IETF RFC 793: Transmission Control Protocol</i> with the exhibit, RFC 793, “Transmission Control Protocol” (“ <b>RFC793</b> ”)
1011	U.S. Pat. App. Pub. No. 2003/0217174 (“ <b>Dorenbosch</b> ”)
1012	U.S. Patent No. 5,163,131 (“ <b>Row</b> ”)
1013	W. Richard Stevens, “Unix Network Programming,” Chapters 1, “Introduction”; 4, “A Network Primer”; 5, “Communication Protocols”; and, 6, “Berkeley Sockets”
1014	Information Disclose Statement Under 37 C.F.R. §§ 1.97 and 1.98 that includes “Universal Mobile Telecommunications System (UMTS); Technical realization of the Short Message Service (SMS) (3G TS 23.040 version 3.5.0 Release 1999)” and was submitted August 15, 2002, concurrently with U.S. Pat. App. 10/218,580, which application was published on February 27, 2003, as U.S. Pat. App. Pub. 2003/0040300 A1 (“ <b>SMS Specification</b> ”)

**EXHIBITS continued**

<b>Exhibit No.</b>	<b>Description</b>
1015	W. Richard Stevens, TCP/IP ILLUSTRATED, VOLUME 2: THE PROTOCOLS (1994)
1016	U.S. Pat. No. 8,018,877 to Lin
1017	U.S. Pat. Pub. No. 2005/0278448 to Mazor (“ <b>Mazor</b> ”)
1018	Declaration of Harold Ogle Regarding JSR-000120, “Wireless Messaging API (WMA) for Java™ 2 Micro Edition Version 1.0” with the exhibit JSR 120, “Wireless Messaging API (WMA) for Java™ 2 Micro Edition Version 1.0” (“ <b>WMA</b> ”)
1019	IBM Dictionary of Computing, 10th Ed. (1993)
1020	Newton’s Telecom Dictionary, 11th Ed. (1996)
1021	<i>Declaration of Sandy Ginoza for IETF RFC 2543: SIP: Session Initiation Protocol</i> with the exhibit RFC 2543, “SIP: Session Initiation Protocol” (“ <b>RFC2543</b> ”)
1022	<i>Declaration of Sandy Ginoza for IETF RFC 791: Internet Protocol</i> with the exhibit RFC 791, “Internet Protocol”
1023	U.S. Pat. Pub. No. 2003/0040300
1024	<i>Declaration of Sandy Ginoza for IETF RFC 2026: The Internet Standards Process – Revision 3</i> with the exhibit, RFC 2026: “The Internet Standards Process – Revision 3” (“ <b>Internet Standards Process</b> ”)
1025	U.S. Pat. No. 7,181,231
1026	<i>Declaration of Mr. Craig Bishop regarding ETSI TS 123 040 V3.5.0, “Universal Mobile Telecommunications System (UMTS); Technical Realization of the Short Message Service (SMS) (3GPP TS 23.040 version 3.50 Release 1999) with appendices A-D</i>
1027	<i>Declaration of Sandy Ginoza for IETF RFC 768: User Datagram Protocol</i> with the exhibit, RFC768: User Datagram Protocol
1028	Declaration of Dr. Henry Houh (for Petitioner’s Reply)

## **I. INTRODUCTION**

Patent Owner’s (“PO”) Response (the “POR”) is, like its Preliminary Response, unsupported by any expert declaration. The reason for this is readily apparent: the POR relies on constructions that are contrary to the plain meaning of the claims and to established case law, what is actually taught in the specification, and even what is technically possible. The arguments in the POR should be rejected for the reasons discussed in detail below.

## **II. CLAIM CONSTRUCTION**

The POR raises two claim construction issues: (1) the proper construction of the “opening a listening software port” limitation in independent claims 1, 8 and 15; and (2) whether the “opening a second listening software port” limitation in claims 2, 9 and 16 requires that this second port be opened only after the port in the independent claims. Both of PO’s constructions are wrong. Ex. 1028, ¶7.

### **A. The “opening a listening software port” Limitation**

The first step in independent claims 1, 8 and 9 recites in its entirety “opening a software listening port on an initiating mobile device to receive communications through the data packet-based communications service.” The POR raises three separate issues with respect to this limitation. Ex. 1028, ¶8.

**1. The Limitation Does Not Require That the “listening software port” Be Opened Only for a Specific Device**

The linchpin of the POR is PO’s argument that the “opening a listening software port” limitation must be construed as requiring that the port be opened for a specific target mobile device. POR, 7-8. This is an attempt to add the italicized limitations to what the claims actually recite: “opening a software listening port on an initiating mobile device to receive communications *from only a specific target mobile device* through the data packet-based communications service.” PO’s construction is improper for at least four reasons. Ex. 1028, ¶9.

**a. The Plain Meaning Does Not Support PO’s Erroneous Construction**

PO’s construction is contrary to the plain language of the claims. There is nothing in this limitation requiring that the software listening port be opened in such a way that it can receive communications from *only a specific* target mobile device, and PO offers no declaration from an expert or any other evidence to the contrary. Ex. 1028, ¶10.

**b. The Specification Does Not Support PO’s Erroneous Construction**

To support its erroneous construction, PO cites to only two disclosures in the specification that identically recite:

Initially, the initiating mobile device opens a TCP port to listen for communications from the target mobile device [210/310].

Response, 8 (citing Ex. 1001, 4:38–40 and 4:58–62). PO appears to argue that those two passages lexicographically define “opening a listening software port” to require opening the port only for the target device. *Id.*, 8-9. That argument is nonsense. An equally plausible understanding of the passages relied on by PO is that they explain *why* the listening software port is opened, not the manner in which it is opened. For example, if one turns on one’s mobile phone to receive an expected call from a child, that does not mean that the mobile phone is or must be configured to receive a call from only that child. Indeed, this latter understanding is compelled when one realizes as explained in further detail below that configuring the listening software port for *only* the target mobile device is not possible under the circumstances and using the TCP/IP connection discussed in those passages. Thus, the specification passages cited by PO do not “clearly set forth a definition of the disputed claim term other than its plain and ordinary meaning” that would be necessary for a construction of the “opening a listening software port” limitation as being limited to opening the port for only a specific target mobile device. *Thorner v. Sony Computer Entertainment America LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (quotations omitted). Ex. 1028, ¶11.

**c. The File History Does Not Support PO’s Erroneous Construction**

To support its construction, PO also cites to assertions the applicant made during the prosecution of the 994 Application that the same “opening a listening



software port” limitation requires opening the port for only the specific target device. *See, e.g.*, Response, 8-9, 12-15. Ex. 1028, ¶12.

However, erroneous statements made during prosecution cannot overcome the plain language of the claims. Ex. 1028, ¶12. In *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050 (Fed. Cir. 1989), the remarks section of an amendment submitted by the applicant there included an erroneous statement that “the claims are restricted to a single vaccination scheme” when not all claims included this limitation. The district court relied on this statement to hold that all claims of the patent at issue in that case were limited to a single vaccination scheme. The Federal Circuit reversed, holding:

When it comes to the question of which should control, an erroneous remark by an attorney in the course of prosecution of an application or the claims of the patent as finally worded and issued by the Patent and Trademark Office as an official grant, we think the law allows for no choice. The claims themselves control.

*Id.*, 1054. The Federal Circuit further noted that the “Examiner was not misled or deceived” by this erroneous mark and that the erroneous remark “was not the end of prosecution.” *Id.*

The situation here is similar. The prosecution history statements relied on by PO are clearly erroneous as nothing in the “opening a listening software port”

limitation requires that the listening software port be opened for only a specific target mobile device. Ex. 1028, ¶12. Moreover, as in *Intervet*, the examiner here was not misled or deceived. Indeed, the examiner rejected that argument in a January 2, 2009, *Interview Summary*. Ex. 1004, 324 (“The Examiner and Applicant, Mr. Daniel Lin discussed the current claim language ‘opening a listening port’ in view of the teachings of Caloud. No agreement was reached and the Examiner advised Applicant that he will formally consider the response filed ...”). Later during prosecution of the 994 Application, in a *Supplemental Amendment* dated April 10, 2010, the applicant amended the pending claim language to recite “opening a listening software port for the target mobile device” and relied on the “for the target mobile device” language (which is not a part of the limitation at issue here) to argue that the listening software port must be opened only for a specific target mobile device:

opening a listening software port <u>for the target mobile device</u> on an <u>the</u> initiating mobile device to receive communications through the data packet-based communications service <u>from the target mobile device</u> ;
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Ex. 1004, 350; *see also* Petition, 22<sup>1</sup> (identifying additional instance in the prosecution history in which application relied on this same additional language not present in the claims at issue here to support an argument that those claims required opening a port for a particular target mobile device). When the applicant filed the application that issued as the 925 patent (four months later on July 8, 2010), the applicant omitted the narrowing claim language. Ex. 1003, 16-19. The Board should therefore reject PO’s argument that the prosecution history compels its erroneous construction.

**d. PO’s Erroneous Construction Is Wrong Because It Cannot Be Implemented Using TCP/IP**

Another fundamental problem with PO’s construction is that it is impossible to implement that construction under the conditions discussed in the 925 patent using a TCP connection, which is the only type of connection disclosed in the 925 patent used for implementing ports on the claimed data packet-based communications service and which is specifically required by dependent claims 7, 14 and 20. *See, e.g.*, Ex. 1001, Fig. 2-3; 1:23-42, 2:21-27, 3:53-4:11, 4:31-5:20; and, Ex. 1028, ¶13.

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<sup>1</sup> This discussion of the prosecution history in the Petition disproves the assertion in the POR at 6 that the Petition relied “exclusively on *extrinsic* evidence in addressing the construction of the ‘opening’ limitations” (emphasis in original).

The Petition explains that an OPEN call can be either active or passive. Petition, 14 (citing Ex. 1010, RFC793). Both types of OPEN calls require arguments for an IP address of a remote/foreign host and for a port number of a process running on that remote/foreign host. *Id.* The combination of an IP address and port number is known as a socket address, or just a socket. A passive OPEN call with zeroes for each of the remote/foreign IP address and port arguments results in entry into the LISTEN state and allows for a connection with any foreign/remote process. Ex. 1010, 11. Alternatively, if a port is to be restricted to a particular foreign process, the OPEN call must specify the foreign socket address (both the IP address of the foreign host and the port number for the process on that host). Ex. 1010, 11; Ex. 1028, ¶14.

Thus, if PO were correct that “opening a listening software port” requires opening the port only for the target device, the initiating device would need to know the target device’s socket address (IP address and port number) in order to specify those arguments in the TCP OPEN call. However, this is inconsistent with the problem the 925 patent purports to solve, which is that the initiating device does not know the target device’s network (*e.g.*, IP) address or port number. Ex. 1001, 1:42-51; 4:12-19 (“In order to provide direct data transfer capabilities between mobile devices, an initiating mobile device must have knowledge of the IP address (and possibly, a port) of the target device in order to establish a direct

data transfer. Current mobile multimedia message solutions, such as MMS do not provide direct data transfer capabilities because the initiating mobile device is not able to obtain the receiving mobile device’s IP address.”) Thus, in the embodiments described in the specification and specifically required in dependent claims 7, 14 and 20, PO’s construction is simply not possible. Indeed, if the initiating device already knew the information necessary to perform a TCP active OPEN, then the initiating device could simply proceed to the “establishing a data transfer session” step using TCP/IP without having to first use a page-mode messaging service to perform the “transmitting” and “receiving” steps as recited in claims 1, 8 and 15 of the 925 patent. Notably, the POR offers no explanation (let alone evidence) as to how a listening software port for only a specific target mobile device could be opened without knowledge of the target mobile device’s IP address and port number. The reason for the lack of evidence is simple – this is not possible using TCP. Ex. 1028, ¶15.

## **2. The “listening software port” Only Need Be Opened Once**

In addition to arguing that claimed “listening software port” must be opened only for a specific target mobile device, PO also argues that “the claim language ‘requires opening a listening software port *every time* that initiating mobile device desires to establish communications with a particular target mobile device.’” POR, 8-9 (citing the same prosecution history at Ex. 1004, 316 discussed above).

However, this assertion is clearly erroneous as the words “every time” do not appear in the “opening a listening software port” limitation, and nothing in the specification indicates that a listening software port must be opened “every time” data is to be exchanged. Accordingly, this part of PO’s construction should also be rejected as contrary to the Federal Circuit’s holding in *Intervet* discussed above. Finally, a requirement that a port be open “every time” would be inconsistent with the claims, which recite that a port is open to receive plural “communications” (claim 1) and plural “invitation messages” (claim 2). Ex. 1001, 5:49-50, 6:2-3; *see also* identical language for claims 8-9 and 15-16; Ex. 1028, ¶16.

### **3. PO’s Conclusory Attacks on Petitioner’s “Associating” Construction Are Both Wrong and Irrelevant**

PO attacks Petitioner’s construction of the “opening a listening software port” limitation by mischaracterizing Petitioner’s construction as “replac[ing] the word ‘opening’ with ‘associating.’” POR, 6. This is incorrect because Petitioner’s construction replaces the phrase “opening a listening software port” with the phrase “associating a port identifier with a process” rather than simply replace the word “opening” with “associating” as PO asserts. Petition, 21-22 and 10-17. PO further asserts that Petitioner’s construction “fails to give effect to the meaningful and limiting term chosen by the patentee,” but PO never identifies any effect that Petitioner’s construction fails to give the “opening” term. Response, 6. PO’s assertion fails and Petitioner’s construction is correct because the construction uses

“associating” in the same way that the claims themselves use “associated” in the “transmitting” limitations that immediately follow the “opening” limitations. *See, e.g.*, Ex. 1001, 5:52-57, 6:34-39, 7:19-24 (each reciting, “a network address associated with the initiating mobile device”) (emphasis added). As explained in the Petition, the port number associated with a process uniquely identifies that process on a computer and the IP address associated with the computer uniquely identifies that computer in the network. Petition, 12-13. PO’s Response also demonstrates the flaw in this attack when it uses “associated” in the same way to describe the 925 patent:

The initiating mobile device may further utilize and incorporates a unique identification number (e.g., telephone number, PIN number, etc.) associated with the target mobile device into the invitation message to locate and contact the target mobile device within the wireless mobile network.

POR, 2 (emphasis added). PO closes its first attack by complaining that “Petitioner offers no explanation as to why ‘associating’ is more appropriate here.” Response, 6. The Petition explains at length why Petitioner’s construction is correct under applicable law. Petition, 21-22 and 10-17. Ex. 1028, ¶17.

PO’s second attack is a variation of its first attack. PO again mischaracterizes Petitioner’s construction as “reduce the ‘opening’ limitations as

merely purposed for “associating a port identifier with a process ...” POR, 6-7.

Substituting Petitioner’s construction in the limitation illustrates the mischaracterization:

~~opening a listening software port~~ [**associating a port identifier with a process**] on an initiating mobile device to receive communications through the data packet-based communications service

*See, e.g.*, Petition, 21-22 and 10-17. PO continues its second attack by asserting that it “is inconsistent with the remainder of the limitation and the surrounding context.” Response, 6-7. The Board should reject this second attack because PO never identifies any “surrounding context” and never explains how Petitioner’s construction is inconsistent with the remainder of the limitation or any “surrounding context.” Response, 6-7. The Board should also reject this attack because (i) as illustrated above, Petitioner’s construction retains all elements of the remainder of the limitation, and (ii) as explained for the first attack, Petitioner’s construction is consistent with the remainder of the claims and correct under applicable law. Ex. 1028, ¶18.

PO’s third attack asserts without explanation or evidence that Petitioner’s construction is incorrect because it does not require opening the port only for the target device “notwithstanding the explicit claim language to the contrary.”

POR, 7. The Board should reject this attack because there is no requirement in the



claim for the listening software port to be opened for only a specific target mobile device for the reasons discussed above. Ex. 1028, ¶19.

In addition to being wrong, PO’s arguments concerning “associating” are irrelevant because the POR fails to identify any reason why adopting the “associating” part of the construction in the Petition leads to an erroneous result. Ex. 1028, ¶20. Absent such an explanation, there is no reason for the Board to address this issue. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that “only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy”).

The POR uses the adjective “untethered” at least three times to describe Petitioner’s construction of the “opening a listening software port” limitation. POR, 5, 8, and 9. However, as demonstrated above, it is PO’s construction that is untethered – untethered to the plain language of the claims, untethered to the specification of the 925 patent, untethered to Federal Circuit case law, and untethered to the reality of what is even possible using TCP. For those reasons, PO’s construction must be rejected.

**B. No Order Is Required Between the Steps of Claims 1-2; 8-9; and 15-16**

As explained in the Petition, there is nothing in independent claims 1, 8 and 15 or in dependent claims 2, 9 and 16 that requires that the steps in the independent claims be performed in any particular order with respect to the steps in

the dependent claims. Petition, 20-21. The Petition also explains that nothing in the specification requires any such temporal relationship. *Id.*, 22. *Id.*

Ex. 1028, ¶21. The Petition further cites *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1371 (Fed. Cir. 2003) for the proposition that no such temporal relationship should be required under such circumstances.

In response, PO wrongly asserts that the Petition failed to explain its construction. POR, 9-10. PO then asserts that the word “second” in the “opening a *second* listening software port” limitations in the dependent claims is “clearly” an explicit reference to the listening software port of claim 1 having been opened first. POR, 9-10. True to form, this attorney argument is unsupported by any evidence. Ex. 1028, ¶21-22. This argument is also contrary to well-established Federal Circuit case law that terms such as “first” and “second” do not in and of themselves impose an order. *See, e.g., 3M Innovative Props. Co. v. Avery Dennison Corp.*, 350 F.3d 1365, 1371 (Fed. Cir. 2003) (stating that the “use of the terms ‘first’ and ‘second’ is a common patent-law convention to distinguish between repeated instances of an element or limitation,” and rejecting assertion that ‘first ... pattern’ and ‘second ... pattern’ claim limitations imposed a serial or temporal limitation); *see also Gillette Co. v Energizer Hldgs., Inc.*, 405 F.3d 1367, 1373 (Fed. Cir. 2005) (same).

PO identifies nothing more than the use of “second” in the dependent claims to support its construction. POR, 10. Therefore, its assertion that the “opening a *second* listening software port” steps in the dependent claims must be performed only after the port in claim 1 has been opened must be rejected. Ex. 1028, ¶22.

### **III. PO’S ATTACKS ON THE SIX GROUNDS OF THE PETITION ARE ALL FLAWED**

#### **A. PO’s First Attack Relies on a Flawed Construction**

PO first argues that all six grounds of the Petition are flawed because they rely on a construction of the “opening a listening software port” limitation of the independent claims that is not limited to a specific target mobile device. POR, 11-12. This argument fails because PO’s construction is wrong for the reasons discussed above. Moreover, there is no dispute that the prior art renders obvious that the intended purpose of opening the port is to receive responsive communications or invitations. Petition, 29-35 (Ground 1), 38-41 (Ground 2), 45-51 (Ground 3), 53-55 (Ground 4), 58-64 (Ground 5), and 65-68 (Ground 6). Ex. 1028, ¶23.

#### **B. PO’s Second Attack Based on Well-Known Ports Is Contrary to the Evidence On Which PO Relies**

PO next makes an argument concerning well-known ports. POR, 13-15. This argument is flawed for several reasons. First and foremost, each of the three grounds of the Petition directed to an independent claim relies on a theory that uses ports not known in advance in addition to a theory that uses well-known ports.

Petition, 29, 32 (Ground 1), 44, 48 (Ground 3), and 61 (Ground 5). Thus, even if any of PO’s arguments concerning well-known ports had merit (they do not for the reasons discussed below), they would not be sufficient to overcome any challenge in the Petition. Ex. 1028, ¶24.

PO also seems to argue—yet again without any expert support—that well-known ports would not be well-known to a POSITA. POR, 13. This is wrong as well-known ports were well-known to a POSITA as the applicant admitted in its appeal brief in the 994 Application. *See, e.g.*, Petition, 10-11 (*e.g.*, quoting Ex. 1004, 415: “It is well-known in the art that any general computer system may open different types of default or well-known listening software ports for specific purposes.”); and Ex. 1028, ¶25.

PO next cites Ex. 1010 for the proposition that well-known sockets are permanently assigned to a particular sockets, and then argues that “[a] port that is *permanently assigned* and made available *a priori* to all devices in general is not one that [sic, is] even available for ‘opening’ as claimed.” POR, 13-14. To the extent that this argument relies on PO’s erroneous construction that requires that the listening software port be opened for a specific target mobile device, it must be rejected as being based on a flawed construction. However, to the extent that this argument is a reprisal of the argument in PO’s Preliminary Response that a well-

known port cannot be opened because it is available “*a priori*,” this argument fails for two reasons. Ex. 1028, ¶26.

First, as discussed in the Institution Decision (Paper 7, “**Decision**”), this assertion is nothing more than attorney argument, and PO has again failed to produce any evidence to support it. Decision, 18 (“PO, however, has failed to explain why a person having ordinary skill in the art (1) would have understood that a well-known socket would not require ‘opening a listening port’ ... PO relies only on attorney argument, which cannot take the place of record evidence.”) Ex. 1028, ¶26.

Second, the passage of applicant’s Appeal Brief discussed in the POR at 14 flatly contradicts this argument because it states: “Such ***well-known TCP ports are not opened by default on mobile devices*** because mobile devices do not run servers for data packet based communications services by default.” POR, 14 (citing Ex. 1004, 416) (emphasis added). The challenged claims all require that the “opening a listening software port” step be performed “on an initiating mobile device.” Ex. 1001, claims 1, 8, and 15. Contrary to PO’s attorney’s assertion that these well-known ports are available “*a priori*,” a POSITA would have understood that they must be opened if they are to be used, just like any other port. Ex. 1028, ¶26.

**C. PO’s Additional Attacks Are Also Flawed**

PO argues on 15-16 that the claims require that the port be opened for a specific target mobile device. This argument is flawed because it is based on a flawed construction as discussed above. Ex. 1028, ¶27.

PO then distinguishes between packet-switched networks and circuit-switched networks, (POR, 16-17), and argues that this distinction defeats grounds based on the combination of Alos and RFC793 (*i.e.*, Grounds 1 and 2), (POR, 18-19), and grounds based on the combination of Cordenier and RFC793 (*i.e.*, Grounds 3 and 4), (POR, 19-20). PO does not contend that this distinction between packet-switched networks and circuit-switched networks has any effect on Grounds 5 or 6 based on the combination of Lee and RFC793. Thus, even if this argument were sound (it is not), it does not overcome the Petition’s showing of unpatentability for any claim. Ex. 1028, ¶28.

Moreover, this argument is clearly flawed. As discussed in the Petition, Alos discloses that the wireless connections 13, 23 connect the phones 1, 2 to Internet service providers. Petition, 23. Thus, communications over wireless connections 13, 23 conform to the Internet Protocol, which is indisputably a packet-switched protocol. The implementation of Internet Protocol (ISO level 3) over lower level (*i.e.*, ISO level 2) switched telephone network links does not mean

that the IP network is not packet-switched. Thus, PO’s unsupported attorney argument is meritless. Ex. 1028, ¶29.

PO’s arguments regarding Cordenier are equally flawed. PO notes that Cordenier discloses that “responsive to a message from the first terminal 1, the second terminal logs onto a server 15.” POR, 20 (citing Ex. 1007 ¶ 16 [7:2-15]). PO argues that the purpose of the 925 patent, which is to provide a technique in which “no separate data server need be used to provide a known location from which a recipient retrieves data such as multimedia content.” POR, 20 (citing 925 patent, 1:54-67). However, server 15 in Cordenier is a server that provides a temporary IP address for IP communications over GPRS, not a “separate data server” for multimedia content. Ex. 1007, Fig. 6, 1:28-2:25, 7:9-14; *see also*, Ex. 1001, Fig. 1, 3:53-4:11 (describing GPRS). Thus, PO’s argument fails. Ex. 1028, ¶30.

#### **IV. PO’S ATTACK ON DR. HOUH’S DECLARATION IS FLAWED**

The POR argues that the testimony in Dr. Houh’s Declaration (Ex. 1002) should be given little weight because that testimony is repetitive of the arguments in the Petition and is unsupported. Both arguments are wrong. First, the sufficiency of expert declarations is judged by their substance, not whether the petition and the expert declaration include the same language. *Shopkick, Inc. v. Novitaz, Inc.*, IPR2015-00279, Paper 11 at 15 (PTAB Sept. 3, 2015) (“the Petition

can be drafted to closely mirror an expert’s opinion”); *Elekta, Inc. v. Varian Med. Sys. Int’l. AG*, IPR2016-00845, Paper 11 at 7 (PTAB Sept. 28, 2016) (expert testimony is evaluated substantively, even if the petition’s language is the same). Second, as discussed in the Board’s Decision, Dr. Houh’s testimony is supported by, among other things, RFC793 itself. Decision, 17 n.1.

**V. THE PETITION ESTABLISHES THE OBVIOUSNESS OF EVERY DEPENDENT CLAIM**

The POR’s only arguments for the dependent claims are based on (1) its arguments for the independent claims, and (2) its claim construction argument that the “opening a second listening software port” limitation in dependent claims 2, 9 and 16 requires that this step be performed only after the port recited in the independent claims has been opened. POR, 21. Both of these arguments are wrong for the reasons discussed above. Ex. 1028, ¶31.

**VI. CONCLUSION**

The Board should reject the arguments in the PO’s Response and find that the Challenged Claims are unpatentable for the reasons set forth in the Petition.

Dated: January 29, 2020

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE**

Under the provisions of 37 CFR § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Petitioner’s Reply to Patent Owner’s Response to Petition totals 4,337, as calculated by Microsoft Word, which is less than the 5,600 allowed under 37 CFR § 42.24(c).

Dated: January 29, 2020

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**CERTIFICATE OF SERVICE**

The undersigned certifies service of a copy of this document on the Patent Owner’s counsel of record pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b) by electronic mail to the following:

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