

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

TREND MICRO INC.,
Petitioner,

v.

KAJEET, INC.,
Patent Owner.

Case IPR2023-00178
Patent 7,899,438

PATENT OWNER'S PRELIMINARY RESPONSE

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I. INTRODUCTION

Patent Owner, Kajeet, Inc., requests the Board to deny institution of *inter partes* review of U.S. Patent No. 7,899,438 (the “’438 Patent”) because the Petition fails to demonstrate a reasonable likelihood that any claim will be found invalid on the proffered invalidity grounds. Petitioner, Trend Micro Inc., fails to show that the Choudhary or Putzolu reference teaches or suggests “notifying the user of [a] denied request,” as claimed. On this feature, Petitioner identifies no relevant teachings from either reference. Instead, it relies on conclusory expert testimony that parrots argument from the Petition, testimony that is entitled to little or no weight. 37 C.F.R. § 42.65(a). So, too, with the claims’ requirements that a policy decider accept or deny a “request sent to or from the communication device.” Here, Petitioner refers to communications that originate from network equipment, and it fails to explain how any such communications represent a request that is “sent to or from a communication device” “used by a user.” And Petitioner fails to show that either reference teaches use of policies that “control one or more features or functions associated with the communication device;” in Choudhary and Putzolu, the policies control features of network equipment rather than user communication devices.

In light of Petitioner’s deficient analysis, the Petition fails to make the required showing under 35 U.S.C. § 314, namely, “that there is a reasonable

likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Institution should be denied.

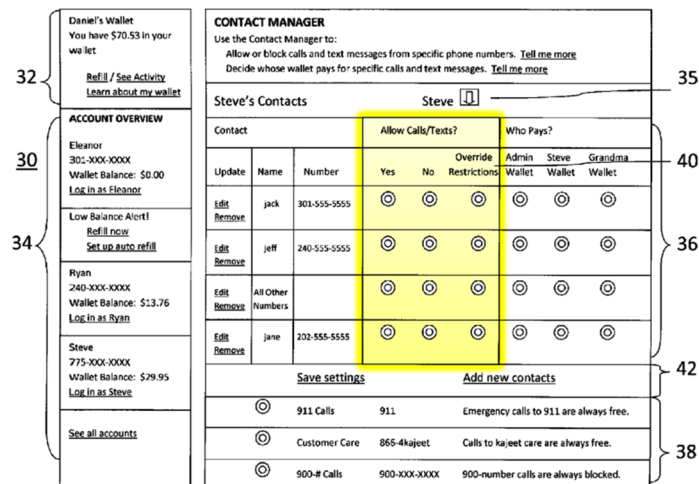
II. SUMMARY OF THE '438 PATENT SPECIFICATION DISCLOSURE

The '438 Patent discloses techniques for managing a user communication device through “policies or rules associated with the feature[s] or functions that may be performed with the device.” Ex. 1001, Abstract. These policies “regulat[e] how and when that device can be used.” *Id.* For example, when applied to a phone, these techniques permit a parent or other responsible party to “control the use of the phone through management of its features.” *Id.* col. 3:54-62. The techniques also may control features or functions that execute locally on the device, such as games. *Id.* col. 8:50-59.

The responsible party may define policies that govern functions or features of the phone. The '438 Patent cites, as one example, managing downloads of ringtones and games. *Id.* col. 4:15-35. Through feature management, rules can be established that manage downloading of content, for example, by turning off the download capability entirely, limiting how many downloads can be purchased, choosing a time of day or days of the week when downloads can occur, and the like. *Id.*

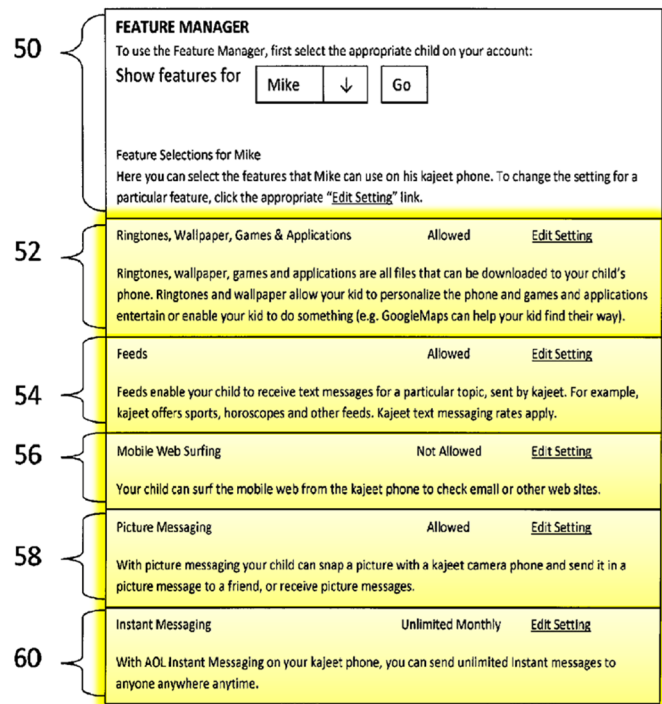
The '438 Patent explains that the features and functions being controlled are features of a user communication device. For example, policies may be defined to

control whether a user communication device can conduct calls or text messaging with select contacts:



'438 Patent (Ex. 1001), FIG. 3 (annotated)

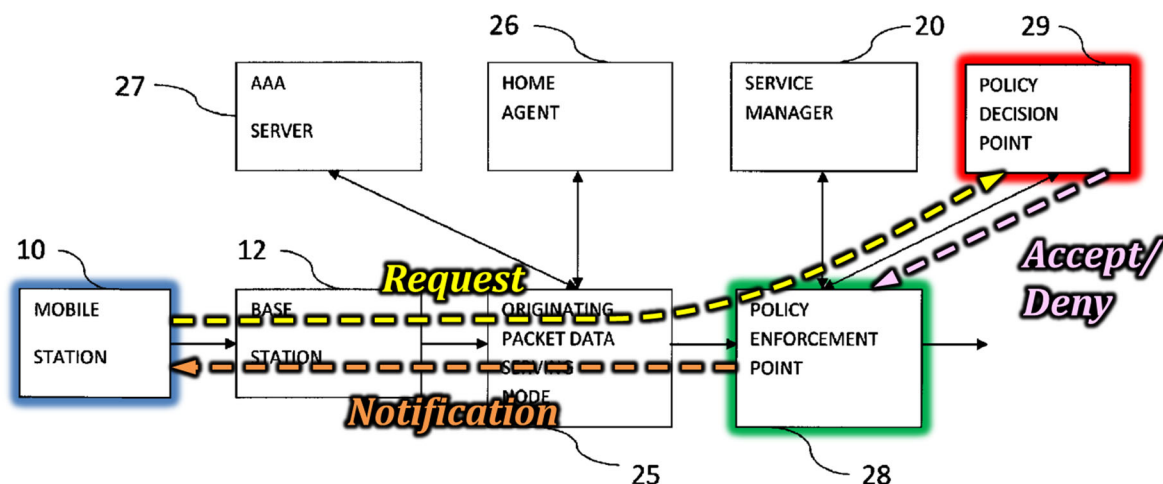
Policies may govern other device features, such as wallpaper, games, feeds, web surfing, picture messaging, and instant messaging:



'438 Patent (Ex. 1001), FIG. 4 (annotated)

See generally *id.* col. 9:55-15:20 (discussing different permutations illustrated in FIGS. 3 & 4). In these cases, the policies manage features and functions to be performed by individual user communication devices. See *id.* cols. 1:56-62 (responsible parties “control the use of the phone through *management of its features*”), 8:35-39 (policies “control the *features and functions of the mobile station 10*”); 8:67-9:3 (“policies can cover many different rules that apply to *the features or functions of the device* based on requests sent to or received from the device”); 13:53-58 (“an administrator can control features or *functions associated with a subscriber’s phone*”); 15:33-38 (an “administrator [may] manage *the functions of a device* in many different ways”) (emphases added).

The '438 Patent discloses a system that includes a user communication device 10 (*blue*), a policy enforcement point 28 (*green*), and a policy decision point 29 (*red*):



'438 Patent (Ex. 1001), FIG. 2 (annotated)

In this example, the communication device is a mobile station, such as a cellular phone.

The communication device 10 (*blue*) issues a service request (*yellow*) that identifies a feature or function to be performed by the device. *Id.* cols. 1:23-27, 6:35-56, 7:2-5, 8:40-45, 8:67-9:3. Alternatively, a request may be issued by another device (not shown) that seeks to communicate with the communication device 10. *Id.* col. 8:45-49. The request need not involve a communication function of the communication device; instead, the request may seek “to use some feature or function of the device, such as a game that is already stored on the device.” *Id.* col. 8:50-58. The request eventually propagates to the policy enforcement point 28, which decides whether to accept or deny the service request based on its stored policies. *Id.* col. 8:14-19, 8:35-39.

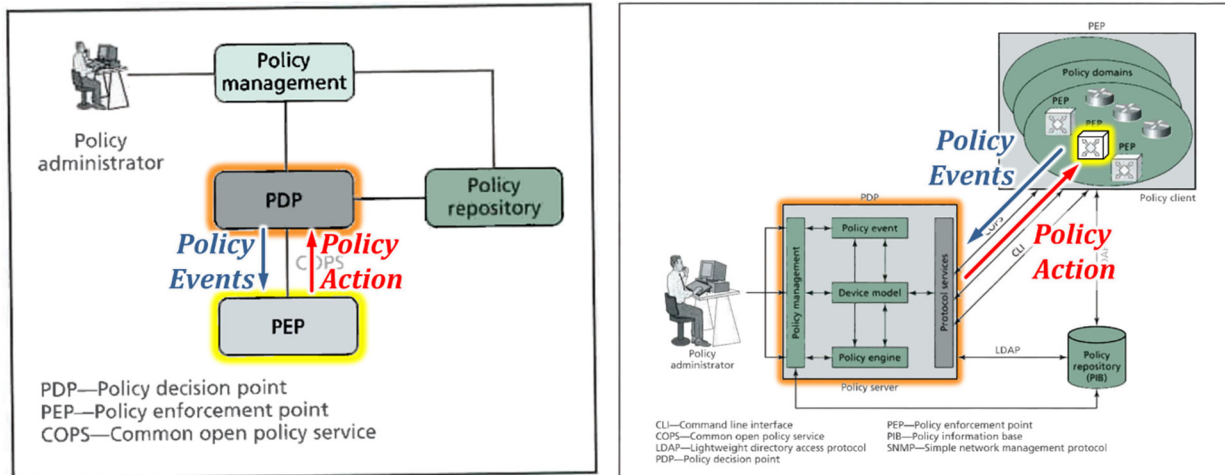
The PEP 28 enforces the PDP’s decision (*pink*) to accept or deny the request. *Id.* col. 8:25-27. If a provisioned policy fails, “the subscriber is notified” (*orange*) and the PEP 28 takes an appropriate action such as terminating a session, redirecting the session, or degrading the session to a lower class of service. *Id.* col. 9:10-15. And even when the requester is different from the user of the communication device 10, the user may be notified that the request was denied. *Id.* col. 9:15-17. If the policies are satisfied, of course, the service request continues. *Id.* col. 9:24-26.

III. SUMMARY OF PRIOR ART

A. Choudhary

Choudhary is directed to “Policy-Based Network Management” (Ex. 1006-0006 (Title)) in which policies “enforc[e] business rules and service priorities” (*id.* (Abstract)). Choudhary’s network management techniques are based on “three basic constructs: policy events, policy actions, and policy rules.” *Id.* (Introduction). “Policy events represent the system states that are of interest in the context of the business objectives and their operational realization.” *Id.* “Policy actions are the responses that an organization wishes to enforce in case one or more of the specified policy events actually take place.” *Id.* “Policy rules [are] the mechanisms to bind the policy events with the policy actions.” *Id.* The system’s policies manage objects, such as a network softswitch or its subsystems. *Id.* at 0008.

Choudhary’s network management techniques are implemented by an architecture that includes policy decision points (“PDPs,” *orange*) and policy enforcement points (“PEPs,” *yellow*). “The PDP uses a policy repository that contains the parameters and data structures that the PDP needs to evaluate the policy rules to make policy-based management decisions.” *Id.* at 0007. It “performs the desired analysis on the policy events that are obtained from the various PEPs.” *Id.* at 0012; *see also id.* at 0009 (the PDP “makes decisions based on the policies it retrieves”).



Choudhary (Ex. 1006), FIGS. 1 & 2 (annotated)

The PEPs monitor network elements and communicate (*blue*) policy events to PDPs. *Id.* at 0012 (A second important function of a PEP “is to gather information on the events that occur in the network element”), 0009 (the PEP “communicates the local events to the PDP”), 0013 (“The PDP examines the policy events that it receives from the PEPs”), 0013 (“policy events are collected from the network elements”).

The PDP determines a policy action to be taken in response to the policy events and communicates (*red*) the policy action to the PEP. *Id.* at 0009 (“The PEP applies actions according to PDP decisions based on relevant policies and current network conditions”), 0012 (A first important action of a PEP “is to execute actions on the network element according to the directives received from the PDP”).

Choudhary provides several examples of policy events that might trigger policy rules:

- the occurrence of congestion in a router,
- the failure of a network node,
- the repeated failed attempts at logging on to a system,
- the occurrence of an emergency,
- the arrival of a call from a hot number, and
- the detection of a denial of service (DoS) attack.

Id. at 0006. As shown, these events are detected at components internal to a communication network such as a network switch, Choudhary's primary application. *See id.* at 0008 (FIG. 2 represents application to the Lucent Softswitch), 0008 (one example of a managed object is a softswitch or one of its subsystems such as call control, call detail records, and low-level communications).

Choudhary also describes exemplary actions that would be performed in response to the detected policy events. They include:

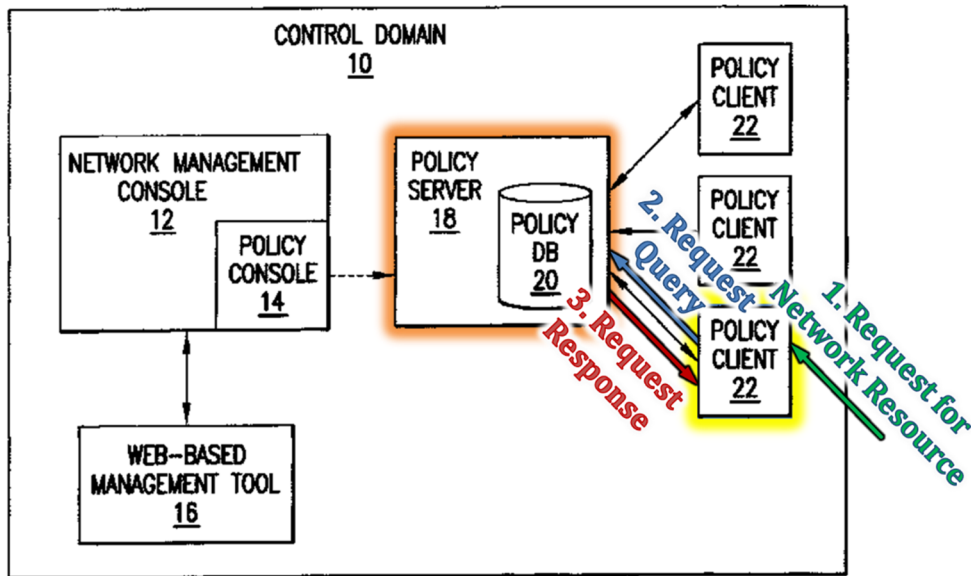
- rerouting traffic,
- switching on a backup system,
- suspending a user account,
- denying service to all calls except those related to an emergency operation,
- monitoring a call from and/or to a hot number, and
- disconnecting service to those clients suspected of causing a Dos attack.

Id. at 0006.

B. Putzolu

Putzolu is directed to another “policy-based network management system.” Ex. 1007 Title. Putzolu discloses “[a] system and method for managing a network” that “manag[es] access to network resources,” including “databases, servers, hosts, switches, routers, and firewalls.” Ex. 1007 at Abstract; col. 1:13-15. Putzolu describes policy-based network management as “a relatively-recent advance in the field of network management.” *Id.* col. 2:29-34; *see also id.* col. 1:28-32. Putzolu explains that existing policy-based systems are inflexible, however, because they require all policies to be specified in advance, which requires “substantial administrator time to establish the policies, consumes a large amount of space on policy servers ... and consumes significant processing time.” *See generally id.* col. 1:44-63. Putzolu proposes techniques for dynamically-defining policies to overcome such disadvantages. *See id.* cols. 1:64-2:6, 6:27-8:19 (describing dynamic definition of policies from policy trees and policy templates). The Petition does not rely on Putzolu’s proposals in its invalidity challenges. Instead, the Petition relies on Putzolu’s discussion of a generic policy client/policy server operation. *See generally* Pet. Ground 2.

Putzolu discloses that its policy-based network management technique is implemented using policy clients 22 (**yellow**) and policy servers 18 (**orange**):



Putzolu (Ex. 1007), FIG. 1 (annotated)

Ex. 1007, cols. 3:4-7 (“Policy server 18 is configured to implement policies relating to the management of a group of network devices within control domain 10.”), 3:19-21 (“Each policy client 22 serves as a policy enforcement point for policy-based control over the use of network resources.”). Each “[p]olicy client 22 typically resides at a network device responsible for data forwarding, such as a LAN switch, a router, or a firewall.” *Id.* col. 3:29-31.

In Putzolu, communications between the policy client 22 and the policy server 18 occur according to a four message protocol. *See id.* col. 5:57-6:26. The policy client 22 issues a Request Query with information relevant to a received request for access (*id.* col. 5:60-61), such as “objects that describe the bandwidth requirements and the requesting user's identity” (*id.* col. 6:2-4). The policy server 18 responds to the Request Query with a Request Response (*id.* col. 5:61-62), which can accept or

reject the request (*id.* col. 6:4-8). The Petition does not allege that Putzolu's other messages, a Delete Request message and an Unsolicited Response message (*id.* col. 5:63-67), have any relevance to its invalidity challenges.

The policy client 22 engages the policy sever 18 when it receives a request for access to a network resource (**green**) from some other network element. *Id.* cols. 3:34-48 (“policy client 22 *receives a request for access* to a resource under its control”); 2:48-50 (a “router *receives a request* to join [a] multicast group”); 3:21-22 (“*a request for use of a network resource may arrive* at policy client 22”) (emphases added). In response to this received request, the policy client 22 creates its Request Query (**blue**) for the policy server 18. *Id.* cols. 5:60-61, 6:2-4. The policy server 18 responds to the Request Query with its Request Response (**red**). *Id.* cols. 5:61-62, 6:4-8; *see also id.* col. 5:11-40.

Putzolu teaches, throughout its disclosure, that policies are designed to govern network usage. *See, for example, id.* cols. 1:28-32 (“policies relating to the use of *network resources* [are] stored in a management system”), 1:66-67 (“The present invention relates to an improved policy-based *network management system*”), 2:30-34 (“Policy-based network management is a relatively-recent advance ... responding in part to dramatic changes that have taken place in the way *the Internet and corporate networks* [] are used”), 2:43-46 (“policy servers are responsible for applying established policies *to requests for use of network resources*”), 4:8-18

(disclosing an exemplary policy “relating to *use of bandwidth on a particular network segment*”) (emphases added). As discussed below (§ VIII.B), Putzolu does not disclose that policies are designed to govern features or functions of user communication devices.

IV. PROPOSED GROUNDS OF INVALIDITY

The Petition proposes two grounds of invalidity:

Ground 1: Claims 1-3, 6, 10, 27 and 33 are challenged as obvious over Choudhary (Ex. 1006) and “the knowledge of the ordinary artisan.”

Ground 2: Claims 1, 27, and 33 are challenged as obvious over Putzolu (Ex. 1007) and “the knowledge of the ordinary artisan.”

Pet. at 4. The Petition’s reference to “the knowledge of the ordinary artisan” is unexplained. The Petition does not identify what this knowledge might be or how it would motivate a person of ordinary skill in the art (a “POSITA”) to modify anything disclosed by Choudhary or Putzolu.

V. LEGAL STANDARDS

A petition must show how the construed claims are unpatentable under its identified statutory grounds. 37 C.F.R. § 42.104(b)(4). Petitioner bears the burden of demonstrating a reasonable likelihood that it would prevail with respect to at least one challenged claim for a petition to be granted. 35 U.S.C. § 314(a).

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. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved 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) when in evidence, objective indicia of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

In an *inter partes* review, claims are construed using the same claim construction standard that is used in district court litigation. 37 C.F.R. § 42.100(b). Thus, the Board applies the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). A POSITA is deemed to read claim terms not only in the context of the particular claim in which the terms appear, but also in the context of the entire patent, including the specification. *Phillips*, 415 F.3d at 1313. Thus, the claims themselves provide substantial guidance as to the meaning of particular claim terms. *Id.* at 1314. And, of course, “claims ‘must be read in view of the specification, of which they are a part.’” *Id.* at 1315. If the specification “reveal[s] a special definition given to a claim term by the patentee that differs from

the meaning it would otherwise possess ... the inventor's lexicography governs." *Id.* at 1316.

VI. CLAIM CONSTRUCTIONS

Although Petitioner purports to interpret all claims according to their plain and ordinary meaning (Pet. at 11), the Petition's analysis demonstrates that Petitioner has not done so. Specifically, the Petition fails to recognize that the "features or functions associated with the communication device," a term recited by all claims, are features or functions to be performed by a user's communication device. The "request[s] ... to perform the features or functions" and the "policies that control one or more features or functions associated with the communication device" identify features or functions that are associated with the user's communication device.

All claims recite that they are directed to "managing ... a communication device used by a user." They manage the user's communication device by storing, at a policy decider, policies "that control one or more features or functions associated with *the communication device*." These features or functions of the communication device are identified in "a request sent *to or from the communication device*." These recitations, when read together in context, demonstrate that the communication device is personal to the user, the communication device issues

requests to perform an identified feature or function of the communication device, and those requests are compared to policies at the policy decider that also identify features or functions of the communication device that the policies control. *See Phillips*, 415 F.3d at 1314 (“the context in which a term is used in the asserted claim can be highly instructive.”).

The ’438 Patent’s specification confirms that this understanding of the claims is correct. The specification discloses that communication devices 10 send requests for service that identify features/functions of those devices that are to be performed. Ex. 1001 col. 8:40-58. Alternatively, requests can be issued by other network devices to perform a feature/function of the communication device 10. *Id.* (describing a text message sent to the device). The specification also discloses that policies are defined that identify features and functions of the communication device that are to be controlled. *See id.* FIGS. 3-5 and accompanying discussion.

The Petition’s reference to the Board’s claim construction analysis in *NortonLifeLock, Inc. v. Kajeet, Inc.*, IPR2022-00001, Paper 20 (PTAB April 21, 2022), does not suggest a different conclusion. There, Petitioner had argued that the term “computing device” means a “user-level device[], such as a mobile phone, for example, rather than a network-level device, such as a router, gateway, or the like.” *NortonLifeLock* at 22. The Board rejected the proposed construction, first, because the patent’s specification did not define the term “computing device” as excluding

network devices. *Id.* at 23.¹ Second, the Board determined that the proposed construction, when read in context with an “enforcing” step recited by those claims, was inconsistent with specification discussion that identified enforcement being performed by a network element. *Id.* at 24 (discussing a PEP 28). Here, the claims contain different recitations, which provide a different context for the term “communication device.”

Independent claims 1, 27, and 33 each refer to “managing ... a communication device ***used by a user***.” Moreover, they recite that the communication device is used “on a communication network,” which indicates separation between the communication device and the communication network. When the term “communication device” is read in context with these elements, the context demonstrates that the communication device is personal to the user and it is distinct from the communication network. *Phillips*, 415 F.3d at 1314.

And, while the claims here refer to a “policy enforcer,” they do not recite that the policy enforcer is part of a communication device, as the claims had in the *NortonLifeLock* IPR. *See NortonLifeLock* at 5 (in illustrative claim 1, program instructions “cause the computing device to at least ... enforce [a] response”). Here,

¹ The *NortonLifeLock* IPR remains pending. No final written decision has been issued.

claim 27 recites that the policy enforcer is “housed within a network device on the communication network,” a clause that indicates separation from the “communication device used by a user.”² Because the present claims have very different recitations from those presented in the *NortonLifeLock* IPR, the Board’s constructions in *NortonLifeLock* do not inform construction of the present claims.

VII. THE LEVEL OF ORDINARY SKILL IN THE ART

The Petition alleges that a person of ordinary skill in the art would have “at least a bachelor’s degree in computer science or a similar degree such as computer engineering, with at least two years of experience in the development of computer software systems.” Pet. at 5. The Petition also argues that this level of skill may vary to include a person with more formal education but less technical experience or less formal education but more technical experience (*id.*), but it does not explain what is meant by either characterization. The Board may adopt this definition for purposes of deciding whether to institute review because, under any definition, Petitioner failed to meet the threshold requirement mandated by 35 U.S.C. § 314.

² Claims 1 and 33 are silent as to the policy enforcer’s location.

VIII. ARGUMENT

A. Ground 1 Should Be Rejected Because Choudhary Does Not Teach or Suggest All Elements of Any Challenged Claim.

The Board should reject Ground 1 because Choudhary does not teach or suggest all elements of the challenged claims 1-3, 6, 10, 27, or 33. Although Choudhary uses many of the same buzzwords that occur in the '438 Patent's specification, such as "policy decision point" and "policy enforcement point," Choudhary discloses that its PDPs and PEPs operate differently than as recited in the challenged claims. Specifically, Choudhary uses the PDP and PEP to implement policy-based "network management, quality of service (QoS), and network security" (Ex. 1006-0006) rather than to "manag[e] in real-time a communication device used by a user" as claimed. Choudhary's policies evaluate "policy events [that] represent system states" (*id.*) rather than "accept[ing] or deny[ing] a request sent to or from the communication device to perform the features or functions" of the communication device. Buzzword level correspondence between prior art and a patent's specification, of course, does not prove obviousness. Instead, the prior art must teach or suggest the claims' features as arranged in the claim. *KSR*, 550 U.S. at 418 (2007) (It remains important to identify a reason that would have prompted a person of ordinary skill to combine elements in the way the claimed invention does).

As explained below, Choudhary fails to teach or suggest several features recited in the challenged claims 1-3, 6, 10, 27, or 33. Petitioner, thus, failed to show

a reasonable likelihood that it will prevail on its Ground 1 challenges. 35 U.S.C. § 314(a).

1. **The Petition’s Argument that Choudhary Teaches “Notifying the User of [a] Denied Request” is Conclusory and Unsupported by Evidence.**

The Petition fails to show that Choudhary teaches or suggests notifying a user of a denied request, as recited by all claims challenged on Ground 1. These claims recite:

Claim 1: a policy enforcer for ... enforcing a decision by the policy decider as to whether the request has been accepted or denied by [] *notifying the user of the denied request* and taking one or more actions consistent with the denied request ...

Claim 27: a policy enforcer [for] enforcing a decision by the policy decider as to whether the request has been accepted or denied by [] *notifying the user of the denied request* and taking one or more actions consistent with the denied request ...

Claim 33: a policy enforcer for ...enforcing a decision by the policy decider as to whether the request has been accepted or denied by [] *notifying the user of the denied request* and taking one or more actions consistent with the denied request ...

See Ex. 1001.

The Petition’s analysis of this notification is limited to a single perfunctory statement:

A POSITA would have understood that the PEP would have notified the user if the request has been denied and taken one or more actions consistent with the denied request, e.g., “denying service to all calls,” or by taking

one or more actions consistent with the accepted request, e.g., accepting service to all calls. (Ex. 1003 at ¶ 95; Ex. 1006 at 19).

Pet. at 29; *see also id.* at 37 (same analysis for element 27[b]), 41 (element 33[b]). The Petition’s conclusory analysis falls far short of the particularized showing required in IPRs. *See* 37 C.F.R. §§ 42.104 (b)(4) (a petition must show where each element of the claim is found in the prior art), 42.104(b)(5) (a petition must identify specific portions of the evidence that support the challenge); *Symantec Corp. v. Finjan, Inc.*, IPR2015-01545, Paper 10 at 18-19 (PTAB Jan. 14, 2016). By failing to identify any disclosure from Choudhary that teaches or suggests the required notification, the Petition impliedly admits that no such disclosure exists.

Choudhary discloses no notification to a user at p. 19 (Ex. 1006-0006), the cite identified by the Petition. Pet. at 29. There, Choudhary’s Introduction discusses “three basic constructs” of his system: “policy events, policy actions, and policy rules.” Ex. 1006-0006. Choudhary identifies a variety of exemplary actions that may be taken in response to policy events (*id.*), but none of them involve any notification to a user of a communication device. Moreover, as discussed below (§ VIII.A.2), Choudhary’s policy events are not “request[s] sent to or from [a] communication device to perform the features or functions” of the communication

device;³ therefore, Choudhary discloses no denial of any such request and, by extension, no “notifying the user of [a] denied request.”

The Petition cites to its expert declaration (Ex. 1003 ¶ 95) as support for its argument that Choudhary teaches the claims’ notification, but the cited paragraph omits any discussion of a notification to a user. Presumably, the Petition meant to cite the declaration at ¶ 96 but, here, the declaration repeats the Petition’s argument almost verbatim:

Moreover, an ordinary artisan would have understood that the PEP would have implicitly notified the user if the request has been denied and by taking one or more actions consistent with the denied request, e.g., “denying service to all calls,” or by taking one or more actions consistent with the accepted request, e.g., accepting service to all calls. (See Ex. 1006 at 19).

³ Section VIII.A.2 explains that the use case that the Petition identifies—“denying service to all calls”—arises when system state indicates that a denial of service attack is underway, rather than when a PDP receives a request sent by a user communication device. Choudhary never discloses that PDPs receive requests from user devices. It certainly never states that its system “accept[s] service to all calls,” as the Petition suggests.

Id. ¶ 96. The expert’s analysis cannot be given weight because it “does not cite to any additional supporting evidence or provide any technical reasoning to support his statement.” *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential) (citing 37 C.F.R. § 42.65(a))⁴.

The Petition’s argument that “the PEP would have notified the user if the request has been denied” (Pet. at 29) not only is conclusory, it is belied by Choudhary’s teachings that policy events are not requests. The Petition fails to show a reasonable likelihood of success on Ground 1 because it failed to show that Choudhary teaches or suggests “notifying the user of [a] denied request.”

2. The Petition Fails to Show that Choudhary Teaches a “Request Sent to or from the Communication Device to Perform the Features or Functions” of a Communication Device.

The Petition fails to demonstrate that Choudhary teaches or suggests a request to perform features or functions of a communication device based on a list of policies. The independent claims recite this feature as follows:

Claim 1: a policy decider ... for automatically deciding to accept or deny *a request sent to or from the communication device to perform the features or functions* based on the list of policies

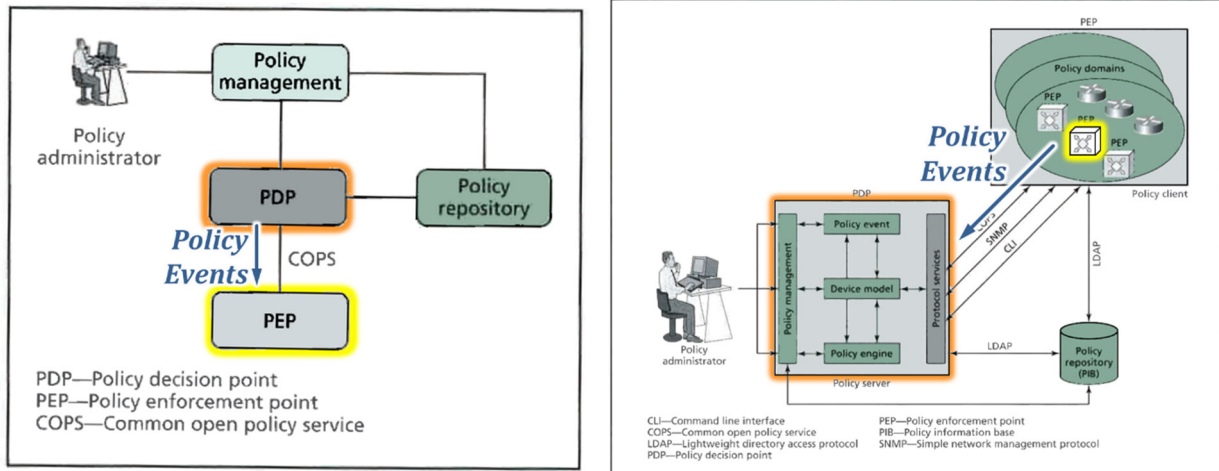
⁴ Designated as precedential by Director Vidal on February 10, 2023.

Claim 27: a policy decider ... for automatically deciding to accept or deny *a request sent to or from the communication device to perform the features or functions* based on one or more policies from the list of policies;

Claim 33: a policy decider ... for automatically deciding to accept or deny *a request sent to or from the communication device to perform the features or functions* based on one or more policies from the list of policies;

The Petition argues that Choudhary's PDP corresponds to the policy decider. Pet. at 24. But the Petition fails to establish that Choudhary discloses a "request sent to or from the communication device to perform the features or functions" of a communication device or that the PDP "automatically decid[es] to accept or deny" a request from such a communication device.

Consider, *first*, the Petition's analysis of the "request." The Petition alleges, without support, that "[i]n operation, a request can originate from the 'managed object'" in Choudhary's system. Pet. at 25. But Choudhary discloses no requests that *originate with a managed object*. Instead, Choudhary discloses that *PEPs* (*yellow*) communicate "policy events" (*blue*) to PDPs (*orange*), the Petition's purported "policy decider," based on observation of events at network elements:



Choudhary (Ex. 1006), FIGS. 1 & 2 (annotated)

See Ex. 1006-0009 (a PDP “receiv[es] policy events (conditions) from PEPs”), 0009 (A PEP “communicates the local events to the PDP”); 0012 (A PDP “performs the desired analysis on the policy events that are obtained from the various PEPs”); 0013 (“The PDP examines the policy events that it receives from the PEPs to carry out logic to decide whether or not certain policy conditions have arisen.”). Thus, the policy events are sent by PEPs; they are not “request[s] sent to or from the communication device” used by a user.

Moreover, in Choudhary, the policy events are not “request[s] ... to perform features or functions” of a communication device. Instead, they represent states of network elements. See *id.* at 0006 (“[p]olicy events represent the *system states* that are of interest in the context of the business objectives and their operational realization”), 0012 (PEPs “gather information on the events that occur *in the network element*”), 0013 (“policy events are collected *from the network elements*”)

(emphases added). Exemplary events include router congestion, the failure of a network node, repeated failed attempts at logging on to a system, the occurrence of an emergency, the arrival of a call from a hot number, and the detection of a denial of service (DoS) attack. *Id.* at 0006. But Choudhary does not disclose that policy events represent “a request ... to perform the features or functions” of a user communication device or that any policy event represents a request that is “sent to or from the communication device,” as claimed. And the Petition fails to explain why a POSITA might regard Choudhary’s policy events as a request having these features.

The Petition discusses Choudhary’s policy events only superficially. *See* Pet. at 14 (acknowledging that PEPs communicate local events to PDPs). But the Petition’s analyses of elements 1[a], 27[a], and 33[a] ignore these policy events. Instead, Petitioner alleges incorrectly and without support that the claims’ “request can originate from the ‘managed object.’” Pet. at 25. Because Choudhary does not disclose that any managed object makes a request, the premise of Petitioner’s Ground 1 invalidity challenge is fatally flawed. Petitioner failed to demonstrate that Choudhary teaches or suggests “a request sent to or from the communication device to perform the features or functions” of a communication device, and, therefore, it failed to make the requisite showing under 35 U.S.C. § 314(a).

Consider, *second*, the claims’ requirement that a policy decider “automatically decid[es] to accept or deny a request.” Because Choudhary discloses no request, Choudhary, of course, fails to disclose any decision to accept or deny a request. Choudhary’s identifications of various policy actions that respond to policy events shows that they are not “acceptances” or “denials” of a request:

Policy Event	Policy Action
the occurrence of congestion in a router	rerouting traffic
the failure of a network node	switching on a backup system
the repeated failed attempts at logging on to a system	suspending a user account
the occurrence of an emergency	denying service to all calls except those related to an emergency operation
the arrival of a call from a hot number	monitoring a call from and/or to a hot number
the detection of a denial of service (DoS) attack	disconnecting service to those clients suspected of causing a DoS attack

See Ex. 1006-0006. Again, the policy events are not requests at all but, instead, they represent network conditions detected at a PEP. See *id.* at 0012 (a PEP “gather[s] information on the events that occur in the network element.”), 0012 (“policy events are collected from the network elements”). For example, the action to deny service to non-emergency calls is made in response to a policy event that indicates that an emergency exists; Choudhary does not disclose that a PDP issues such a policy action in response to a “request sent to or from the communication device.”

Similarly, an action to disconnect service to a client suspected of causing a DoS attack is made in response to detection of a DoS attack, something that requires “a complex ensemble of rules to detect” (*id.* at 0006); Choudhary does not disclose that a PDP issues this policy action in response to a “request sent to or from the communication device,” either. This is a separate analytical flaw that shows the Petition fails to make its requisite showing under 35 U.S.C. § 314(a).

3. The Petition Fails to Show that Choudhary Teaches “Policies that Control One or More Features or Functions Associated with the Communication Device.”

The Petition fails to show that Choudhary teaches or suggests policies that control features or functions of a communication device. The independent claims recite this feature as follows:

Claim 1: a policy decider for storing a list of *policies that control one or more features or functions associated with the communication device*

Claim 27: a policy decider ... for storing a list of *policies that control one or more features or functions associated with the communication device*

Claim 33: a policy decider for storing a list of *policies that control one or more features or functions associated with the communication device*

As explained, these elements (§ VI *supra*), when read in context with the other recitations of those claims, demonstrate that the claims’ policies identify features or functions to be performed by the communication device. Choudhary does not

disclose that the policies identify features or functions to be performed by communication devices. Instead, Choudhary's policies are directed to control of network elements.

As discussed, Choudhary is directed to "policy-based network management." Ex. 1006-0006 (Title); *see also id.* at 0007 ("we discuss the policy-based approaches to network management, quality of service (QoS), and network security"), 0010 ("Network management is one of the first areas to which the policy-based approach has been applied"), 0011 ("the real value of the policy-based approach to network management is to achieve business objectives by managing services that require the network as a whole to have a desired overall behavior"). Once a PDP issues a policy action, the PEPs "execute [the] action[] on the network element according to the directives received from the PDP." *Id.* at 0012; *see also id.* at 0013 ("policy actions [] are performed on the network elements"). Choudhary does not teach or suggest that the policies identify features or functions to be performed by a user communication device. Instead, Choudhary discloses that the policy events reflect the state of network elements (not user communication devices) and the policy actions taken in response are directed to network elements.

4. The Petition's Catchall Arguments Plainly Violate Governing Rules.

The Board should reject the Petition's various arguments that, "to the extent Choudhary does not disclose any limitation," the Board nonetheless should institute review because "Choudhary's modification would have required no more than the application of prior art devices (i.e., communication devices, policy enforcers, and policy deciders), according to known methods of network connectivity and software to yield a predictable result of implementing policy-based control over communication devices." *See* Pet. at 30 (claim 1), 39 (claim 27), 42 (claim 33). These are backhanded attempts to render claims obvious via hindsight. These arguments presume that the claims are obvious no matter what shortcomings are identified from Choudhary's disclosure even without motivation in the art. But obviousness analyses are not performed this way. *See Sony Corp. Am. v. Network-I Security Solns., Inc.*, IPR2013-00092, Paper 21 at 24 (PTAB May 24, 2013) (repeated conclusory statements that, to the extent claim elements are undisclosed, they are predictable variations of the art are deficient under 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104(b)).

Although the Petition presents Ground 1 as an obviousness challenge, it acknowledges no differences between Choudhary's disclosure and the challenged claims. *See generally*, Pet. Ground 1. It proposes no modifications to be made to Choudhary's disclosure that would cause Choudhary's system to be arranged as in

the claims. *Id.* The Petition, for example, fails to explain how its proffered motivations, “reduc[ing] the workload and complexity of network management for administrators and reduce memory requirements on individual devices” (*id.* at 30, 38-39, 42), would lead a POSITA to modify anything in Choudhary’s system. Instead, the Petition contingently dismisses any unforeseen deficiencies in Ground 1—as discussed, there are several—as predictable variations of prior art. *See* Pet. at 30, 39 & 42.

The Board should reject Petitioner’s arguments for they fail to provide the particularized showing that are required in IPRs. *See* 35 U.S.C. § 312(a)(3) (a petition must “identif[y], in writing and with particularity, ... the grounds on which the challenge to each claim is based”); 37 C.F.R. § 42.104(b) (a petition must identify how each claim is unpatentable under the identified statutory grounds).

B. Ground 2 Should Be Rejected Because Putzolu Does Not Teach or Suggest All Elements of Any Challenged Claim.

The Board should reject Ground 2 because Putzolu does not teach or suggest all elements of the challenged claims 1, 27, or 33. Although Putzolu uses many of the same buzzwords that occur in the ’438 Patent’s specification, such as “policy decision point” and “policy enforcement point,” Putzolu discloses that its PDPs and PEPs are used differently than as recited in the challenged claims. Specifically, Putzolu uses the PDP and PEP to “manag[e] access to network resources,” including

“databases, servers, hosts, switches, routers, and firewalls” (Ex. 1007 at Abstract; col. 1:13-15) rather than to “manag[e] in real-time a communication device used by a user,” as claimed. Putzolu’s PDPs do not “accept or deny a request *sent to or from the communication device* to perform the features or functions,” but, instead, they respond to different messages—Request Queries—which are distinct from requests for access to network resources. Thus, notwithstanding some buzzword level correspondence between Putzolu and the ’438 Patent’s disclosure, Putzolu’s system is directed to an application that is quite different from the application recited in the challenged claims.

1. **The Petition’s Argument that Putzolu Teaches “Notifying the User of [a] Denied Request” is Conclusory and Unsupported by Evidence.**

The Petition fails to show that Putzolu teaches or suggests notifying a user of a denied request, as recited by challenged claims 1, 27, and 33:

Claim 1: a policy enforcer for ... enforcing a decision by the policy decider as to whether the request has been accepted or denied by [] *notifying the user of the denied request* and taking one or more actions consistent with the denied request ...

Claim 27: a policy enforcer [for] enforcing a decision by the policy decider as to whether the request has been accepted or denied by [] *notifying the user of the denied request* and taking one or more actions consistent with the denied request ...

Claim 33: a policy enforcer for ...enforcing a decision by the policy decider as to whether the request has been accepted or denied by [] *notifying the user of the denied request* and taking one or more actions consistent with the denied request ...

See Ex. 1001.

The Petition’s analysis of element 1[b] (pp. 50-54) ignores the notifying feature entirely. The Petition merely asserts that Putzolu’s policy clients enforce decisions from policy servers:

After receiving the decision from the policy server, the policy client enforces the decision. ...

In certain embodiments, enforcing the decision from the policy server includes enabling features or functions based on the list of policies, including content that can be used, sent, or received, e.g., access to a network resource, over the communication network when the decision grants the request – i.e., providing access to the network resource or denying such access. ...

Based on these teachings from Putzolu, a POSITA would recognize that Putzolu disclosed that the policy server (i.e., the policy decider) uses information stored in the policy database to generate a decision, wherein the decision is then sent to the policy client (i.e., the policy enforcer) for enforcement.

Id. at 50-51. But claim 1 requires “*notifying the user* of [a] denied request” in addition to “taking ... actions” consistent with accepted and denied requests. The Petition’s analysis of element 1[b] fails to acknowledge the notifying step, and it

certainly does not explain how Putzolu might teach it. Therefore, the Petition's analysis of claim 1 is fatally flawed.

Although the Petition's analyses of claims 27 and 33 acknowledge the "notifying" operations, they, too, fail to make any particularized showing how this feature might be taught or suggested by Putzolu. The Petition simply argues:

A POSITA would have understood that the PEP would have implicitly notified the user if the request has been denied and by taking one or more actions consistent with the denied request, or by taking one or more actions consistent with the accepted request, e.g., "allowing or disallowing the request." (Ex. 1003 at ¶ 165; Ex. 1007 at 3:26-28).

Pet. at 56-57 (element 27[b]); *see also id.* at 60 (element 33[b]). As in Ground 1, this argument is conclusory, and it lacks support in the reference. Therefore, it should be rejected.

The material cited by the Petition teaches no notification, as claimed. At col. 3:26-28, Putzolu describes only communication between a policy server 18 and a policy client 22:

Based on the response from policy server 18, policy client 22 enforces the decision by either allowing or disallowing the request.

Ex. 1007 col. 3:26-28. There is no indication that any notification is provided to a user of a communication device. And the Petition does not explain how Putzolu's description of communications exchanged between the policy server 18 and the

policy client 22 purportedly teaches or suggests communication of a notification to a user at a communication device.⁵

And, again, Petitioner’s expert declaration parrots the same conclusory assertion made in the Petition:

An ordinary artisan would have further understood that the policy enforcer would have notified the user if the request has been denied and would have taken one or more actions consistent with the denied request, or by taking one or more actions consistent with the accepted request, e.g., “allowing or disallowing the request.” (Id. at 3:26-28).

See Ex. 1003 ¶ 165. The expert, like Petitioner itself, fails to explain how a communication exchanged between a policy server 18 and the policy client 22 teaches communication of a notification to a user at a communication device. The declaration is plainly deficient. *See Xerox* at 15.

⁵ As discussed below (§ VIII.B.2), Putzolu’s policy servers 18 respond to Request Queries from policy clients 22, which are different from requests for network resources that the policy clients 22 might receive from other network elements.

2. The Petition Fails to Show that Putzolu Teaches a “Request Sent to or from the Communication Device to Perform the Features or Functions” of a Communication Device.

The Petition fails to demonstrate that Putzolu teaches or suggests a request sent to or from a communication device to perform features or functions of that device. The independent claims recite this feature as follows:

Claim 1: a policy decider ... for automatically deciding to accept or deny *a request sent to or from the communication device to perform the features or functions* based on the list of policies

Claim 27: a policy decider ... for automatically deciding to accept or deny *a request sent to or from the communication device to perform the features or functions* based on one or more policies from the list of policies;

Claim 33: a policy decider ... for automatically deciding to accept or deny *a request sent to or from the communication device to perform the features or functions* based on one or more policies from the list of policies;

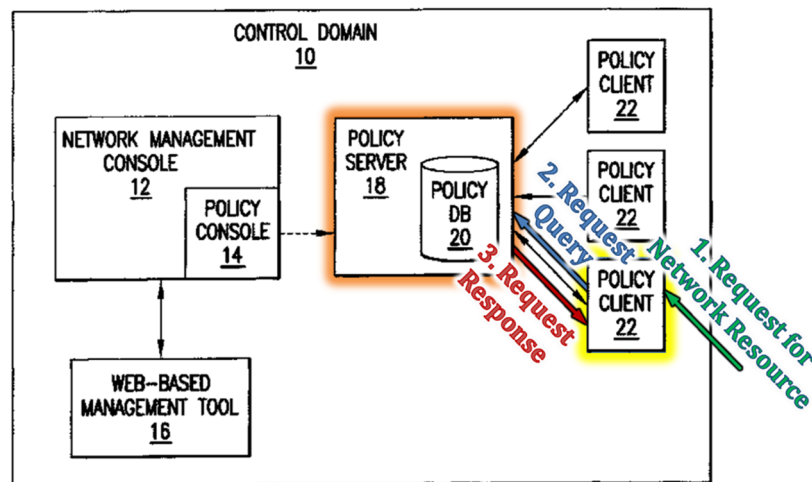
Although the Petition argues that Putzolu’s policy server 18 corresponds to the policy decider (Pet. at 47), the Petition fails to establish that Putzolu’s policy server accepts or denies a “request *sent to or from the communication device* to perform the features or functions” of that device.

The Petition’s Ground 2 invalidity challenges rely on a distortion of Putzolu’s disclosure. The Petition alleges:

The policy server, i.e., the policy decider, of Putzolu receives the access request (sometimes referred to as a “query” in Putzolu) from the policy client.

Pet. at 47-48 (citing Ex. 1007 col. 3:34-38). But, where the Petition suggests that access requests and queries are the *same*, Putzolu actually discloses that they are *different* from each other.

Putzolu’s system includes a policy client 22 (*yellow*) and a policy server 18 (*orange*):



Putzolu (Ex. 1007), FIG. 1 (annotated)

The policy client 22 receives access requests for network resources (*green*) from other entities within a network. See Ex. 1007 cols. 3:34-48 (“policy client 22 *receives a request for access* to a resource under its control”); 2:48-50 (a “router *receives a request* to join [a] multicast group”); 3:21-22 (“*a request for use of a network resource may arrive* at policy client 22”) (emphases added).

Policy clients 22 do not send the access requests (*green*) to policy servers 18. Instead, the policy client 22 and policy server 18 communicate with each other by their own unique protocol:

Looking more closely at communications between policy server 18 and policy client 22, a suitable protocol for exchanging policy information can be relatively simple, consisting mainly of four types of messages: RQ (Request 60 Query, used to query policy server 18), RR (Request Response, sent by policy server 18 in response to a query), DQ (Delete Request, used by policy client 22 to delete state associated with a previously-accepted request), and UR (Unsolicited Response, used by policy server 18 to modify 65 its decision or priority associated with a previously-accepted request).

Id. col. 5:57-67. A policy client 22 sends a new communication (*blue*), a Request Query, that “includes objects that describe the bandwidth requirements and the requesting user's identity,” which the policy server 18 may accept or reject in a Request Response (*red*). *Id.* col. 6:2-8. Putzolu discloses an exemplary Request Query-Request Response exchange as follows:

Client->Server: RQ “RIH=4, client type=RSVP, RSVP objects incl. Policy data” {client sends query asking whether reservation can be accepted}
Server->Client: RR “RIH=4, Priority=5, OUT-POLICY object” {server accepts request (at priority 5) and provides policy object to be forwarded to next device in path}

Putzolu (Ex. 1007), col. 6:13-21 (annotated)

Thus, the Petition’s premise is incorrect. The access requests (*green*) that policy clients 22 *receive* from other network elements are different from the Request Queries (*blue*) that policy clients 22 *send* to policy servers 18.

The Petition fails to explain how a policy server 18 (the Petition’s purported policy decider) “automatically decid[es] to accept or deny a request *sent to or from the communication device*,” as claimed. Instead, the Petition analyzes (and, as explained above, mangles) the communications that extend between the policy clients 18 and policy servers 22. *See* Pet. at 48. But the Petition fails to explain how any such communications represent a “request sent to or from the communication device,” as claimed. Because the Petition fails to make this showing, the Petition has not shown that Putzolu renders claims 1, 27, or 33 obvious.

Claims 1, 27, and 33 further recite that the request is a “request ... to perform the features or functions” of the user communication device. As explained (§ VI *supra*), this request identifies features or functions of the user communication device

that are to be performed. Although the Petition alleges that Putzolu’s queries correspond to this request (Pet. at 48), the Petition fails to explain how the Request Queries identify features or functions of a user communication device. To the contrary, Putzolu shows that the Request Queries do not identify features or functions of a user communication device:

Client->Server: RQ
 “RIH=4, client type=RSVP, RSVP objects incl. Policy data”
 {client sends query asking whether reservation can be accepted}

Putzolu (Ex. 1007), col. 6:13-21 (annotated)

Instead, Putzolu discloses that a “query ... includes objects that describe the bandwidth requirements and the requesting user's identity.” Ex. 1007 col. 6:2-4. This is another failure in the Petition’s analysis.

3. The Petition Fails to Show that Putzolu Teaches “Policies that Control One or More Features or Functions Associated with the Communication Device.”

The Petition fails to show that Putzolu teaches or suggests policies that control features or functions of a communication device. The independent claims recite this feature as follows:

Claim 1: a policy decider for storing a list of *policies that control one or more features or functions associated with the communication device*

Claim 27: a policy decider ... for storing a list of *policies that control one or more features or functions associated with the communication device*

Claim 33: a policy decider for storing a list of *policies that control one or more features or functions associated with the communication device*

As explained, this element, when read in context with the other recitations of those claims, demonstrate that the claims’ policies identify features or functions to be performed by the communication device. Putzolu does not disclose that policies identify features or functions performed by communication devices that are to be controlled. Instead, Putzolu’s policies are directed to control of network elements.

Putzolu discloses, in the passages cited by the Petition, that the policies are directed to *network functions* not “features or functions associated with the communication device.” *See* Ex. 1007 cols. 4:31-43 (policies restrict use of “network bandwidth” or “access to a network resource, such as a corporate database”), 1:34-46 (policies are established for network resources). Putzolu provides several exemplary policies, which confirm that Putzolu’s policies concern use of network resources not features or functions of a user communication device itself:

Allow User_X to use up to 1 Mbit/s of bandwidth on Subnet_Y
between 8 AM and 5 PM.

Id. col. 4:13-14.

Allow User_X to use up to 1 Mbit/s of bandwidth on ANYSUB-
NET between 8 AM and 5 PM,

Id. col. 4:22-23.

No more than 1 Mbps bandwidth can be used by members
of user group QoSUsers during the work hours of
8am–noon or 1pm–5pm

Id. col. 7:18-20. The Petition identifies nothing from Putzolu that teaches or suggests policies that control performance of “features or functions” of a user communication device.

4. The Petition’s Catchall Arguments Plainly Violate Governing Rules.

The Petition’s analysis of Putzolu makes the same hindsight-driven arguments that it does for Choudhary, and they should be rejected for the same reason. *See* § VIII.A.4 *supra*. As before, the Petition argues that, “to the extent Putzolu does not disclose any limitation,” the Board nonetheless should institute review because “Putzolu’s modification would have required no more than the application of prior art devices (i.e., communication devices, policy enforcers, and policy deciders), according to known methods of network connectivity and software to yield a predictable result of implementing policy-based control over communication devices.” *See* Pet. at 53-54 (claim 1), 38 (claim 27), 61 (claim 33). And, again, because these contingent arguments reveal rank hindsight, they should be rejected.

Sony at 24 (rejecting repeated conclusory statements that, to the extent claim elements are undisclosed, they are predictable variations of the art).

As with Ground 1, the Petition presents Ground 2 as an obviousness challenge, but it acknowledges no differences between Putzolu’s disclosure and the challenged claims. *See generally*, Pet. Ground 2. It proposes no modifications to be made to Putzolu’s disclosure that would cause Putzolu’s system to be arranged as in the claims. *Id.* The Petition, again, fails to explain how its proffered motivations—“reduc[ing] the workload and complexity of network management for administrators and reduce memory requirements on individual devices” (*id.* at 53, 57, 61)—would lead a POSITA to modify anything in Putzolu’s system. These arguments fail to provide the particularized showing that are required in IPRs. *See* 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b).

IX. CONCLUSION

As explained above, Grounds 1 and 2 both are fatally flawed. Therefore, Petitioner has failed to show “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). Patent Owner respectfully requests the Board to deny institution.

Respectfully submitted,

Dated: February 22, 2023

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CERTIFICATION

Pursuant to 37 C.F.R. § 42.24(b)(1), the undersigned certified that the foregoing Preliminary Response to Petition for *Inter Partes* Review contains 8,567 words as measured by the word-processing system used to prepare this paper. This word count does not include items excluded by 37 C.F.R. § 42.24(a)(1).

Date: February 22, 2023

/Robert L. Hails/

Robert L. Hails

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of Patent Owner's Preliminary Response was served electronically via email upon counsel of record for Petitioners:

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