

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TREND MICRO INC.,  
Petitioner,

v.

KAJEET, INC.,  
Patent Owner.

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IPR2023-00178  
Patent 7,899,438 B2

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Before KARL D. EASTHOM, JULIET MITCHELL DIRBA, and  
IFTIKHAR AHMED, *Administrative Patent Judges*.

DIRBA, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314

On November 10, 2022, Trend Micro Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–3, 6, 10, 27, and 33 of U.S. Patent No. 7,899,438 B2 (Ex. 1001, “the ’438 patent”). Paper 1 (“Pet.”). Kajeet, Inc. (“Patent Owner”) timely filed a Preliminary Response. Paper 10 (“Prelim. Resp.”).

An *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a).

Having reviewed the parties’ papers and the evidence of record, we determine that Petitioner has shown a reasonable likelihood it will prevail in establishing the unpatentability of at least one challenged claim. Accordingly, we institute an *inter partes* review.

## I. BACKGROUND

### A. *Related Matters*

The parties indicate that the ’438 patent has been asserted in district court lawsuits, including: *Kajeet, Inc. v. Gryphon Online Safety, Inc.*, Case No. 1:19-cv-02370 (D. Del.). Pet. 1–2; Paper 4 (Patent Owner Mandatory Notices), 1. In addition, Petitioner suspects that Patent Owner may add the ’438 patent to a district court lawsuit pending between the parties. Pet. 1 (citing Ex. 1009); *see also Kajeet, Inc. v. Trend Micro Inc.*, Case No. 6:21-cv-00389, Dkt. #57 (W.D. Tex.) (Patent Owner’s conditional motion to amend the complaint to add the ’438 patent if the case is not stayed).<sup>1</sup>

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<sup>1</sup> The parties are reminded of their continuing obligation to update their mandatory notices within 21 days of any relevant change, including changes in related matters. 37 C.F.R. §§ 42.8(a)(3), 42.8(b)(2).

In addition, as Petitioner notes (Pet. 2), a third-party filed a petition challenging US 8,667,559 B1, which is related the '438 patent, in *Gen Digital Inc. v. Kajeet, Inc.*, IPR2022-00001 (filed Oct. 1, 2021). The Board issued a final written decision in that proceeding, finding some challenged claims unpatentable. *Gen Digital Inc. v. Kajeet, Inc.*, IPR2022-00001, Paper 52 (PTAB Apr. 13, 2023); *see also* Paper 11 (Petitioner's Updated Mandatory Notices).

*B. The Petition's Asserted Grounds*

Petitioner asserts the following grounds of unpatentability (Pet. 4):<sup>2</sup>

<b>Claim(s) Challenged</b>	<b>35 U.S.C. <sup>3</sup> §</b>	<b>Reference(s)/Basis</b>
1–3, 6, 10, 27, 33	103	Choudhary <sup>4</sup>
1, 27, 33	103	Putzolu <sup>5</sup>

In support, Petitioner relies on the testimony of Dr. Madisetti (Ex. 1003).

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<sup>2</sup> Patent Owner takes issue with Petitioner's framing of these grounds as a combination of a reference and "the knowledge of an ordinary artisan." Prelim. Resp. 12 (quoting Pet. 4). We agree that the ordinary artisan's knowledge cannot be a "basis" of the ground, but it should be considered when evaluating a petitioner's grounds. *See Koninklijke Philips N.V. v. Google LLC*, 948 F.3d 1330, 1337 (Fed. Cir. 2020).

<sup>3</sup> The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), revised 35 U.S.C. § 103 effective March 16, 2013. Because the application that issued as the '438 patent was filed before that date, we refer to the pre-AIA version of § 103.

<sup>4</sup> A. R. Choudhary, *Policy-Based Network Management*, BELL LABS TECH. J., No. 9(1), 19–29 (2004) (Ex. 1006).

<sup>5</sup> US 6,578,076 B1, issued June 10, 2003 (Ex. 1007).

### C. The '438 Patent

The '438 patent is titled “Feature Management of a Communication Device,” and the application that led to this patent was filed on July 26, 2007, claiming the benefit of an application filed on June 28, 2007. Ex. 1001, codes (22), (63). It is directed to “the real-time management of a device, and more particularly to the establishment and enforcement of policies or rules associated with the feature or functions that may be performed with the device.” *Id.* at code (57), 1:12–15; *see also id.* at 3:56–57 (“The present invention is directed to the real-time management of a device in general . . .”).

Figure 2 of the '438 patent (reproduced below) depicts the components of an exemplary feature management system.

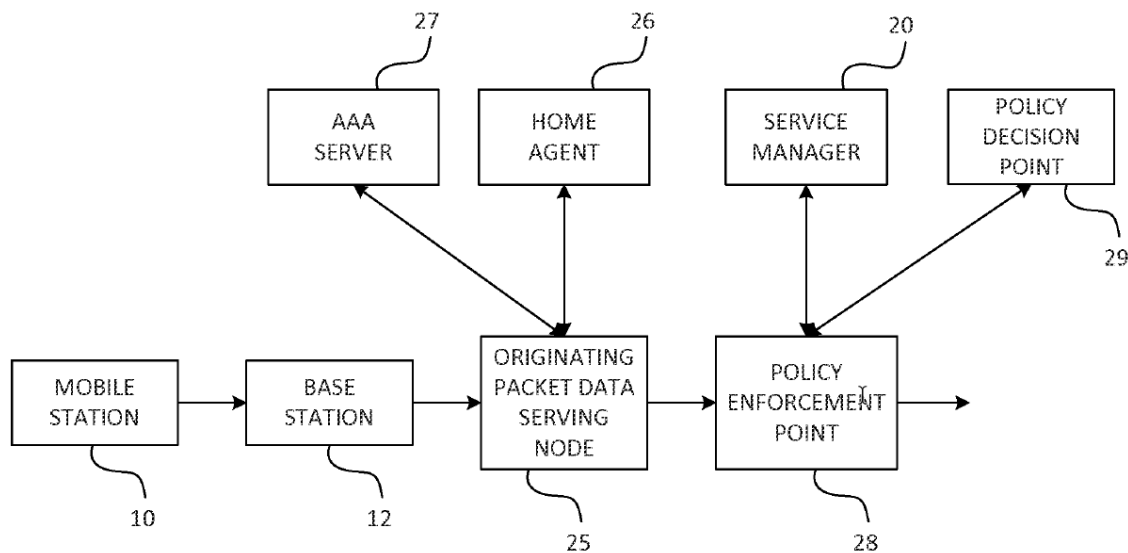


Figure 2 (above) includes mobile station 10, base station 12, originating packet data serving node (“O-PDSN”) 25, policy enforcement point (“PEP”) 28, and policy decision point (“PDP”) 29. Ex. 1001, 7:64–8:39. Mobile station 10 originates a session by establishing a connection with base station 12, which connects to O-PDSN 25. *Id.* at 7:66–8:3. After validating mobile station 10, O-PDSN 25 obtains an IP address for the data session and

routes mobile station 10 to the appropriate PEP 28, which operates in conjunction with an associated PDP 29. *Id.* at 8:8–19, 8:30–39. The Specification clarifies that PEP 28 and PDP 29 are both logical elements that can be physically housed in different devices. *Id.* at 8:19–24, 8:32–34.

The '438 patent states that a request may be initiated either by mobile station 10 (such as when a user seeks to download content) or by another device that seeks to communicate with mobile station 10 (such as when a text message is sent to the user). Ex. 1001, 8:40–49. If the user is a valid subscriber, PEP 28 will enforce the policies associated with that subscriber. *Id.* at 8:65–67. The Specification clarifies that PDP 29 “maintains or stores a list of policies that have been established to control the features and functions of the mobile station 10 and decides, based on those policies, to either accept or reject the service request” (*id.* at 8:34–39), and PEP 28 is responsible for enforcing the decision of PDP 29 (*id.* at 8:24–26). *See also id.* at 9:3–9 (providing examples of restrictions based on content type, URL, and/or time-of-day). “If all of the policies pass, then the session or transaction associated with the service request is permitted to continue.” *Id.* at 9:24–26. Otherwise, PEP 28 will take an action, such as terminating the session or transaction. *Id.* at 9:10–15.

#### *D. Challenged Claims*

Petitioner challenges claims 1–3, 6, 10, 27, and 33 of the '438 patent. Of these, claims 1, 27, and 33 are independent, and claim 1 is representative for purposes of this Decision. Claim 1 follows:

1. [pre] A system for managing in real-time a communication device used by a user on a communication network, comprising:

[a] a policy decider for storing a list of policies that control one or more features or functions associated with the communication device and 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, the list of policies including a policy for managing content that can be sent, received, or used by the communication device; and

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

Ex. 1001, 15:53–16:3 (reference letters added).

## II. ANALYSIS

### *A. Legal Standards*

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden of persuasion never shifts to the patent owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

The legal 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 ordinary skill in the art; and (4) when in evidence,

objective evidence of nonobviousness.<sup>6</sup> *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966). One seeking to establish obviousness based on more than one reference also must articulate sufficient reasoning with rational underpinnings to combine teachings. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

### *B. Level of Ordinary Skill in the Art*

Petitioner asserts that the level of ordinary skill in the art corresponds to “a bachelor’s degree in computer science or a similar degree such as computer engineering” and “two years of experience in the development of computer software systems.” Pet. 5 (citing Ex. 1003 ¶¶ 23–25).

At this stage, Patent Owner does dispute Petitioner’s assertion. *See* Prelim. Resp. 17.

For purposes of this Decision, we adopt Petitioner’s proposed level of skill, as articulated above. We are satisfied that this definition generally comports with the level of skill necessary to understand and implement the teachings of the ’438 patent and the asserted prior art. This definition is also supported by the testimony of Dr. Madisetti. *See* Ex. 1003 ¶¶ 23–25. To the extent the level of ordinary skill in the art is in dispute or makes a material difference in the obviousness analysis, the parties should brief their respective positions in this regard during trial.

### *C. Claim Construction*

We interpret claim terms using “the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C.

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<sup>6</sup> The current record does not include allegations or evidence of objective indicia of nonobviousness.

282(b).” 37 C.F.R. § 42.100(b). Under the principles set forth by our reviewing court, the “words of a claim ‘are generally given their ordinary and customary meaning,’” as would be understood by a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).

Petitioner states that all terms should be given their plain and ordinary meaning. Pet. 11.

Patent Owner argues that the Petition fails to apply the plain and ordinary meaning of the claims. Prelim. Resp. 14–17. We understand Patent Owner to contend that the “communication device” recited by the claims must be personal to a user, and that the claimed “request” and “policies” must each include a specific identification of features or functions of the communication device. *See id.* Patent Owner asserts that this understanding flows from the context of the claim, which is directed to managing the communication device and indicates a separation between the communication device and the network. *Id.* Patent Owner also asserts that the Specification confirms this understanding of the claims because this understanding is consistent with its disclosure. *Id.* at 15 (citing Ex. 1001, 8:40–58, Figs. 3–5).

We disagree with Patent Owner’s claim construction arguments. Each independent claim recites (1) “a communication device used by a user,” (2) “policies that control one or more features or functions associated with the communication device,” and (3) “a request sent to or from the communication device to perform the features or functions.” We determine that neither the context of the claims nor the Specification supports the constructions advocated by Patent Owner.



As for the “request” and “policies,” we do not agree that either must include a specific identification of a device’s features or functions. The claims do not require any such identification, and we discern no reason to infer such a requirement from the context of the claim. Rather, the independent claims simply require that the policies “control one or more features or functions” and that the request is sent “to perform the features or functions.” Although embodiments described in the Specification are consistent with Patent Owner’s proposed requirements, we do not import additional unrecited limitations into the claims based on specific embodiments in the Specification. *See Phillips*, 415 F.3d at 1323 (“[A]lthough the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments.”). Ultimately, we discern no rationale to support importing Patent Owner’s proposed requirements into the claims.

As for “communication device,” we do not agree it must be personal to a user. The claims require a “communication device *used by a user*” (emphasis added), and we discern no context indicating that the communication device must also be personal to a user. Patent Owner argues that the communication device must be separate from (and outside of) the network because the claims recite “a communication device used by a user *on a communication network*” (Prelim. Resp. 16), but we disagree. A device can be used on a network, as recited in the claims, so long as it is connected to the network, whether or not it is part of that network. Patent Owner also apparently argues that the communication device cannot be a network device because claim 27 separately recites a “network device.” *See id.* at 16–17. This argument is also unavailing because the fact that a claim separately

recites a “network device” does not somehow exclude network devices from the scope of the recited “communication device.”<sup>7</sup>

In addition, contrary to Patent Owner’s assertion (*see* Prelim. Resp. 15), the Specification demonstrates that Patent Owner’s proposed construction of “communication device” is incorrect. As Petitioner points out (*see* Pet. 23), the Specification states that a “communication device” is “referenced herein” to describe a device “capable of being in communication with the control network” and “could be a PDA, a photocopier, a game, a computer, a network device, a bicycle, or any type of device that one could imagine that is capable of being remotely controlled by logical rules.” Ex. 1001, 6:2–9.

Accordingly, we reject Patent Owner’s proposed constructions. There is no need to also articulate an express construction of “communication device,” “policies,” or “request” because these terms are easily understood and not otherwise disputed. Moreover, based on the record at this stage, it is not necessary to address the construction of any other term or phrase. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (noting that “we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

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<sup>7</sup> Patent Owner does not appear to argue that the same component cannot teach both the “communication device” and the “network device” recited by claim 27. As for such an argument, we note that the use of different terms does not necessarily require different structures. *See, e.g., Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006) (“[T]he use of two terms in a claim requires that they connote different meanings, not that they necessarily refer to two different structures.”).

*D. Obviousness Ground Based on Putzolu*

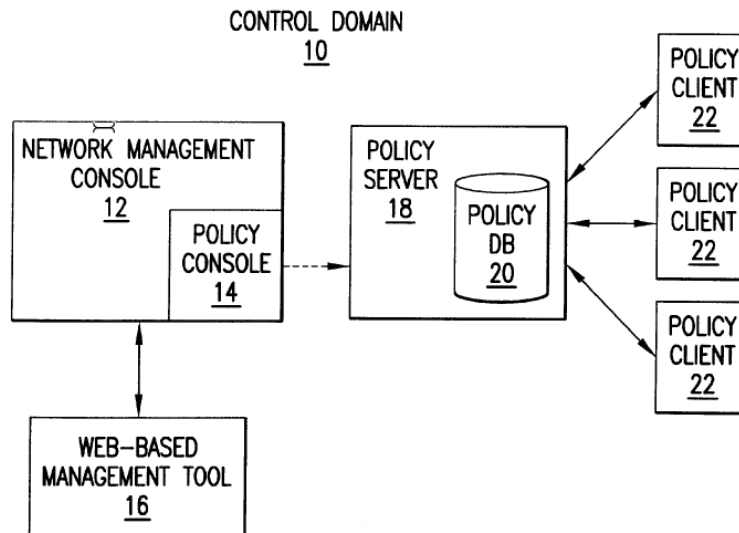
Petitioner contends that the subject matter of independent claims 1, 27, and 33 would have been obvious over Putzolu. Pet. 45–61. Patent Owner argues that Petitioner fails to make a sufficient showing for three limitations, which are recited in each claim. Prelim. Resp. 30–42.

We have considered the parties’ arguments and the evidence presented at this stage, and for the reasons explained below, we determine that Petitioner has demonstrated a reasonable likelihood that it will prevail in showing that the subject matter of these claims would have been obvious over Putzolu. As a result, we institute *inter partes* review of all claims and all challenges raised in the Petition.

*1. Putzolu (Ex. 1007)*

Putzolu relates to an automated policy-based network management (“PBNM”) system that includes one or more policy decision points (“PDPs”), which store and implement policies, and one or more policy enforcement points (“PEPs”), which “are responsible for enforcing the policy decision.” Ex. 1007, 1:28–43. Putzolu uses a client-server paradigm for its PBNM system and refers to PDPs as “policy servers” and PEPs as “policy clients.” *Id.* at 2:40–52; *see also id.* at 3:18–28. In Putzolu, a policy client “typically resides at a network device responsible for data forwarding, such as a LAN switch, a router, or a firewall.” *Id.* at 3:29–31; *see also id.* at 2:46–48.

Figure 1, reproduced below, provides an exemplary architecture of Putzolu's PBNM system. Ex. 1007, 2:9–11.



As shown above, Figure 1 depicts control domain 10, which includes network management console 12 (which includes policy console 14), web-based management tool 16, policy server 18 (which includes policy database 20), and three associated policy clients 22. *Id.* at 2:53–3:28. In operation, “policy client 22 receives a request for access to a resource under its control, [and] it simply sends a query to policy server 18.” *Id.* at 3:34–36. “Policy server 18 determines whether to allow the access,” using policy specification information in its policy database 20, “and communicates the decision to policy client 22.” *Id.* at 3:4–9, 3:38–39. “Based on the response from policy server 18, policy client 22 enforces the decision by either allowing or disallowing the request.” *Id.* at 3:24–28.

## 2. Independent Claim 1

*1[pre]: “A system for managing in real-time a communication device used by a user on a communication network, comprising”*

Petitioner contends that Putzolu discloses element 1[pre] to the extent it limits the claim. Pet. 45–47. Petitioner points to Putzolu’s policy-based network management system, which includes control domain 10, policy server 18, and policy clients 22. *Id.* at 45–46 (citing Ex. 1007, 2:29–34, 2:53–59, 3:1–2, 3:18–19, 3:29–31, Fig. 1). Petitioner notes that Putzolu’s “policy client 22 serves as a policy enforcement point for policy-based control over the use of network resources.” *Id.* at 46 (quoting Ex. 1007, 3:19–21). Petitioner asserts that Putzolu discloses and suggests “that the policy client resides on a communication device (*e.g.*, a router, a firewall, or a network device) that is used by a user to perform a function (*e.g.*, permitting the use of a network resource) on a communication network (*e.g.* control domain).” *Id.* at 45–46 (citing Ex. 1007, 3:18–21, 3:31–39; Ex. 1003 ¶¶ 139–140). Petitioner also asserts that an ordinary artisan would have appreciated that Putzolu’s system controls the communication device in real-time. *Id.* at 47 (citing Ex. 1003 ¶¶ 141–143).

At this stage, Patent Owner does not allege any deficiencies in this aspect of Petitioner’s showing.

On this record, Petitioner has sufficiently shown that Putzolu discloses the claim’s preamble.<sup>8</sup> Putzolu discloses a system that includes policy server 18 and policy client 22. *E.g.*, Ex. 1007, Fig. 1. Putzolu states that

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<sup>8</sup> We need not determine whether the preamble is limiting because Petitioner has sufficiently shown that Putzolu discloses this aspect of the claim. *See Vivid Techs.*, 200 F.3d at 803.

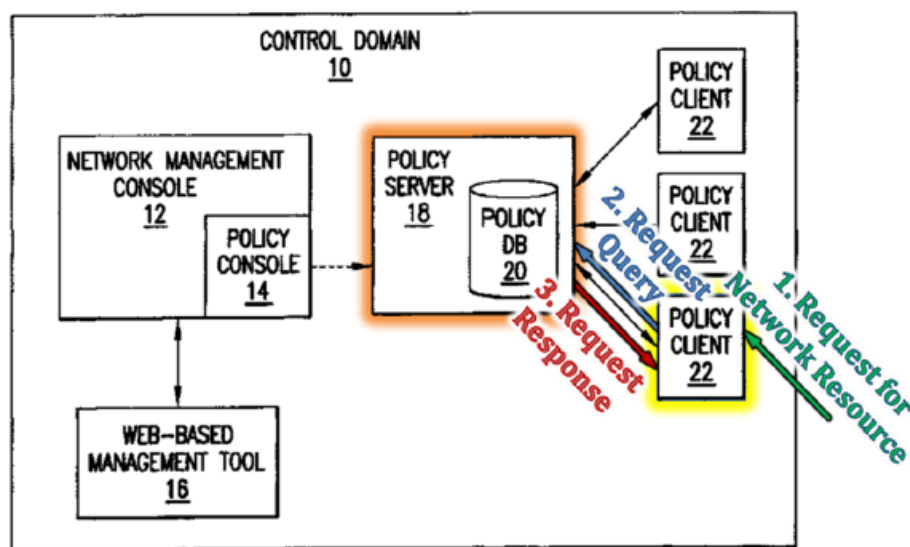
“[p]olicy client 22 typically resides at a network device responsible for data forwarding, such as a LAN switch, a router, or a firewall” (*id.* at 3:29–31), and from this, we are sufficiently persuaded Putzolu discloses that policy client 22 resides on a “communication device” (a network resource such as a router). Also, Putzolu states that “when policy client 22 receives a request for access to a resource under its control, it simply sends a query to policy server 18,” and “[p]olicy server 18 determines whether to allow the access, and communicates the decision to policy client 22.” *Id.* at 3:31–39. From this, we are sufficiently persuaded that Putzolu’s system manages, in real-time, a communication device used by a user on a communication network. *See also, e.g., id.* at 1:11–18 (noting that users seek access to network resources), 4:32–65 (providing example of application seeking access to corporate database).

*1[a]: “a policy decider for storing a list of policies that control one or more features or functions associated with the communication device and 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, the list of policies including a policy for managing content that can be sent, received, or used by the communication device”*

Petitioner contends that Putzolu’s policy server 18 teaches the “policy decider” required by element 1[a]. Pet. 47–50. According to Petitioner, Putzolu’s policy server 18 (1) receives a query from policy client 22 regarding a request to access a resource, (2) uses information in policy database 20, which is maintained by policy server 18, to decide whether to accept the request, and (3) communicates the decision to policy client 22. *Id.* at 47–48 (citing Ex. 1007, 3:7–9, 3:15–17, 3:34–39, 4:57–61, 9:14–20). Petitioner asserts that the policies in policy database 20 include policies

directed towards the type of content that can be used, sent, or received. *Id.* at 48–49 (citing Ex. 1007, 1:34–46, 3:7–9, 4:31–43, 6:42–46; Ex. 1008 ¶ 37); *see also id.* at 50 (“*e.g.*, privileges based on the user’s identity, restrictions based on the number or amount of usage, or accessing content from network resources, *i.e.*, content from a corporate database”) (citing Ex. 1007, 4:31–43, 6:42–49, Fig. 1). From this, Petitioner asserts that an ordinary artisan would have understood Putzolu to teach and suggest the claim language. *Id.* at 49–50 (citing Ex. 1003 ¶¶ 146–149).

Patent Owner contends that the Petition fails to sufficiently show that Putzolu teaches or suggests “a request sent to or from the communication device to perform the features or functions,” as recited in element 1[a]. Prelim. Resp. 35–39. According to Patent Owner, “the Petition suggests that access requests and queries are the *same*, [but] Putzolu actually discloses that they are *different*.” *Id.* at 36; *see id.* at 36–38 (citing Ex. 1007, 2:48–50, 3:21–22, 3:34–48, 5:57–67, 6:2–8, 6:13–21). To illustrate the latter point, Patent Owner provides an annotated version of Putzolu’s Figure 1 (*id.* at 36), which is reproduced below.



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

As shown above, Putzolu's Figure 1 includes, among other things, policy server 18 and policy client 22, and Patent Owner annotates the figure with an orange box around policy server 18, a yellow box around policy client, and arrows denoting messages received by and/or sent from these components. Specifically, Patent Owner adds a request for network resources that is received by policy client 22 (in green), a query request sent from policy client 22 to policy server 18 (in blue), and a request response sent from policy server 18 to policy client (in red).

From this, Patent Owner contends that Petitioner fails to identify a request "sent to or from the communication device," as required. Prelim. Resp. 38 (emphasis omitted). Also, relying on its proposed claim construction, Patent Owner contends that Petitioner fails to show that Putzolu's request "identifies features or functions of the user communication device that are to be performed." *Id.* at 38–39 (citing *id.* at 14–17; Ex. 1007, 6:2–4, 6:13–21).

Finally, Patent Owner contends that Petitioner fails to show that Putzolu teaches or suggests "policies that control one or more features or functions associated with the communication device." Prelim. Resp. 39–41. According to Patent Owner, Putzolu's "policies are directed to ***network functions***" rather than "features or functions of a user communication device itself." *Id.* at 40–41 (citing Ex. 1007, 1:34–46, 4:13–14, 4:31–43, 7:18–20).

On this record, Petitioner has sufficiently shown that Putzolu teaches or suggests element 1[a]. Putzolu states that "policy server 18 maintains a policy database 20 containing policy specification information for established policies" in order "to implement policies relating to the management of a group of network devices." Ex. 1007, 3:4–9. In addition, Putzolu's policy server 18 receives a query from policy client 22 regarding



“a request for access to a resource,” and then policy server 18 “determines whether to allow the access” based on information stored in policy database 20 and “communicates the decision to policy client 22.” *Id.* at 3:34–39, 4:57–61. From this, we are sufficiently persuaded that Putzolu’s policy server 18 teaches “a policy decider for storing a list of policies . . . and for automatically deciding to accept or deny a request . . . based on the list of policies,” as required by element 1[a].

At this stage, we are also sufficiently persuaded that Putzolu teaches “a request sent to or from the communication device to perform . . . features or functions” “associated with the communication device,” as also required by element 1[a]. As noted above, Putzolu’s “policy client 22 receives a request for access to a resource under its control” and “simply sends a query to policy server 18” (Ex. 1007, 3:34–36), and we are sufficiently persuaded by Petitioner’s contention that this teaches a request sent to or from the “communication device” on which policy client 22 resides to “permit[] the use of a network resource” (Pet. 46; *see also id.* at 47–48). For example, Putzolu indicates that a router receives a request for bandwidth and, via its policy client 22, sends a query to policy server 18 before accepting the request (and allowing the bandwidth to be used). *See* Ex. 1007, 4:32–65.

We are also sufficiently persuaded that Putzolu’s policies “control one or more” of those features or functions, as also required, because the policies determine whether use of the resource will be permitted. *See, e.g.,* Ex. 1007, 4:57–62 (“Policy server 18 uses information stored in policy database 20 . . . to determine whether to accept the request, and then sends a response to policy client 22. Policy client 22 then either admits or denies the request as appropriate.”). In addition, we are sufficiently persuaded that Putzolu teaches or suggests that its policies “includ[e] a policy for managing content

that can be sent, received, or used by the communication device,” as also required. *See* Ex. 1007, 4:31–43 (describing restricting access to a corporate database), 6:42–46 (describing restricting “privileges based on an entity’s identity”); Ex. 1003 ¶ 149; *see also* Pet. 48–49.

We have considered Patent Owner’s contrary arguments, but they do not reveal a deficiency in the Petition. First, Patent Owner argues that Putzolu’s requests are different from its queries (*see* Prelim. Resp. 35–38), but this argument is inapposite. It does not matter whether Putzolu uses the terms “request” and “query” interchangeably (*see* Pet. 47) because Putzolu discloses that the query (sent by policy client 22) is dictated by the request (received by policy client 22) (*e.g.*, Ex. 1007, 3:34–38). In other words, even if there are differences between the contents of the request and query messages, we do not discern (and Patent Owner does not identify) the relevance of those differences. Assuming *arguendo* that those differences exist, we are still sufficiently persuaded that Putzolu’s query teaches the claimed “request”<sup>9</sup> because: it is sent from “the communication device” (*i.e.*, the device on which policy client 22 resides); it asks whether the resource may be used; and it is automatically accepted or denied by policy server 18 based on the policies. *See, e.g., id.* at 3:26–39.

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<sup>9</sup> We determine that the Petition includes this contention. *See, e.g.*, Pet. 50 (beginning analysis of element 1[b], which requires “a policy enforcer for communicating the request to the policy decider and enforcing a decision by the policy decider,” by pointing to the Petition’s earlier explanation that “the policy client (*i.e.*, the policy enforcer or PEP) in Putzolu communicates the request to the policy server (*i.e.*, the policy decider or PDP), and enforces the decision received from the policy server”); *see also* Prelim. Resp. 39 (“[T]he Petition alleges that Putzolu’s queries correspond to this request.”).

Patent Owner’s other arguments are premised on its erroneous claim constructions. In particular, Patent Owner argues that Petitioner fails to show that Putzolu’s query “identifies features or functions of a user communication device” (Prelim. Resp. 38–39), and that Petitioner fails to show that Putzolu’s policies “identify features or functions performed by communication devices” (*id.* at 40); however, these arguments are premised on Patent Owner’s constructions of “policies” and “communication device,” which we have rejected (*see supra* § II.C). Patent Owner also argues that Putzolu’s “policies are directed to network functions not ‘features or functions associated with the communication device’” (Prelim. Resp. 40–41 (emphasis omitted)), but that argument is premised on an erroneous assumption that the claimed “communication device” must be personal to a user (*see supra* § II.C). Also, as explained above in connection with element 1[pre], Petitioner has sufficiently shown that a network device (such as a router) teaches a “communication device used by a user,” as required by the claim.

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

Petitioner contends that Putzolu’s policy client 22 teaches the “policy enforcer” required by element 1[b]. Pet. 50–53. Petitioner asserts that “the policy client [22] . . . communicates the request to the policy server [18] . . . and enforces the decision received from the policy server.” *Id.* at 50–51 (citing Pet. 45–50 (discussing elements 1[pre] and 1[a]); Ex. 1007, 3:26–28, 4:57–62). Petitioner argues that, “[i]n certain embodiments, enforcing the

decision from the policy server includes enabling features or functions . . . , *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.” *Id.* at 51 (citing Ex. 1007, 1:13–15, 4:35–37, 10:54–67, 11:10–25). Petitioner further argues that “enforcing the decision from the policy server includes taking one or more actions consistent with the denied request or taking one or more actions consistent with the accepted request.” *Id.* at 51–52 (citing Ex. 1007, 4:61–62, 5:16–22); *see also id.* at 56–57, 60 (arguing that an ordinary artisan would have understood policy client 22 to notify the user if the request has been denied). Petitioner submits that an ordinary artisan would recognize that Putzolu teaches that policy server 18 and policy client 22 are physically separate and that the decision is distinct from the policy. *Id.* at 52–53 (citing Ex. 1007, 3:24–28, 3:31–34, 4:55–65, Fig. 1; Ex. 1003 ¶¶ 153–156).

Patent Owner contends that the Petition fails to sufficiently show that Putzolu teaches or suggests “notifying the user of the denied request,” as recited in element 1[b]. Prelim. Resp. 31–34. Patent Owner asserts that Petitioner’s analysis of claim 1 “ignores the notifying feature entirely,” and that, while the analysis of claims 27 and 33 “acknowledge[s]” this claim element, it “fail[s] to make any particularized showing how this feature might be taught or suggested by Putzolu.” *Id.* at 32–33 (citing Pet. 50–54, 56–57, 60); *see also id.* at 34 (arguing that expert declaration has similar deficiency). According to Patent Owner, “Putzolu describes only communication between a policy server 18 and a policy client 22,” and “[t]here is no indication that any notification is provided to a user of a communication device.” *Id.* at 33–34 (citing Ex. 1007, 3:26–28).

On this record, Petitioner has shown sufficiently that Putzolu teaches, suggests, or renders obvious element 1[b]. Putzolu states that “when policy client 22 receives a request for access to a resource under its control, it simply sends a query to policy server 18” (Ex. 1007, 3:34–36), and “[b]ased on the response from policy server 18, policy client 22 enforces the decision by either allowing or disallowing the request” (*id.* at 3:26–28). From this, we are sufficiently persuaded that Putzolu’s policy client 22 teaches “a policy enforcer for communicating the request to the policy decider and enforcing a decision by the policy decider as to whether the request has been accepted or denied,” as required by element 1[b].

We are also sufficiently persuaded that Putzolu teaches, suggests, or renders obvious the other requirements of this claim limitation—i.e., that the policy enforcer enforces the decision “by either notifying the user of the denied request and taking one or more actions consistent with the denied request or taking one or more actions consistent with the accepted request.”<sup>10</sup> Putzolu teaches (or at least suggests) that policy client 22 takes an action consistent with policy server 18’s decision to accept or deny the request. *See, e.g.*, Ex. 1007, 3:26–28 (“[P]olicy client 22 enforces the decision by either allowing or disallowing the request.”), 4:61–62 (“Policy client 22 then either admits or denies the request as appropriate.”).

In addition, we preliminarily determine that “notifying the user of the denied request” would have been at least obvious in view of Putzolu. *See*

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<sup>10</sup> Element 1[b] recites that the decision is enforced “by either” performing certain operations “or” performing another operation. Ex. 1001, 15:67–16:3. Both parties appear to understand this language to require a policy enforcer that is operable to perform all of these operations. If either party disagrees, it should specifically address this issue at trial.

Pet. 56–57 (citing Ex. 1003 ¶ 165), 60 (citing Ex. 1003 ¶ 174). Having reviewed Putzolu, we agree that an ordinary artisan would have understood Putzolu to notify a user if the request were denied, even though Putzolu does not include an explicit statement to that effect. As Petitioner explains (*see id.* at 45–47, 51), when a user attempts to use a communication device such as a router, a corresponding policy client 22 determines whether or not to admit such a request by querying policy server 18 and enforcing its decision. *See, e.g.*, Ex. 1007, 3:19–28. Dr. Madisetti testifies that “[a]n ordinary artisan would have further understood that the policy enforcer would have notified the user if the request has been denied.” Ex. 1003 ¶ 165. We credit this testimony at this stage because we find the inference drawn by Dr. Madisetti to be reasonable. Moreover, the limitation at issue (“notifying the user of the denied request”) is straightforward, and it would seem to be a matter of common sense to incorporate such a notification into Putzolu’s system. *See Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1330 (Fed. Cir. 2009) (holding that missing claim limitation would have been obvious as a matter of common sense).

The Petition’s analysis of this limitation is terse, but we are preliminarily persuaded that it is sufficient, notwithstanding Patent Owner’s argument to the contrary (*see* Prelim. Resp. 32–34). Patent Owner correctly notes that the Petition does not include its contentions regarding this limitation in its discussion of claim 1 (*see id.* at 32; Pet. 50–53); however, as Patent Owner acknowledges, claims 27 and 33 include the identical limitation, and Petitioner addresses the limitation in the context of those claims (*see* Prelim. Resp. 33–34; Pet. 56–57, 60). On these facts, we are sufficiently persuaded that the Petition is fairly read as including the contentions regarding this limitation (*see* Pet. 56–57, 60) for claim 1 as well.

We note that the independent claims include few differences, the limitation at issue is identical, and the limitation itself is a straightforward extension of the express teachings of Putzolu.

*Additional Arguments*

At the end of its discussion of claim 1, Petitioner includes an additional paragraph that appears to argue that any claim limitation not disclosed by Putzolu would have been obvious in light of it. Pet. 53–54. In particular, Petitioner provides assertions regarding the ordinary artisan’s motivations and expectation of success, and concludes:

Thus, an ordinary artisan would have recognized that, to the extent Putzolu does not disclose any limitation, 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.

*Id.* at 53–54 (citing Ex. 1003 ¶ 181).

Patent Owner contends that these arguments are “backhanded attempts to render claims obvious via hindsight.” Prelim. Resp. 29 (*cited in id.* at 41); *see also id.* at 41–42. Patent Owner also argues that Petitioner’s arguments should be rejected because they fail to provide the particularized showing required for an *inter partes* review. *Id.* at 42 (citing 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b)).

We do not rely upon Petitioner’s final paragraph (*see* Pet. 53–54) in this Decision, and we agree with Patent Owner that the generalized assertions in it are insufficient to show that “any limitation” would have been obvious in light of Putzolu (*see* Prelim. Resp. 41–42). This paragraph

does not give Petitioner carte blanche to present new arguments at trial relating to as-yet unidentified modifications of Putzolu.

But the statements in this paragraph may nonetheless be relevant at trial. For example, in this paragraph, Petitioner includes a specific contention that an ordinary artisan would have expected success in adjusting the type of policies that an administrator can implement using Putzolu. Pet. 53. For guidance regarding the permissible scope of arguments that may be presented in Petitioner’s reply, the parties are directed to the Board’s Trial Practice Guide. *See* Trial Practice Guide<sup>11</sup> 73–74 (stating that a petitioner “may not submit new evidence or argument in reply . . . to make out a prima facie case of unpatentability”).

### *Conclusion*

For the reasons provided in connection with elements 1[pre], 1[a], and 1[b], Petitioner has sufficiently shown that Putzolu teaches, suggests, or renders obvious each limitation of independent claim 1. We have considered Patent Owner’s arguments that Petitioner’s arguments are insufficient, but at this stage and on this record, we do not agree. Accordingly, we determine that Petitioner has shown a reasonable likelihood that it would prevail in establishing that the subject matter of claim 1 would have been obvious over Putzolu.

### *3. Independent Claims 27 and 33*

Petitioner also contends that the subject matter of independent claims 27 and 33 would have been obvious over Putzolu. *See* Pet. 54–61.

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<sup>11</sup> PTAB Consolidated Trial Practice Guide (Nov. 2019), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.



Petitioner substantiates its contentions with analysis that addresses each claim limitation and identifies supporting evidence, relying on its analysis of claim 1 as appropriate. *See id.*

Other than the arguments discussed in connection with claim 1, Patent Owner does not dispute Petitioner's arguments, analysis, or evidence for these claims. *See* Prelim. Resp. For the reasons explained above (*see supra* § II.D.1), Patent Owner's arguments are unavailing at this stage of the proceeding.

Having considered the parties' arguments and evidence, on this record, we determine that Petitioner has shown a reasonable likelihood that it would prevail in establishing that the subject matter of claims 27 and 33 would have been obvious over Putzolu.

#### *E. Obviousness Ground Based on Choudhary*

Petitioner contends that the subject matter of independent claims 1, 27, and 33 and dependent claims 2, 3, 6, and 10 would have been obvious over Choudhary. Pet. 19–44. Patent Owner argues that Petitioner fails to make a sufficient showing for three limitations, which are recited in each independent claim. Prelim. Resp. 18–30.

As noted above, we have decided to institute *inter partes* review of all claims and all challenges raised in the petition,<sup>12</sup> but we address the parties' arguments for this ground in order to further guide the parties after institution. Patent Owner's arguments are applicable to each independent

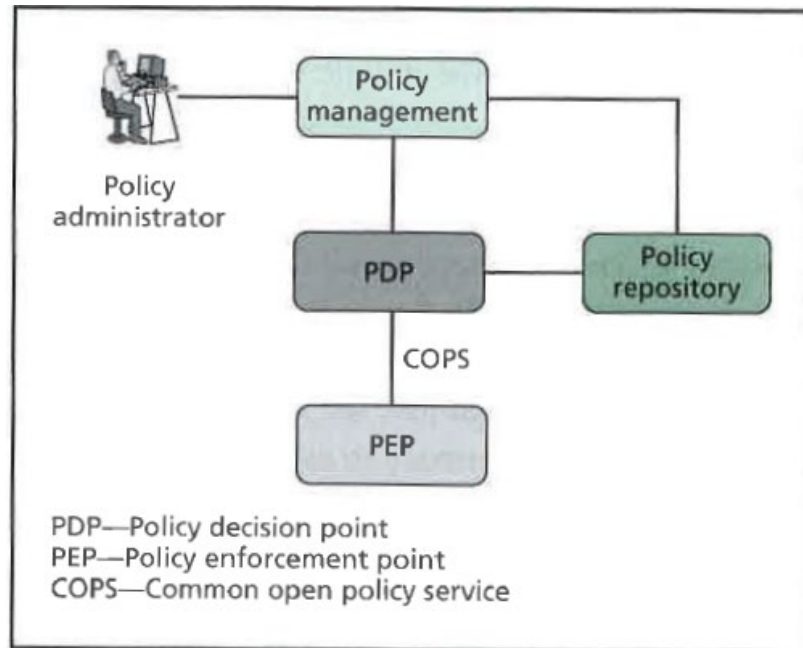
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<sup>12</sup> *See Guidance on the Impact of SAS on AIA Trial Proceedings* (Apr. 26, 2018), <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>; *see also SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018).

claim, so we discuss only representative claim 1. The parties are expected to address this ground at trial.

*1. Choudhary (Ex. 1006)*<sup>13</sup>

Choudhary is titled “Policy-Based Network Management.” Ex. 1006, 19.<sup>14</sup> Choudhary’s Figure 1 is reproduced below.



**Figure 1.**  
**Policy reference architecture.**

As shown above, Figure 1 depicts Choudhary’s reference architecture, which includes a policy decision point (“PDP”) and a policy enforcement point (“PEP”), along with other elements. *Id.* at 20. Choudhary explains that the

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<sup>13</sup> Petitioner has shown a reasonable likelihood of establishing that Choudhary was accessible to the public in 2004 and that persons interested in the subject matter could have located it with reasonable diligence. *See* Ex. 1005 ¶¶ 21, 42–48; Ex. 1006, 4 (date stamp). At this stage, Patent Owner does not dispute Petitioner’s contention that Choudhary is a printed publication. *See* Prelim. Resp.

<sup>14</sup> We follow Petitioner’s convention and cite to the article’s page numbers rather than the page numbers of Petitioner’s exhibit.

PDP “is the module where the policy expertise resides.” *Id.* “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.* “The PEP enforces the PDP decisions and communicates the local events to the PDP.” *Id.* at 22. The system also includes managed objects (which are not shown in Figure 1), and “[e]ach managed object supports a [PEP].” *Id.* at 20. The managed object may be “a physical entity such as a switch or a router” or a “[s]oftware system[], subsystem[], application[], [or] other entit[y].” *Id.* at 21.

## 2. Independent Claim 1

*1[pre]: “A system for managing in real-time a communication device used by a user on a communication network, comprising”*

Petitioner contends that Choudhary discloses element 1[pre] to the extent it limits the claim. Pet. 19–24. According to Petitioner, Choudhary describes a policy-based network management system that includes a PDP and a PEP for managing a “managed object” in real-time. *Id.* at 19–21 (citing Ex. 1006, 19–21, 24, Figs. 1–2). Petitioner asserts that Choudhary’s managed object can be “a physical entity such as a switch or a router” or “[s]oftware.” *Id.* at 21 (alteration in original) (quoting Ex. 1006, 21); *see id.* (also stating that managed objects can include “a softswitch or one of its subsystems such as call control, call detail records, and low-level communications” (emphasis omitted)). Petitioner further asserts that Choudhary’s PEP is “a mechanism to abstract the managed object’s operations and management characteristics” and is implemented on a communication device. *Id.* at 21–22 (quoting Ex. 1006, 21; citing *id.* at Figs. 1, 2); *see also id.* at 20–21 (citing Ex. 1006, 20–21, Figs. 1, 2). From

this, Petitioner contends that an ordinary artisan would have understood that Choudhary discloses a system for controlling a communication device used by a user. *Id.* at 23 (citing Ex. 1006, 19; Ex. 1003 ¶¶ 77–83).

At this stage, Patent Owner does not allege any deficiencies in this aspect of Petitioner’s showing.

*1[a]: “a policy decider for storing a list of policies that control one or more features or functions associated with the communication device and 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, the list of policies including a policy for managing content that can be sent, received, or used by the communication device”*

Petitioner contends that Choudhary’s PDP teaches the “policy decider” required by element 1[a]. Pet. 24–27. Petitioner quotes Choudhary’s statement that 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 24 (quoting Ex. 1006, 20). According to Petitioner: a request can originate from the managed object; the “PEP is a mechanism to abstract the managed object’s operations and management characteristics”; the “PEP communicates with the PDP”; and the “PDP makes decisions based on policies” automatically. *Id.* at 25 (quoting Ex. 1006, 21–22). Petitioner contends that “[t]he PDP in Choudhary contemplates a wide variety of policies that control features and functions of communication devices,” such as denying service to certain clients. *Id.* at 26 (citing Ex. 1006, Abstr., 19, 22). Petitioner also contends that an ordinary artisan would have understood Choudhary’s policies to include, for example, “business rules or service priorities, or policies that control software systems and applications,” which would manage content

sent, received, or used by the communication device. *Id.* at 27 (citing Ex. 1006, Abstr., 19, 22; Ex. 1003 ¶ 90; Ex. 1008 ¶ 37). From this, Petitioner asserts that an ordinary artisan would have understood Choudhary to teach and suggest the requirements of element 1[a]. *Id.* at 26–27 (citing Ex. 1003 ¶¶ 89–90).

Patent Owner contends that the Petition fails to sufficiently show that Choudhary teaches or suggests “a request sent to or from the communication device to perform the features or functions,” as recited in element 1[a]. Prelim. Resp. 22–27. In support, Patent Owner argues that “Choudhary discloses no requests that *originate with a managed object*,” but instead only describes communications between PEPs and PDPs. *Id.* at 23–24 (citing Ex. 1006, 22, 25–26, Figs. 1, 2). Patent Owner contends that policy events are not requests to perform features or functions of a communication device and are not sent by the communication device. *Id.* at 24–25 (citing Ex. 1006, 22, 25–26). In addition, Patent Owner argues that Choudhary also fails to disclose any decision to accept or deny the request. *Id.* at 26. To illustrate, Patent Owner provides a table identifying Choudhary’s policy events and corresponding policy actions. *Id.* at 26–27; *see id.* at 25 (arguing that “[e]xemplary 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” (citing Ex. 1006, 22)).

At this stage, we agree that Choudhary does not expressly state that a request originates with a managed object, but it appears that an ordinary artisan would have understood Choudhary in this way. In particular, Choudhary states that a managed object could be “a switch or a router.” Ex. 1006, 21. Choudhary also states that “[e]ach managed object supports a

[PEP],” which is “a mechanism to abstract the managed object’s operations and management characteristics.” *Id.* at 20–21. Choudhary states that the PEP sends “policy events” to the PDP (*id.* at 22), and an example policy event is “the occurrence of congestion in a router” (*id.* at 19). *See also id.* at 25 (explaining that a PEP “gather[s] information on the events that occur in the network element”). Moreover, Choudhary states that the PEP sends a “policy decision request” to the PDP. *Id.* at 22. Based on this, we are preliminarily persuaded that an ordinary artisan would have understood Choudhary to disclose that a managed object (such as a router) includes a PEP, which sends a request to the PDP, and so we are preliminarily persuaded that Choudhary discloses or suggests “a request sent to or from the communication device,” as required by element 1[a].

But it is less clear whether an ordinary artisan would have understood this request to be a request “to perform . . . features or functions” “associated with the communication device,” as the claim also requires. Choudhary provides exemplary policy events (*see* Ex. 1006, 19 (*cited in* Pet. 23)), and we preliminarily agree with Patent Owner that none of these constitute “a request . . . to perform . . . features or functions” that is accepted or denied by the PDP (*see* Prelim. Resp. 26–27; *see also id.* at 24–25). However, Choudhary is not limited to these examples. *See* Ex. 1006, 19. Also, it states that the PDP “receiv[es] policy decision requests from PEPs . . . [and] return[s] the results of policy application.” *Id.* at 22 (*cited in* Pet. 28–29). In addition, Choudhary states that “[t]he PEP applies actions according to PDP decisions based on relevant policies and current network conditions,” which “may be static, such as source and destination addresses or ports, and/or dynamic, such as current bandwidth availability or date and time.” *Id.* (*cited in* Pet. 28). As a result, we question whether Choudhary discloses or

suggests the “request” required by the claim. We request that the parties discuss these issues further at trial.

Patent Owner also contends that the Petition fails to sufficiently show that Choudhary teaches or suggests “policies that control one or more features or functions associated with the communication device,” as recited in element 1[a]. Prelim. Resp. 27–28. Specifically, Patent Owner argues that “Choudhary’s policies are directed to control of network elements” and do not “identify features or functions to be performed by communication devices.” *Id.* However, these arguments are unavailing because they are premised on Patent Owner’s proposed constructions of “policies” and “communication device,” which we reject for the reasons above (*see supra* § II.C).

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

Petitioner contends that Choudhary’s PEP teaches the “policy enforcer” required by element 1[b]. Pet. 27–29. According to Petitioner, Choudhary’s PEP manages a managed object, such as a “communication device[], network element[], software, application[], [or] the like.” *Id.* at 27–28 (citing Ex. 1006, 20–21). Petitioner asserts that Choudhary’s PEP communicates with the PDP and enforces its decisions. *Id.* at 28–29 (citing Ex. 1006, 22, 24–25). Petitioner also asserts that an ordinary artisan would have understood that the PEP would have notified the user if the request had been denied and would have taken actions consistent with a denied or

accepted request. *Id.* at 29 (citing Ex. 1006, 19; Ex. 1003 ¶ 96).<sup>15</sup> From this, Petitioner asserts that an ordinary artisan would have understood Choudhary to teach and suggest the claim language. *Id.* (citing Ex. 1003 ¶¶ 95–96).

Patent Owner contends that the Petition fails to sufficiently show that Choudhary teaches or suggests “notifying the user of the denied request,” as recited in element 1[b]. Prelim. Resp. 19–22. In particular, Patent Owner asserts that “[t]he Petition’s conclusory analysis falls far short of the particularized showing required in [*inter partes* reviews].” *Id.* at 20 (citing 37 C.F.R. § 42.104 (b)(4)–(5)). Patent Owner also asserts that Choudhary discloses no notification to a user (and no denial of the claimed request, as discussed in connection with element 1[a]). *Id.* at 20–21.

We have addressed Patent Owner’s arguments regarding the claimed “request” in connection with element 1[a], and its arguments for this limitation rise and fall with that analysis. In particular, if Choudhary does disclose a request to perform a function associated with a communication device, then we preliminarily agree that an ordinary artisan would have understood the PEP to notify the user when the request is denied. *See also supra* § II.D.2 (analyzing similar argument in Putzolu ground). We agree that Choudhary does not include an express statement to that effect, but we credit Dr. Madisetti’s un rebutted testimony on this point because his inferences are reasonable. *See* Ex. 1003 ¶ 96. Moreover, as explained in connection with the Putzolu ground, the limitation at issue (“notifying the user of the denied request”) is straightforward, and it would seem to be a

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<sup>15</sup> The Petition cites to paragraph 95 of Dr. Madisetti’s declaration, but this appears to be a typographical error intended to reference paragraph 96. We have corrected the citation.



matter of common sense to incorporate such a notification into Choudhary's system. *See Perfect Web*, 587 F.3d at 1330.

### *Additional Arguments*

At the end of its discussion of claim 1, Petitioner includes an additional paragraph that appears to argue that any claim limitation not disclosed by Choudhary would have been obvious in light of it. Pet. 29–30. Patent Owner argues that these arguments are “backhanded attempts to render claims obvious via hindsight” (Prelim. Resp. 29), and that Petitioner's arguments should be rejected because they fail to provide the required particularized showing (*id.* at 30).

Petitioner's additional paragraph for Choudhary is substantially identical to the additional paragraph provided for Putzolu (*compare* Pet. 29–30, *with id.* at 53–54), and our comments regarding the latter are equally applicable to the former. In short, although the statements in this paragraph (*see id.* at 29–30) may be relevant, they do not show that “any limitation” would have been obvious in light of Choudhary. Moreover, this paragraph does not give Petitioner license to present new arguments at trial relating to as-yet unidentified modifications of Choudhary. *See* Trial Practice Guide 73–74 (stating that a petitioner “may not submit new evidence or argument in reply . . . to make out a prima facie case of unpatentability”).

### III. CONCLUSION

As explained above, we determine that Petitioner has established a reasonable likelihood of prevailing in its challenge to at least one claim of the '438 patent. Thus, we institute an *inter partes* review of all challenged claims on all asserted grounds.

The factual findings and conclusions of law in this Decision are preliminary and based on the current record. They are made for the sole purpose of determining whether Petitioner meets the threshold for initiating review. Our final decision as to the patentability of challenged claims will be based on the full record developed during trial, including any response timely filed by Patent Owner. Any arguments not raised by Patent Owner in such a response may be deemed waived.

#### IV. ORDER

It is:

ORDERED that an *inter partes* review is instituted on all of the challenged claims, i.e., claims 1–3, 6, 10, 27, and 33 of the '438 patent, on all corresponding grounds of unpatentability as specified in the Petition and identified in the Table in Section I.B. of this Decision; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '438 patent shall commence on the entry date of this Decision, and notice is hereby given of the institution of a trial.

IPR2023-00178  
Patent 7,899,438 B2

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