

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner

v.

UNILOC 2017 LLC

Patent Owner

IPR2019-00702

PATENT 7,969,925

PATENT OWNER RESPONSE TO PETITION

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I. INTRODUCTION

Uniloc 2017 LLC (“Uniloc” or “Patent Owner”) submits this Response to Petition IPR2019-00702 for *Inter Partes* Review (“Pet.” or “Petition”) of United States Patent No. 7,969,925 (“the ’925 patent” or “EX1001”) filed by Apple, Inc. (“Petitioner”). The instant Petition is procedurally and substantively defective.

II. THE ’925 PATENT

The ’925 patent is titled “Peer-to-peer mobile data transfer method and device.” The ’925 patent issued June 28, 2011, from U.S. Patent Application No. 12/832,576 filed January July 8, 2010.

The inventors of the ’925 patent observed that, at the time, multimedia technologies for mobile devices depended upon a server that receives and prepares multimedia content to be retrieved by the recipient of the multimedia content. For example, at the time, the Multimedia Messaging Service (“MMS”) protocol utilized a server known as a Multi-Media Service Center (“MMSC”) to store multimedia content in preparation for a retrieval process initiated by the recipient. Specifically, under MMS, the initiating device initiated a data connection over TCP/IP and performed an HTTP POST of an MMS Encapsulation Format encoded multimedia message to the MMSC. The MMSC stored the multimedia message and made it available as a dynamically generated URL link. The MMSC then generated a notification message containing the dynamically generated URL and sent the notification message to the recipient through WAP Push over the Short Message Service (“SMS”) protocol. When the recipient received the MMS notification

message, it initiated a data connection over TCP/IP and performed an HTTP request to retrieve the MMS message containing multimedia content from the MMSC through the dynamically generated URL. '925 patent (Ex. 1001), 1:23–42.

According to one example embodiment, a method and system is provided for establishing a direct data transfer session between mobile devices over a digital mobile network system that supports data packet-based communications. No separate data server need be used to provide a known location from which a recipient retrieves data such as multimedia content. A mobile device initiating a data transfer opens a listening software port, which is configured for use with an underlying data packet-based network protocol and for enabling a direct data transfer with a specific target mobile device. The initiating mobile device sends an invitation message containing the network address, including the listening port, of the initiating device to the target mobile device through a page-mode messaging service (*e.g.*, text-based service) supported by the digital mobile network system. 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. Once the initiating mobile device receives a response from the target mobile device at the listening software port, the two mobile devices may establish a reliable virtual connection through the underlying data packet-based network protocol in order to transfer data directly between the two mobile devices. *Id.* at 1:61–2:17.

III. RELATED PROCEEDINGS

The following pending cases concerns U.S. Pat. No. 7,969,925: *Uniloc USA, Inc. et al v. Apple Inc.*, Civ. No. 4-19-cv-01696, filed April 3, 2019 in the Northern District of California.

IV. LEVEL OF ORDINARY SKILL IN THE ART

The Petition alleges that “[a] person of ordinary skill in the art at the time of the alleged invention of the 925 patent (a “POSITA”) would have had a Bachelor’s degree in computer science or a comparable field of study, plus approximately two to three years of professional experience with cellular phone and IP networks, or other relevant industry experience.” Pet. 9. Given that Petitioner fails to meet its burden of proof when purportedly applying its own definition of a person of ordinary skill in the art, Patent Owner does not offer a competing definition for purposes of this proceeding.

V. PETITIONER DOES NOT PROVE A REASONABLE LIKELIHOOD OF UNPATENTABILITY FOR ANY CHALLENGED CLAIM

The Petition raises the following obvious challenges under Section 103:

Ground	Claims	Reference(s)
1	1, 3-8, 10-15, 17-20	Alos ¹ , and RFC793 ²
2	2, 9, and 16	Alos, RFC793, and SMS Specification, ³ and WMA ⁴

¹ Ex. 1005, EP 1 099 153 A1.

² Ex. 1010, Request for Comment 793.

³ Ex. 1014, SMS Specification.

⁴ Ex. 1018, WMA.

3	1, 3-8, 10-15, 17-20	Cordenier ⁵ and RFC793
4	2, 9, and 16	Cordenier, RFC793, and Dorenbosch ⁶
5	1, 3-8, 10-15, 17-20	Lee, ⁷ RFC793, and SMS Specification
6	2, 9, and 16	Lee, RFC793, SMS Specification, and WMA

A. Claim Construction

In IPR proceedings, claim terms are to be given a construction utilizing the standard applied by Article III courts. 37 C.F.R. §42.100(b); *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). Under *Phillips*, a claim term must be given “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips*, 415 F.3d at 1313. The *Phillips* standard primarily focuses on intrinsic evidence, such as the patent specification and prosecution history, to interpret the claim terms. *Id.* at 1317; *see also* 37 C.F.R. § 42.100(b).

Patent Owner submits that the Board need not expressly construe any claim term in a particular manner in order to arrive at the conclusion that the Petition is substantively deficient. *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“need only be construed to the extent necessary to resolve the controversy”).

Patent Owner does not address herein all the claim terms Petitioner identified in its section purporting to address claim construction. Pet. 20–23. This should not be taken as a concession that Petitioner’s proposed constructions are correct.

⁵ Ex. 1007, EP 1 385 323 A1.

⁶ Ex. 1011, US Patent Application No. 2003/0217174.

⁷ Ex. 1006, US Patent No. 6,847,632.

Rather, certain constructions Petitioner offers are simply not dispositive. This is at least because fatal deficiencies would arise if those constructions are applied, even if only for the sake of argument. Further, in at least once instance, Petitioner identifies a term (“page-mode messaging service”) as purportedly *not* requiring construction. Because the error in certain constructions Petitioner offers gives rise to additional and substantive deficiencies, however, such error is addressed below.

**1. “opening a listening software port . . .” (claims 1, 8, and 15)
and “opening a second listening software port . . .” (claims 2,
9, and 16)**

Independent claims 1, 8, and 15 (and hence all challenged claims) each recite “opening a listening software port on an initiating mobile device to receive communications through the data packet-based communications service.” Dependent claims 2, 9, and 16 (which depend from claims 1, 8, and 15, respectfully) each recite “opening a second listening software port on the initiating mobile device to receive invitation messages through the page-mode messaging service.” Petitioner impermissibly seeks to rewrite these “opening” limitations to recite, instead, merely “associating a port identifier with a process.” Pet. 21–22. Petitioner acknowledged its construction is purposefully crafted to make certain that the port need not “be opened exclusively for receiving a response from only the target device.” Pet. 22.

The Board declined to adopt Petitioner’s construction in its Institution Decision. Decision (Paper 7) at 8–9. For purposes of trial, Petitioner’s untethered construction should be outright rejected as violating fundamental canons of claim

construction and as directly refuted by the intrinsic evidence. Presumably, this is why Petitioner cites no authority and ignores the intrinsic evidence altogether when presenting its claim construction for the “opening” limitations. *See* Pet. 21–22 (relying exclusively on *extrinsic* evidence in addressing construction of the “opening” limitations).

Resolution of the dispute is warranted here because Petitioner’s reliance on an incorrect claim construction for the “opening” limitations taints the entirety of the Petition and provides an independent and fully dispositive basis for denial. *See Mentor Graphics Corp., v. Synopsys, Inc.*, IPR2014-00287, 2015 WL 3637569, (Paper 31) at *11 (P.T.A.B. June 11, 2015), *aff’d sub nom. Synopsys, Inc. v. Mentor Graphics Corp.*, 669 Fed. Appx. 569 (Fed. Cir. 2016) (denying Petition as tainted by reliance on an incorrect claim construction).

First, Petitioner’s attempt to replace the word “opening” with “associating” fails to give effect to the meaningful and limiting term chosen by the patentee. *See K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) (“Courts do not rewrite claims; instead, [Courts] give effect to the terms chosen by the patentee.”). Indeed, Petitioner offers no explanation as to why “associating” is more appropriate here. It would appear Petitioner’s proposed rewrite is merely intended to shore up weaknesses in Petitioner’s strained obviousness challenges.

Second, Petitioner’s attempt to reduce the “opening” limitations as merely purposed for “associating a port identifier with a process” (i.e., *any* process in general) is inconsistent with the remainder of the limitation and the surrounding

context. As recited in claim 1, for example, the “opening” of the listening software port is at least expressly tied to “receiv[ing] communications through the data packet-based communications service” (i.e., the data packet-based communications service introduced in the preamble of the claim). This is distinguishable on its face from merely associating a port identifier with *an unspecified* “process.”

Finally, Petitioner’s fatal error is further underscored by its interpretation that the claimed “initiating mobile device” need not listen at its newly-opened and special-purpose “listening software port” for a “*response from the target mobile device*” in particular, notwithstanding the explicit claim language to the contrary. See Pet. 22. Petitioner appears to advance such a construction to gap-fill additional fatal deficiencies in the Petition, as explained further below. See, e.g., Pet. 31 (alleging “[i]t would have been obvious to a POSITA to configure phone 1 to passively open a TCP port in a listening state with an *unspecified* foreign host.”).

That the port must opened for a specific “*target mobile device*” identified in an “invitation message” by a “unique identifier” known to the “initiating mobile device” is made explicit in the claim language of each independent claim 1, 8, and 15. Furthermore, that the response must be received from that “*target mobile device*” at the “listening software port” opened for that very purpose is also made explicit. A construction that is inconsistent with this definitive context cannot be correct, nor can any obviousness theory which applies such a clearly erroneous construction.

The intrinsic evidence, which Petitioner ignores in advancing its claim construction, is also conclusive on this point and provides additional reasons to reject Petitioner’s untethered construction. In an embodiment described with reference to Figure 2, for example, the ’925 patent offers the following description of a special purpose for which the listening port is configured: “the initiating mobile device opens a TCP port to listen for communications from the target mobile device 210.” Ex. 1001 4:38–40; *see also id.* at 4:58–62 (describing an alternative embodiment with reference to Figure 3); *Profoot, Inc. v. Merck & Co.*, 663 F. App’x 928, 932 (Fed. Cir. 2016) (“‘When a patent ‘repeatedly and consistently’ characterizes a claim term in a particular way, it is proper to construe the claim term in accordance with that characterization.’”) (quoting *GPNE Corp. v. Apple Inc.*, 830 F.3d 1365, 1370 (Fed. Cir. 2016)).

That the “opening” requirement must be directed to a specific “*target* mobile device” is also unambiguously confirmed by the patentee’s remarks offered during prosecution of a parent application of the ’925 patent. *See generally* Ex. 1004.⁸ For example, when addressing the *exact same* claim language verbatim (i.e., “opening a listening software port on an initiating mobile device to receive communications through the data packet-based communications service”), the patentee explained that this claim language “requires opening a listening software port on an initiating mobile device *every time* the initiating mobile device desires to establish

⁸ Exhibit 1004 of the Petition is the file history of the parent application which issued as U.S. Pat. No. 7,961,663.

communications *with a particular target mobile device.*” *Id.* p. 316 (emphasis added).

The patentee further unambiguously distinguished the same claim language at issue here from, for example, (1) opening a port that indiscriminately “serves any and all mobile terminals that desire setting up a connection” and (2) “leav[ing] open one known connection to allow any number of devices to communicate with it.” *Id.* pp. 316–317. Petitioner’s untethered construction would erroneously recapture subject matter applicant had unambiguously identified as being outside the claim scope of this very same claim language.

Accordingly, for a myriad of reasons, Petitioner has failed to meet *its* burden to prove that the “opening” limitations should be construed as proposed in the Petition. The Petition should be rejected as tainted by its application of an incorrect claim construction. *See Mentor Graphics Corp.*, 669 Fed. Appx. 569. Even if the Board were to adopt Petitioner’s construction, however, the Petition is nevertheless deficient in its application of such a construction, as explained further below.

2. Petitioner fails to explain why the Board should find there is no claimed relationship between the timing of any of the steps in these independent claims vis-à-vis any step recited in a respective dependent claim

Evidently recognizing weaknesses in its challenges of certain dependent claims, Petitioner offers the conclusory statement, without explanation, that “[t]here is no claimed relationship between the timing of any of the steps in these independent claims vis-à-vis the steps in these dependent claims, such that the steps

of the dependent claims can be performed at any time before or after the steps of the independent claims.”⁹

Neither the Board nor Patent Owner should not be expected to parse the limitations of the dependent claims and speculate as to why Petitioner concluded no claimed relationship between claims is recited in terms of ordered steps. Nevertheless, a counter example serves to illustrate the error in Petitioner’s unexplained and unsupported interpretation. Absent from the Petition is any explanation of how opening a “opening a *second* listening software port” should be understood in the abstract, without reference to the same initiating mobile device having *first* opened the listening software port recited in claim 1. Clearly, the word “second” in this context is an explicit reference to a first port (of claim 1) having been opened previously.

The Petition makes no attempt to prove obviousness under a construction that recognizes at least an implicit (if not explicit) order between the antecedent timing of the “opening” step of claim 1 vis-à-vis the opening step of claim 2. For this additional and independent reason, claim 2 has not be shown to be obvious. Analogous reasoning also applies to claims 9 and 16, which depend from claims 8 and 15, respectively. This counterexample is not intended to be exhaustive of all

⁹ In the absence of such an explanation by Petitioner for its claim construction position, Patent Owner is prejudiced in its ability to respond. By opting to not present the basis for its claim construction position in the Petition itself, Petition has waived such argumentative and evidentiary support. Patent Owner objects to any attempt Petition may make to lie behind the log and introduce new argument and evidence for the first time in its Reply brief.

ordered steps. Rather, it serves to illustrate that *Petitioner* has failed to meet *its* burden to prove obviousness under *its* theory that there is no claimed relationship between the timing of certain steps.

B. Petitioner’s assertion of RFC793 relies upon an incorrect claim construction and fails to cure conceded deficiencies of the primary references for the limitations directed to “opening a listening software port . . .” (Grounds 1–6, all challenged claims)

While the Petition advances six different grounds, every challenge is tainted by Petitioner’s erroneous construction for “opening a listening software port on an initiating mobile device to receive communications through the data packet-based communications service,” as recited in independent claims 1, 8, and 15 (and hence all challenged claims). *See* §V.A.1, *supra* (addressing claim construction of the “opening” limitations). The term “*the* packet-based communications service” derives its antecedent basis from the recitation in the preamble, “[a] method of establishing a direct data transfer session between mobile devices that support *a data packet-based communications service over a digital mobile network system.*”

The Petition concedes that none of the respective primary references cited in Grounds 1–6 (i.e., Alos for Grounds 1–2, Cordenier for Grounds 3–4, and Lee for Grounds 5–6) disclose the limitations directed to “opening a listening software port” *See* Pet. 25, 47, 60. According to Petitioner, “[a] POSITA would have been motivated to incorporate the use of TCP and TCP ports as disclosed in RFC793 in connection with” each one of the primary references. *Id.* at 26 (for Alos), at 43 (for Cordenier), and at 57 (for Lee). Petitioner’s redundant combinations expressly

rely on the same reasoning and hence are all tainted by analogous deficiencies.

1. Petitioner expressly relies solely an alleged “opening” that is not specific to a “target mobile device”

Petitioner’s erroneous claim construction for 1.a, 8.a, and 15.a. (i.e., the “opening” limitations) is laid bare in its repeated assertion that “[i]t would have been obvious to a POSITA to configure phone 1 to passively open a TCP port in a listening state with *an unspecified foreign host* so that the TCP/IP response message from the as-yet unknown socket address at phone 2 could be received at phone 1.” See Pet. 31 (Grounds 1–2) (emphasis added); see also *id.* at 47 (Grounds 3–4) and 60 (Grounds 5–6).

As explained above, certain intrinsic evidence (which the Petition ignores) unambiguously states that the claimed “opening” must be directed to a specified “*target mobile device*” for the specific purpose set forth in the claim language itself. See §V.A.1, *supra* (addressing claim construction of the “opening” limitations). Moreover, the patentee explicitly distinguished this claim language at least from (1) opening a port that indiscriminately “serves any and all mobile terminals that desire setting up a connection” and from (2) “leav[ing] open one known connection to allow any number of devices to communicate with it.” *Id.* (citing Ex. 1004 p. 316–317).

Accordingly, the redundant obviousness theories advanced in the Petition (in addressing limitations 1.a, 8.a, and 15.a) are each tainted by an incorrect claim construction that would impermissibly recapture subject matter unambiguously disclaimed by relevant intrinsic evidence. See §V.A.1, *supra*.

2. Petitioner undermines its challenges by acknowledging a POSITA would likely use “well-known” sockets if combining RFC793 with any of the cited primary references

Petitioner further undermines its argument by asserting that a POSITA would likely use an “assumed” port applicable to all devices in general, as opposed to opening a new one specified for a *target mobile device* in particular, if combining RFC793 with any of the primary references. *See, e.g.*, Pet. 28 (“A POSITA would understand that this port likely would . . . be assumed (e.g., a well-known port).”); *id.* at 44 (same). Petitioner gives the example of “well-known ports such as FTP, telnet, http etc.” *Id.* Contrary to what is suggested in the Petition, the qualifier “well-known” in this context does not refer to the knowledge of those skilled in the art at the time. Rather, it is itself a term of art used to describe the nature of the port itself.

A referenced submitted by Petitioner (Ex. 1010) described “well-known sockets” as follows:

Well-known sockets are a convenient mechanism for a priori associating a socket address with a standard service. For instance, the "Telnet-Server" process is permanently assigned to a particular socket, and other sockets are reserved for File Transfer, Remote Job Entry, Text Generator, Echoer, and Sink processes (the last three being for test purposes). A socket address might be reserved for access to a "Look-Up" service which would return the specific socket at which a newly created service would be provided. The concept of a well-known socket is part of the TCP specification, but the assignment of sockets to services is outside this specification. (See [4].)

Ex. 1010 at 20 (highlighting and underlining added). The above passage discloses that “well-known sockets” are “permanently assigned to a particular socket” and are indiscriminately made available “*a priori*” to all devices in general. *Id.*

A port that is *permanently assigned* and made available *a priori* to all devices in general is not one that even available for “opening” as claimed. This axiomatic distinction is further confirmed at least by patentee’s relevant remarks addressed above. *See* §V.A.1, *supra*. For example, the patentee stated that this claim language should be understood to require “opening a listening software port on an initiating mobile device every time the initiating mobile device desires to establish communications with a particular target mobile device.” Ex. 1004 p. 316 (emphasis added).

Moreover, the patentee explained (in addressing analogous claim language of the parent application) that even in the context of TCP, a “well-known” port is distinguishable. The patentee offered the following explanation in a footnote to an appeal brief before the PTAB:

Please refer to Annex D for examples of well-known TCP ports for well-known Internet services such as FTP servers (port 20), telnet server (port 23), and HTTP servers (port 80) 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. Furthermore, because such well-known ports are “well-known”, they available to any computer desiring to communicate the computer having the opened port and are therefore not opened for a specific target mobile device, as required by claim 1.

Ex. 1004 p. 416.

In view of at least the intrinsic, and certain extrinsic evidence *filed by Petitioner*, there can be no question that the “opening” limitations are plainly distinguishable from permanently-assigned ports which are technically classified as “well-known” because they are generally known by, and hence available to, any

foreign computer. Thus, Petitioner’s assertion that a POSITA would most likely be motivated to use such “well-known” ports, if combining RFC793 with any given one of the cited primary references, only undermines the *contrary* conclusion that there would be sufficient motivation to modify in a manner that would, instead, satisfy the plainly distinguishable claim language.

3. Petitioner fails to prove the use of TCP in RFC793 cures the conceded deficiencies of the primary references (Alos, Cordenier, and Lee)

As an additional and independent basis for denying the Petition in its entirety, Petitioner’s reliance on the cited description of TCP in RFC793 essentially rehashes the same argument that the patentee persuasively addressed in a parent application. *See* Ex. 1004 pp. 414–416. Petitioner mischaracterizes the ’925 patent, the prosecution history of a parent application (filed as Ex. 1004), and the claim language itself in falsely asserting that the specification “simply states that ports may be opened and used without any further explanation.” Pet. 10–11 (citing Exhibit 1004). According to Petitioner, the claim language directed to “opening a listening software port” is obviousness simply because any mobile device necessarily must open a listening software port to operate and communicate with other devices. *Id.*

The patentee successfully traversed this same argument during prosecution of the parent application. For example, in an appeal brief before the PTAB addressing a parent application, the patentee summarized an examiner rejection as “maintain[ing] that opening a listening software port is implicit [in the cited art] and that any mobile device necessarily has to open a listening software port just to

operate and communicate with other devices.” Ex. 1004 pp. 414–416. The patentee traversed this understanding by explaining why the claimed invention was distinguishable from merely opening a conventional TCP port. *Id.*

One example point of distinction was that conventional TCP ports of the time were opened on servers, and “[were] not opened by default *on mobile devices* because mobile devices do not run servers for data packet[-]based communication services by default.” *Id.* p. 415 n.4 (emphasis added). The applicant further submitted that “no mobile device” at that time by default opens the specific type of listening software port disclosed and claimed—i.e., a special-purpose port opened to establish a direct data transfer session between the initiating mobile device and the target mobile device through the data packet-based communications service. *Id.* p. 416.

Another point of distinction over opening conventional ports in general focused on the specific *type* of port opening required by the claim language. The Patentee raised the axiomatic point that a port “opened to receive communications through the data packet-based communications service” is plainly distinguishable from a port opened, instead, for something other than receiving communications through a data packet-based communications service. To clarify, the patentee explained that “[a]s described herein, ‘packet switching’ contrasts ‘circuit switching.’” Ex. 1004 p. 420.¹⁰ The applicant provided that statement in boldface

¹⁰ Exhibit 1004 of the Petition is the file history of the parent application which issued as U.S. Pat. No. 7,961,663.

annotations to an exhibit filed in an appeal brief before the PTAB, as shown by the screenshot below.

The screenshot shows a Wikipedia article titled "Packet switching". At the top, a black box highlights the sentence: "Packet switching contrasts with another principal networking paradigm, circuit switching, a method which sets up a specific circuit with a limited number dedicated connection of constant bit rate and constant delay between nodes for exclusive use during the communication session." An arrow points from this box to a central text block that reads: "As described herein, 'packet switching' contrasts 'circuit switching.'" Below this, another black box highlights the sentence: "Packet mode (or packet-oriented, packet-based) communication may be utilized with or without intermediate forwarding nodes (packet switches)." An arrow points from this box to a lower text block that reads: "As described herein, 'packet-based' as used in claim 1 is equivalent to packet mode, packet oriented, or 'packet-switching', as used in Annex A in distinguishing packet based communications services from page mode messaging services such as SMS." The screenshot also shows a table of contents on the left, a history section, and a sidebar on the right with sections like "Multiplex techniques" and "Related topics".

Packet switching contrasts with another principal networking paradigm, circuit switching, a method which sets up a specific circuit with a limited number dedicated connection of constant bit rate and constant delay between nodes for exclusive use during the communication session.

Packet mode (or packet-oriented, packet-based) communication may be utilized with or without intermediate forwarding nodes (packet switches).

Contents [hide]

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History [edit]

The concept of packet switching was first explored by Paul Baran in the early 1960s, and then independently a few years later by Donald Davies (Abbate, 2000).

Leonard Kleinrock conducted early research in queueing theory which would be important in packet switching, and published a book in the related field of digital message switching (without the packets) in 1961; he also later played a leading role in building and management of the world's first packet switched network, the

As described herein, "packet switching" contrasts "circuit switching."

As described herein, "packet-based" as used in claim 1 is equivalent to packet mode, packet oriented, or "packet-switching", as used in Annex A in distinguishing packet based communications services from page mode messaging services such as SMS.

Multiplex techniques

- Circuit mode (constant bandwidth)
 - TDM · FDM · WDM
 - Polarization multiplexing
 - Spatial multiplexing (MIMO)
- Statistical multiplexing (variable bandwidth)
 - Packet mode · Dynamic TDM
 - FHSS · DSSS · OFDMA

Related topics

- Channel access methods
- Media Access Control (MAC)

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Id.; see also *id.* p. 314 (“Please refer to both Annex A and Annex B for a description of the difference between circuit switched data transmission and packet[-]based data transmission.”). The Applicant further unambiguously stated that “a ‘data packet based communications service’ as used in claim 1 is a different data transmission service than . . . circuit based communications service, as distinguished herein.” *Id.* p. 419 (underlining and emphasis original).

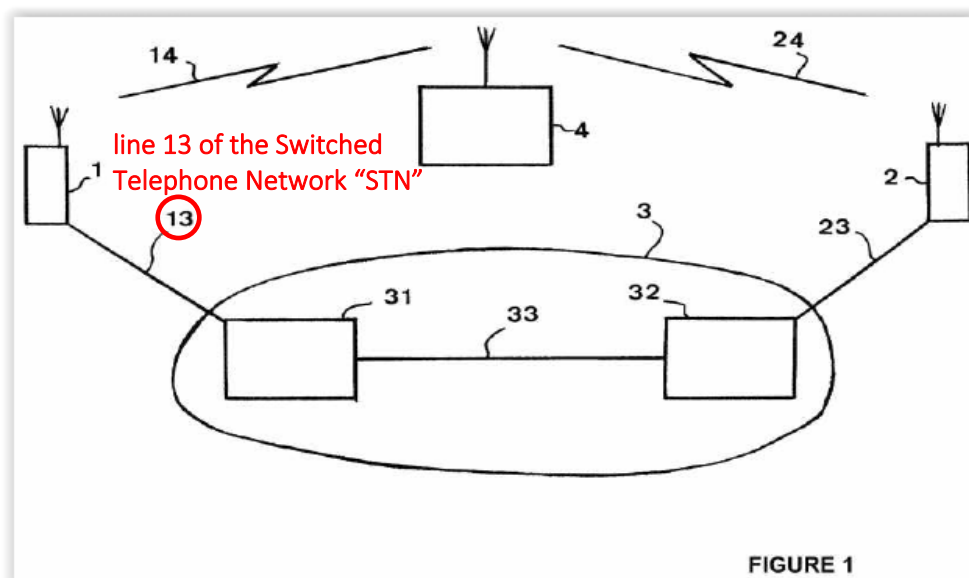
Accordingly, the intrinsic evidence speaks for itself in refuting Petitioner’s assertion that the “opening” limitations recite nothing more than what was

conventional and inherently required in establishing any communication over TCP.

C. Petitioner overlooks additional demonstrable facts further refuting the alleged motivation to combine Alos and RFC793

The Petition overlooks additional record evidence further refuting the alleged motivation to combine Alos and RFC793. It is well established that a proposed combination that would change the basic principles under which a cited reference was designed to operate undermines a conclusion of obviousness. *See Plas-Pak Indus., Inc. v. Sulzer Mixpac AG*, 600 Fed. Appx. 755, 759 (Fed. Cir. 2015).

Petitioner argues it would have been obvious to modify Alos (purportedly based on RFC793) to open a port to receive communication. However, Petitioner overlooks the fact that Alos' station 1 receives communications on line 13 of the Switched Telephone Network or "STN"—i.e., not a packet-based communication service. This is illustrated in Figure 1 of Alos, reproduced and annotated below.



Alos (Ex. 1005), Fig. 1.

As explained above, the record evidence offers an explicit and unambiguously distinction between opening a port for *circuit switched* communication (e.g., over an STN) and, instead, “opening a listening software port on an initiating mobile device *to receive communications through the data packet-based communications service.*” See §V.B.3, *supra*.

It would fundamentally change the basic principles under which Alos was designed to operate to modify line 13, and the station 1 connection to that line, to receive the “packet-based communication services” set forth in the claim language. *Plas–Pak Indus.*, 600 Fed. Appx. at 759. Furthermore, Petitioner fails to explain how such a modification would not vitiate the essential purposes fulfilled by line 13 *operating on an STN*. See *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1382 (Fed. Cir. 2007) (“a reference teaches away from a combination when using it in that combination would produce an inoperative result.”). Accordingly, and for this additional reason, the alleged motivation to combine Alos and the cited portions of RFC793 is illusory.

D. Additional deficiencies arise from the proposed combination of RFC739 with Cordenier (Grounds 3–4, all challenged claims)

For Grounds 3 and 4 of the Petition, Petitioner rehashes the same arguments of Ground 1 in asserting that RFC793 cures conceded deficiencies for the “opening” limitations (1.a, 8.a, and 15.a). Pet. 47. Consequently, Grounds 3–4 are tainted by deficiencies analogous to those addressed above. See § V.B, *supra* (including subsections thereof).

In addition, Cordenier contains disclosure that gives rise to other deficiencies which Petitioner fails to address. For the “opening” limitations (1.a, 8.a, and 15.a), Petitioner relies on a paragraph in Cordenier that states information is sent over distinct channels 8, 10, 11 and 9 (in that order). Pet. 43 (citing Cordenier ¶ 17).

At a minimum, Petitioner overlooks the disclosure in Cordenier that only two of those channels (10, 11) are part of a “data network” and that terminals 1 and 2 are not directly connected to those channels at least because distinct channels 8 and 9 are respectively interposed therebetween. See Cordenier (Ex. 1007), Figure 6. Petitioner also overlooks that Cordenier offers only one description for the creation of communication channel 11: responsive to a message from the first terminal 1, the second terminal 2 *logs onto a server* 15. Cordenier ¶ 16 (at 7:2–15); *see also* Pet. 42 (citing the same without discussion of this disclosure). The Petition fails to explain how logging onto a server to establish a required communication channel renders the claim language obvious, especially given the Petition states the ’925 patent claims to have invented “a technique for transferring data between mobile devices *that does not require a server.*” Pet. 7 (emphasis added); *see also, e.g.*, ’925 patent (Ex. 1001), 1:54–67 (“Under the present invention, no separate data server need be used to provide a known location from which a recipient retrieves data such as multimedia content.”).

E. Petitioner’s declarant adds nothing of substance

The declaration testimony of Dr. Henry Houh (filed as Ex. 1002) adds nothing of substance and should be given little to no weight. The Petitioner’s declarant

merely repeats the same unsupported statements as in the Petition. *Compare* Pet. 28 with Ex. 1002 (¶ 65). 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *see also Verlander v. Garner*, 348 F.3d 1359, 1371 (Fed. Cir. 2003) (Board has discretion to accord little weight to broad conclusory statements from expert witness). Due to the overlapping nature of the Petition and its attached declaration, the responsive arguments above apply equally to the declaration.

F. The Petition fails to Prove Obviousness of Any Dependent Claim

The deficiencies of the Petition articulated above concerning the challenged independent claims apply also taint the analysis of the challenged dependent claims. Furthermore, Petitioner admitted fails to address certain ordered requirements connoted in claim language itself. *See, e.g., §V.A.2, supra*. Accordingly, the Petition should be denied in its entirety.

VI. CONCLUSION

For at least the reasons set forth above, Uniloc respectfully requests that the Board deny all challenges in the instant Petition.¹¹

Date: November 6, 2019

Respectfully submitted,

By: /s/ Brett A. Mangrum
Brett A. Mangrum; Reg. No. 64,783
Attorney for Patent Owner

¹¹ Patent Owner does not concede, and specifically denies, that there is any legitimacy to any arguments in the instant Petition that are not specifically addressed herein.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Patent Owner Response to Petition complies with the type-volume limitation of 37 C.F.R. § 42.24(b)(1) because it contains fewer than the limit of 14,000 words, as determined by the word-processing program used to prepare the brief, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a)(1).

Date: November 6, 2019

Respectfully submitted,

By: /s/ Brett A. Mangrum

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Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), the undersigned certifies that an electronic copy of the foregoing Patent Owner Response to Petition was served, along with any accompanying exhibits, via the Patent Review Processing System (PRPS) and/or via email to Petitioner's counsel at the following addresses identified in the Petition's consent to electronic service:

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