

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENBAND US LLC and
GENBAND MANAGEMENT SERVICES CORP.,
Petitioner,

v.

METASWITCH NETWORKS LTD.,
Patent Owner.

Case IPR2015-01457
Patent 8,687,640 B2

Before JAMESON LEE, JOSIAH C. COCKS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Genband US LLC and Genband Management Services Corp. (“Petitioner”) filed a Petition (“Pet.”) for *inter partes* review of U.S. Patent No. 8,687,640 B2 (Ex. 1101, “the ’640 patent”). Paper 1. The Petition challenges the patentability of claims 2–5, 8–10, 14–18, and 22–24 of the ’640 patent. In an initial decision, we instituted *inter partes* review of claims 2–5, 15–18, and 22–24, but not claims 8–10 and 14. Paper 8 (“Dec. Inst.”). Petitioner requested rehearing. Paper 11. In a rehearing decision, we added claims 8–10 to the *inter partes* review but not claim 14. Paper 17.

Metaswitch Networks Ltd. (“Patent Owner”) filed a Patent Owner Response (Paper 21, “PO Resp.”), and Petitioner filed a Reply (Paper 23, “Reply”).¹ A consolidated oral argument for IPR2015-01456 and IPR2015-01457 was held on August 22, 2016. A transcript of the oral hearing is included in the record. Paper 37 (“Tr.”). Subsequent to the oral argument, Patent Owner filed a 2-page submission discussing the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350 (Fed. Cir. 2016). Paper 35. Petitioner filed a 2-page response to that submission. Paper 36.

¹ In addition, Patent Owner filed a Motion to Exclude (Paper 26); Petitioner filed an Opposition (Paper 28) to the Motion to Exclude; and Patent Owner filed a Reply (Paper 30) to the Opposition to the Motion to Exclude.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). We determine that Petitioner has shown by a preponderance of the evidence that claims 2–5, 8, 9, 15–18, and 22–24 of the '640 patent are unpatentable. Petitioner, however, has not shown by a preponderance of the evidence that claim 10 of the '640 patent is unpatentable.

B. Related Matters

The parties indicate that the '640 patent is at issue in *Metaswitch Networks, Ltd. v. Genband US LLC*, No. 2:14-cv-744 (E.D. Tex.). Papers 1, 3. The parties further indicate that the '640 patent is the subject of a petition for *inter partes* review in IPR2015-01456. *Id.*

C. The '640 Patent

The '640 patent relates to a telecommunications network including a plurality of media gateways via which can be established (1) a signaling path for transfer of signaling information for setup of a communication session between endpoint devices in the network, and (2) a media path for transfer of media data between the endpoint devices. Ex. 1101, Abstr. 2–8. At a media gateway, an inbound communication session setup request message is received along an inbound signaling path, in response to which an outbound communication session setup request message is sent along an outbound signaling path. *Id.* at Abstr. 8–20. The outbound message includes preceding device connectivity data indicating at least one media connectivity setting for at least one preceding device located before the media gateway in the signaling path. *Id.* at Abstr. 20–25. The media connectivity setting

identifies one or more other devices to which the at least one preceding device is configured to be connectable in the media path. *Id.* at Abstr. 25–28. A media gateway may be bypassed in the media path depending on the content of the preceding device connectivity data in the outbound communication session setup request message. *Id.* at Abstr. 28–30.

The '640 patent describes:

Embodiments of the invention involve a given media gateway retrieving ensuing device connectivity data for an ensuing device which is located after a media gateway in the outbound signal path, the ensuing device connectivity data indicating at least one media connectivity setting for the ensuing device, the at least one connectivity setting identifying one or more other devices to which the ensuing device is configured to be connectable in the media path. The preceding device connectivity data and the ensuing device connectivity data can be compared in order to determine whether the given media gateway may be bypassed in the media path.

Ensuing device connectivity data may be retrieved from storage in or accessible by a given media gateway or obtained via a request to an ensuing device that it should provide its device connectivity data including one or more media connectivity settings to the given media gateway.

A device can be configured to insert its media connectivity setting into outbound communication session setup request messaging for a communication session. As the communication setup request messaging passes through multiple media gateways, preceding device connectivity data in the form of a series of media connectivity settings associated with multiple devices is built up in the communication session setup request messaging. The preceding device connectivity data can then be used by media gateways in the signaling path for a communication session to identify possible shortcuts in the

media path for the communication session, and therefore avoid sending the media data through all media gateways involved in the signaling path where possible.

Id. at 11:1–29.

In a disclosed embodiment, when a media gateway receives an inbound communication session setup request message, it compares the preceding device connectivity data with ensuing device connectivity data associated with the next device in the signaling path for the communication session towards the terminating endpoint device. *Id.* at 14:23–28. If the comparison between the preceding device connectivity data and the ensuing device connectivity data identifies a match, then the media gateway knows that at least one preceding device included in the signaling path for the communication session need not be included in the media path for the communication session. *Id.* at 14:36–41. Depending on the result of the comparison, it is possible that all media gateways between the endpoint devices may be bypassed if the media connectivity settings of the two devices indicate that the two devices may communicate media data directly between each other. *Id.* at 14:45–52.

The '640 patent explains that in the prior art every media gateway in the communication session setup path, i.e., the signaling path, is included in the media data path for actual transfer of media data, which wastes valuable network resources and degrades media quality by increasing latency. *Id.* at 1:53–59. The '640 patent permits identification of a device which need not be included in the media path by taking into account the connectivity of other devices which may be in the media path. *Id.* at 2:34–37.

All of the challenged claims depend directly or indirectly from independent claim 1. Claim 1 is reproduced below, with bracketed lettering added to denote specific portions thereof:

1. [1a] A method of establishing media bypass for a media gateway in a telecommunications network which includes a plurality of media gateways via which a signaling path for transfer of signaling information for setup of a communication session between endpoint devices can be established and via which a media path for transfer of media data between said endpoint devices during said communication session can be established, said method comprising:

[1b] receiving, at said media gateway, an inbound communication setup request message requesting setup of a communication session between an originating endpoint device and a terminating endpoint device in said telecommunications network, said inbound communication session setup request message being transmitted along an inbound signaling path to said media gateway;

[1c] transmitting, from said media gateway, an outbound communication session setup request message in response to receiving said inbound communication setup message, said outbound communication session setup request message being transmitted along an outbound signaling path from said media gateway; and

[1d] including preceding device connectivity data in said outbound communication session setup request message,

[1e] said preceding device connectivity data indicating at least one media connectivity setting for at least one preceding device which is located before said media gateway in said inbound signaling path, the least one media connectivity

setting identifying one or more other devices to which the preceding device is configured to be connectable in said media path,

[1f] to enable bypass of said media gateway in said media path if an ensuing device in said outbound signaling path determines that such bypass should be conducted.

Id. at 26:15–47.

D. Evidence Relied Upon

Reference		Date	Exhibit
Ejzak	U.S. Pub. No. 2009/0010270 A1	Jan. 8, 2009	Ex. 1103
Cisco	<i>Cisco Unified Border Element (SP Edition) on Cisco ASR 1000 Series</i> , Cisco Systems, Inc.	2009	Ex. 1110
Intel	Delivering Secure IP-Based Services, Jasomi Uses Intel® Technology and AdvancedTCA for Its High-End Carrier and IMS Session Border Controller, Jasomi Networks	2005	Ex. 1111

Petitioner also relies on the declaration of James R. Bress. Ex. 1104.

Patent Owner relies on the declaration of Robert Akl. Ex. 2006.

E. The Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Reference(s)	Basis	Claims Challenged
Ejzak and Cisco	§ 103(a)	2–5, 8–10, 15–18, and 22–24
Ejzak and Intel	§ 103(a)	2–5, 8–10, 15–18, and 22–24

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142–46 (2016). Under that standard, we assign claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention, in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). There are, however, two exceptions: “1) when a patentee sets out a definition and acts as his own lexicographer,” and “2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *See Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). It is inappropriate to limit a claim to a preferred embodiment without a clear intent in the specification to redefine a claim term or a clear disavowal of claim scope. *Id.* Limitations that are not a part of the claim should not be

imported into the claim. *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998). It is improper to add into a claim an extraneous limitation, i.e., one that is added wholly apart from any need for the addition. *See, e.g., Hoganas AB v. Dresser Indus., Inc.*, 9 F.3d 948, 950 (Fed. Cir. 1993); *E.I. Du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988).

Only terms which are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Key to this decision are these claim terms and phrases: (1) “preceding device”; (2) “ensuing device”; (3) media gateway; and (4) “media connectivity setting identifying one or more other devices to which the preceding device is configured to be connectable in said media path.”

“*preceding device*” and “*ensuing device*”²

The '640 patent defines “preceding device” and “ensuing device” as follows:

A preceding device is a device located before a given device (endpoint or media gateway) in the inbound signaling

² Recited in independent claim 1.

path, i.e., it is located between the given device and the original endpoint device for the communication session. A preceding device can also comprise the originating endpoint device itself.

An ensuing device is a device located after a given device (endpoint or media gateway) in the outbound signaling path, i.e., it is located between the given device and the terminating endpoint device for the communication session. An ensuing device can also comprise the terminating endpoint device itself.

Ex. 1101, 10:56–67. In our initial decision, we accord these terms their respective definitions as provided in the specification and reproduced above. Dec. Inst. 9. We also added, for clarification, that the two definitions should be read together in the context of the same given device, if both terms appear in the same claim, unless an alternative given device is identified in the claim. *Id.* Subsequent to institution of trial, neither party expressed disagreement with our construction. Accordingly, we maintain the same construction as we articulated in our initial decision.

“media gateway”

The term “media gateway” is recited in independent claim 1. Neither Petitioner nor Patent Owner has proposed a construction for the term. It appears to be a recognized term in the art and is used in the specification of the ’640 patent and referred to by the parties in that manner. According to the ’640 patent, a media gateway can be in the form of a “SBC” (Session Border Controller). Ex. 1101, 8:61–62. The parties do not dispute that prior art references Cisco and Intel are directed to Session Border Controllers.

Regarding what was well known in the art about SBCs, Cisco describes that SBCs are generally deployed in one of two models: a Unified

SBC Model (“unified model”), and a Distributed SBC Model (“distributed model”). Ex. 1110, 2. In the unified model, there is a single physical device as is shown on the left side in Figure 1 of Cisco, including two logical elements “SBE” and “DBE,” and in the distributed model, the two logical elements “SBE” and “DBE” are part of different physical devices as shown on the right side in Figure 1 of Cisco. *Id.* Figure 1 of Cisco is reproduced below:

Figure 1. Unified and Distributed SBC Model

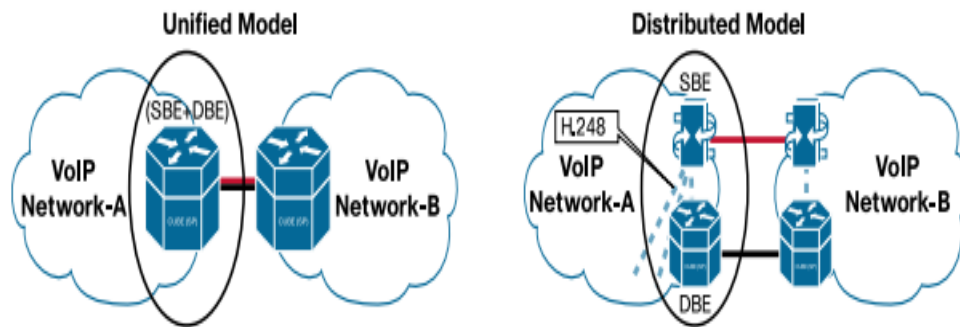


Figure 1 illustrates a unified model and also a distributed model of a Session Border Controller, in a side-by-side comparison.

For the foregoing reasons, we determine that a media gateway encompasses a SBC in the form of either one of two different models, a unified model in which logical elements “SBE” and “DBE” are incorporated within a single physical device, and a distributed model in which the two logical elements “SBE” and “DBE” are part of different physical devices.³

³ The logical element “SBE” is a signaling path border element that provides signaling functions. *Id.* The logical element “DBE” is a data path border element that provides media-related functions. *Id.*

Under this construction, a SBC having the structure of a unified model is a media gateway, and so is a SBC having the structure of a distributed model.⁴

“media connectivity setting” / “media connectivity setting identifying one or more other devices”

The phrase “media connectivity setting identifying one or more other devices” appears in independent claim 1. Petitioner urges that “media connectivity setting” should be construed as “information describing one or more parts, domains or regions of a telecommunications network to which a device has media connectivity.” Pet. 12. In the initial decision, we stated:

We note that the Specification of the ’640 patent states:

A media gateway has one or more media connectivity settings including one or more parts of telecommunications network 1 via which a respective device is able to transmit and receive media data. A device will typically not have access to all parts of telecommunications network 1 so media connectivity settings for the device describes the parts, domains or regions of telecommunications network 1 to which the device does have media connectivity.

Id. at 11:30–37. Patent Owner does not disagree with Petitioner’s proposed construction. Prelim. Resp. 14. On this record, we adopt Petitioner’s proposed construction as the broadest reasonable interpretation. Thus, “media connectivity setting” is construed to mean *“information describing one or*

⁴ This issue was raised and discussed in our initial decision and was a part of our basis for instituting trial. Dec. Inst. 14, 19. Patent Owner did not, in its Patent Owner Response, argue that a media gateway has to have the structure of a unified model SBC.

more parts, domains or regions of a telecommunications network to which a device has media connectivity.”

Dec. Inst. 9–10.

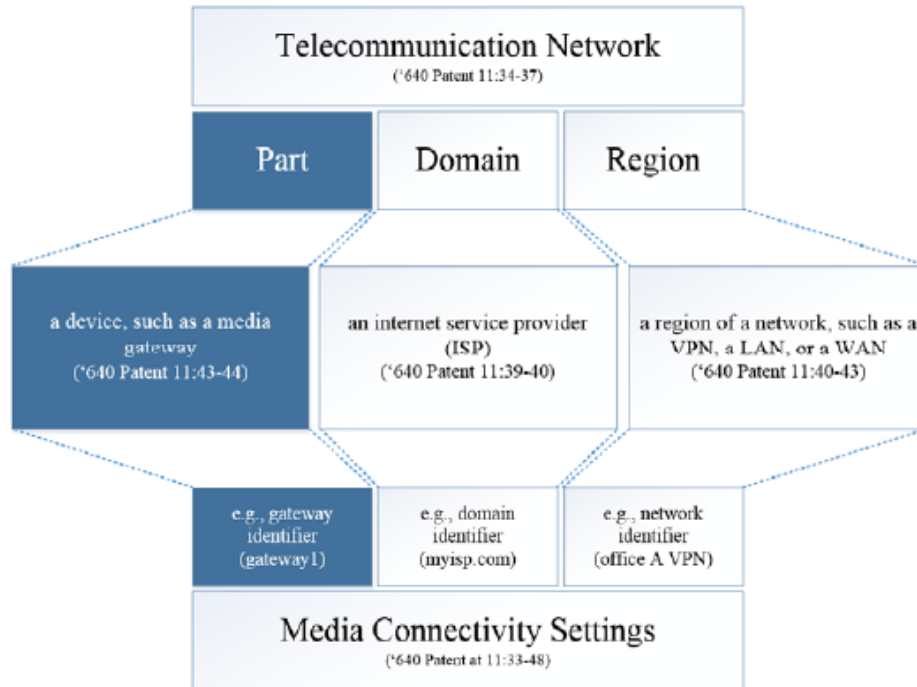
In the Patent Owner Response, Patent Owner does not disagree with our initial construction of the term “media connectivity setting.” PO Resp. 15. Here, we maintain the construction of “media connectivity setting” that we set forth in the initial decision, as reproduced above, and for the reasons explained in the initial decision.

Patent Owner argues, however, that there is significance to the phrase “identifying one or more other devices” that immediately follows the term “media connectivity setting.” *Id.* We agree. The limitation “identifying one or more other devices” may not be ignored. However, for reasons discussed below, Patent Owner is unpersuasive in arguing (PO Resp. 17) that “at least one media connectivity setting identifying one or more other devices” should be construed as “information identifying one or more parts of a telecommunication network, *distinct from either a domain or a region of the telecommunications network.*” (Emphasis added). Specifically, we determine that the requirement of “identifying one or more other devices” does not exclude information describing domains or regions of a telecommunications network from satisfying the claimed “at least one media connectivity setting identifying one or more other devices.”

Patent Owner presents its argument as follows:

A “device” is a “part” of a telecommunications network, such as an endpoint or media gateway. Ex. 1101 [’640 Patent] at 11:46 (“a device (endpoint device or media gateway)”); *see also* Ex. 2006 [Akl Declaration] at ¶ 56. A “device” is neither a “domain”

nor a “region” of a telecommunications network. Ex. 2006 [Akl Declaration] at ¶ 56; *see also* Ex. 2004 [Bress Transcript 1] at 137:15–18 [footnote omitted] and 142:7–11 [footnote omitted]. The following figure demonstrates the relationships between parts, domain, and regions and their associated media connectivity settings:



Thus, Petitioner’s proposed construction of “media connectivity settings,” which recites *parts, domains or regions*, creates a contradiction with respect to the claim language, which recites *at least one media connectivity setting identifying one or more other devices*. Ex. 2006 [Akl Declaration] at ¶ 57.

PO Resp. 15–16. The argument is unpersuasive for two reasons.

First, the above-reproduced figure does not appear in the Specification of the ’640 patent. Rather, it is a creation of the Patent Owner. The figure creates the impression that a “part” necessarily is a “device.” Patent Owner, however, does not provide adequate support for such a narrow reading of

“part.” Although a “device” is a “part” of a telecommunications network, that does not mean a “part” has to be a “device.” Even Dr. Akl, Patent Owner’s expert, testified only that a “device” is a “part” of a telecommunications network and not that a “part” of a telecommunications network has to be a “device.” Ex. 2006 ¶ 56.

Second, the figure also creates the impression that neither a domain nor a region would identify a device. But Patent Owner does not provide adequate support for such a narrow reading of “domain” and “region.” In that regard, Dr. Akl, Patent Owner’s expert, testifies only that a “device” is neither a “domain” nor a “region,” not that a “domain” or a “region” would not or could not identify a “device.” *Id.*

By assuming that a “part” of a telecommunications system has to be a “device,” and by assuming that neither “domain” nor “region” would identify one or more devices, Patent Owner sees an alleged contradiction in allowing *media connectivity setting* to be as we have construed it, and the phrase that immediately follows the claim term—“identifying one or more other devices.” Because of that alleged contradiction, Patent Owner contends that “at least one media connectivity setting identifying one or more other devices” should be construed as “information identifying one or more parts of a telecommunication network, distinct from either a domain or a region of the telecommunication network.”

But there is no such contradiction, because the record does not support a finding that a “part” of a telecommunications network has to be a “device,” or that “domain” and “region” cannot identify one or more devices. Patent

Owner has not identified any portion of the specification that gives support to the notion that a “part” of a telecommunications network necessarily has to be a device, and Patent Owner’s expert also has not testified to that effect. Moreover, if a domain has been identified, then all devices within the domain are identified relative to devices that are not in the domain, and if a region, such as a network, has been identified, then it follows that all devices within the network are identified relative to devices not in the network. Patent Owner’s expert provides no testimony to the contrary.

Under the rule of broadest reasonable interpretation, we do not read “identifying one or more other devices” as requiring the specific naming of each such device. Such a reading is too narrow, given that the object doing the identifying is a *media connectivity setting*, which is defined in the specification, as discussed above, as information describing one or more parts, domains or regions of a telecommunications network to which a device has media connectivity. A “part,” a “domain,” and a “region” all are capable of designating a one or more devices without providing a specific name or address to each such device. None of the claims requires a specific manner of identification. And even if a particular manner of identification is required, the “part” alternative of *media connectivity setting* can no more meet it than can the “domain” and “region” alternatives of *media connectivity setting*, because all are broader than a specific device. Thus, there is no contradiction like Patent Owner asserts. Instead, all three “part,” “domain,” and “region” alternatives of *media connectivity setting* are capable of identifying one or more devices.

Although it is not necessary to rely on the doctrine of claim differentiation to support our claim construction, the doctrine adds further support to our construction. Under 35 U.S.C. § 112, ¶ 4, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed, and a claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers. Claim 15 depends from claim 1 and adds: “wherein said at least one media connectivity setting comprises one or more of: a domain identifier, a network identifier, and a gateway identifier.” If claim 1 already excludes information about domains and regions from constituting media connectivity setting identifying one or more other devices as is urged by Patent Owner, then claim 15 would not further limit claim 1. Rather, in that case, claim 15 facially would be broader than claim 1 by allowing the media connectivity setting to be a domain identifier or a network identifier. As is noted by Petitioner (Reply 2–3), a dependent claim cannot be broader than a base claim from which it depends.

Patent Owner cites to *Multilayer Stretch Cling Film Holding Inc. v. Berry Plastic Corp.*, 831 F.3d 1350, 1360 (Fed. Cir. 2016), for the proposition that the “the language of a dependent claim cannot change the scope of an independent claim whose meaning is clear on its face,” and that “[t]he dependent claim tail cannot wag the independent claim dog.” Paper 35, 1. But *Multilayer* is inapposite to the circumstance here. For instance, on this record the term “media connectivity setting” is not a term of art with a well established conventional meaning. Also, there is no facially clear meaning

on how specific an “identification” has to be. Accordingly, the meaning of “media connectivity setting” and “media connectivity setting identifying one or more other devices” are not clear on their face.

For all of the reasons discussed above, we reject Patent Owner’s argument that “at least one media connectivity setting identifying one or more other devices” should be construed as “information identifying one or more parts of a telecommunication network, *distinct from either a domain or a region of the telecommunication network.*” (Emphasis added). Also, we reaffirm our initial determination that “media connectivity setting” is construed to mean “*information describing one or more parts, domains or regions of a telecommunications network to which a device has media connectivity.*”

B. Level of Ordinary Skill in the Art

Petitioner asserts:

As of the priority date of the ’640 Patent of March 22, 2011, a person of ordinary skill in the art (“POSITA”) would have been someone with a Bachelor’s Degree in electrical engineering, computer science, or a related scientific field, and at least two years of work or research experience in the telecommunications industry, which could include telecommunications device design, telecommunications software development, or related areas. Alternatively, a POSITA in the relevant timeframe would have been someone with an advanced degree, such as a Master’s Degree, in electrical engineering, computer science, or a related scientific field, focusing on telecommunications technology. Alternatively, a POSITA in the relevant timeframe could have been someone lacking formal technical education but having experience in the

telecommunications industry that would be equivalent to such education. *See* Ex. 1004 at ¶ 128.

Pet. 19–20. Patent Owner does not explicitly take a position on the level of ordinary skill in the art. We determine that no express finding on a specific corresponding level of technical education and experience is necessary, and that the level of ordinary skill in the art is reflected by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978).

C. Claims 2–5, 8–10, 15–18, and 22–24
as Obvious over Ejzak and Cisco

We have reviewed the arguments and evidence presented by Petitioner, and determine that, notwithstanding the arguments of Patent Owner, which are discussed below in Section II.E., Petitioner has established, by a preponderance of the evidence, that claims 2–5, 8, 9, 15–18, and 22–24 are unpatentable as obvious over Ejzak and Cisco. Petitioner has not, however, established by a preponderance of the evidence that claim 10 is unpatentable as obvious over Ejzak and Cisco.

Ejzak

Ejzak states that its disclosure relates to “bearer path optimization through a succession of border gateways in an Internet Multimedia Subsystem (IMS) network.” Ex. 1103 ¶ 1. Ejzak explains, more particularly, that its disclosure relates to “identifying alternate end-to-end media paths through Internet Protocol (IP) realms using substitute Session description Protocol (SDP) parameters.” *Id.* Ejzak indicates that its system

and method “allow Session Initiation Protocol (SIP) based networks to bypass one or more border gateways that would otherwise be included in the media path.” Ex. 1103 ¶ 2. Explaining an SIP network, Ejzak states:

A SIP based network call has a call signaling path and a bearer path. The call signaling path handles call control data which is used to setup, connect and process the call. The bearer path is the voice data connection over which a conversation takes place, and is also referred to as a multimedia session path or media path in this disclosure.

In IMS and other SIP based networks, border gateways are deployed between IP realms defined by each network. Within an IP realm every IP endpoint is reachable from every other IP endpoint using a common IP address space. The border gateways provide security to the IP realm by limiting access to the IP endpoints within an IP realm. A multimedia session path may traverse an arbitrary number of IP realms along an end-to-end media path.

Id. ¶¶ 3, 4. Ejzak observes that when a border gateway (BG) has access to additional IP realms on the path, there is an opportunity to create a shorter media path. *Id.* ¶ 4. By shortening the route of a bearer path through optimization, Ejzak frees up the resources of the border gateways, reducing bearer traffic through IP networks, and minimize end-to-end delay. *Id.* ¶ 5.

Ejzak’s system involves use of application level gateway (ALG) configured to receive a session description protocol offer that includes a list of previously traversed internet protocol realms. *Id.* at Abstr. It is determined by the ALG whether the next internet protocol realm to be traversed is on the list of previously traversed internet protocol realms. *Id.* If so, then at least one border gateway associated with the current and

previously traversed internet protocol realms would be bypassed. *Id.* The bypassing is facilitated by substituting information in the session description protocol offer. *Id.*

Figure 1 of Ejzak is reproduced below:

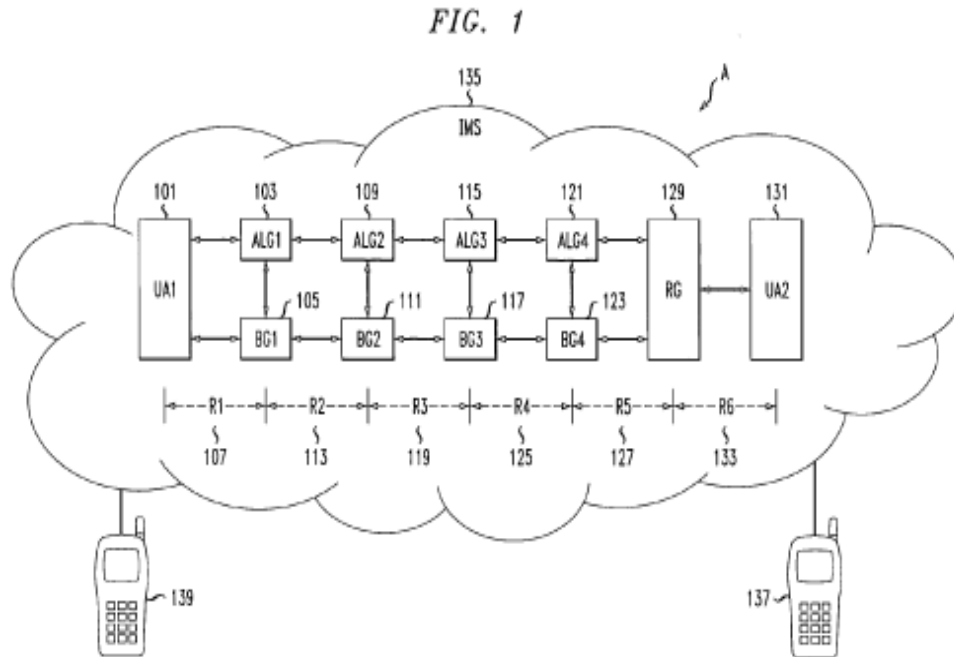


Figure 1 illustrates a portion of the communication network system disclosed by Ejzak. *Id.* at ¶ 33.

In Figure 1, reference letter “A” designates a communications infrastructure including one or more IMS networks 135 and two associated VoIP (Voice over Internet Protocol) telephones 137 and 139. *Id.* ¶ 38. IMS network 135 includes first user agent 101, second user agent 131, four ALGs 103, 109, 115, and 121, four BGs 105, 111, 117, and 123, residential gateway 129 and six IP realms 107, 113, 119, 125, 127, and 133. *Id.* ¶ 36. Ejzak states that a call may be processed through user equipment 137 or 139

to IMS 135, and that Figure 1 shows a typical call configuration between IP endpoints 101 and 131 (user agents UA1 and UA2). *Id.* ¶ 42.

Ejzak explains that SIP signaling goes between the UAs via at least one ALG, and multimedia flow between the UAs takes place via border gateways 105, 111, 117, 123, and optionally residential gateways (RG) 129 associated with one or both UA1 101 and UA2 131. *Id.* Ejzak also explains (1) that each border gateway is controlled by its own corresponding ALG, (2) that IP realms 107, 113, 119, 125, 127, and 133 are associated with each segment of the multimedia session path, and (3) that the border gateways and residential gateways act as IP endpoints and access points for the corresponding IP realms. *Id.* Each border gateway has access to at least two corresponding IP realms. *Id.* Within an IP realm every IP endpoint is reachable from any other IP endpoint using a common IP address space, and each border gateway typically provides a firewall to limit access to IP endpoints within a realm. *Id.* ¶ 43.

In Ejzak, the multimedia session path between UAs is established via an end-to-end SDP offer/answer exchange where each ALG may modify the connection and port information associated with each media line in the SDP to insert its associated border gateway in the media path. *Id.* at ¶ 51. Each ALG may also determine whether one or more border gateways or residential gateways can be bypassed and then to modify forwarded SDP messages to cause implementation of the bypass in the media path. *Id.*

Ejzak defines an SDP extension attribute by the name “traversed-realm” as connection and port information for a prior IP realm traversed

through on the signaling path. *Id.* ¶ 55. “Each instance of traversed-realm has an instance number, realm identifier, connection and port data, and optional cryptographic signature computed using an algorithm private to each IP realm so as to ensure the integrity of the traversed realm data.” *Id.*

Ejzak discloses that when an ALG receives an SDP offer from a UA or an ALG, it determines the identity of the IP realm for the next segment of the media path. *Id.* ¶ 69. If the ALG further determines that there is a match between a traversed realm indicated in the received SDP offer and the next IP realm, the ALG may cause bypass of border gateways by (1) replacing the connection and port information in the SDP offer with the connection and port information from the earliest traversed-realm instance associated with the next IP realm, (2) deleting every traversed-realm instance after the one used to populate the outgoing connection and port data, and (3) forwarding the modified SDP offer to the next ALG. *Id.* ¶ 73.

Limitations of Claim 1

Each of claims 2–5, 8–10, 15–18, and 22–24 depends, directly or indirectly, from independent claim 1, and therefore incorporates all of the limitations of claim 1. We begin our analysis with the limitations of claim 1.

At the outset, as argued by Petitioner in the Petition (Pet. 37), and based on our discussion of media gateway above, we find that each pair of ALG and associated BG in Ejzak constitutes a media gateway.⁵ This was a

⁵ In particular, we find that each ALG and associated BG pair in Ejzak is a distributed mode Session Border Controller as described in Cisco.

determination first made in the initial decision (Dec. Inst. 19), and Patent Owner put forth no contrary position in the Patent Owner Response. Tr. 48:7–18. Petitioner additionally argues that it would have been obvious to one with ordinary skill to combine each pair of ALG and associated BG in a single physical device, in view of Ejzak alone, because it was well-known in the art that the signaling and media functions of the ALG and BG could be implemented in a single physical device. Pet. 20–21.⁶ That contingent argument is unnecessary, because none of the claims requires the media gateway to be in the form of a single physical device, such as a unified model Session Border Controller. Even if we assume that a single physical device is required by the claims, then for reasons expressed by Petitioner, we determine that it would have been obvious to one with ordinary skill in the art, based on the disclosure of Ejzak, to implement Ejzak’s ALG and

⁶ Petitioner cites to Cisco and Intel, respectively, as teaching that signaling and media functions can be performed by a single physical device. Pet. 21. In particular, Cisco discloses that Session Border Controllers (SBCs) come in two different models, a distributed model and a unified model, and that in the unified model the signaling and media functions are performed not by separate units but by a single operative unit. Ex. 1110, 2.

corresponding BG in a single physical device.⁷ In that regard, Cisco was cited by Petitioner to show what was well-known to one with ordinary skill in the art. In any event, for the reasons indicated by Petitioner on pages 21–26 of the Petition, Cisco would have suggested to one with ordinary skill in the art to implement Ejzak’s ALG and corresponding BG in a single physical device.⁸

Petitioner asserts that “Ejzak discloses all features of Claim 1 of the ’640 Patent.” Pet. 27. We find that, notwithstanding the contrary arguments of Patent Owner, which are addressed below, Petitioner has established that assertion by a preponderance of the evidence.

For limitation [1a], Petitioner provides persuasive explanation on pages 27 and 32–33 of the Petition. In summary, and by reference to Figure 1 of Ejzak, letter “A” designates a telecommunications network including a plurality of media gateways connecting internet protocol realms (IP realm), where each media gateway has a pair of ALG and BG, and where a signaling

⁷ Patent Owner argues against such a combination to have a unified device, on the basis that Ejzak mentions the importance of freeing the resources of BGs. PO Resp. 12. But a prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985). The choice of a distributed model or a unified model, both of which were well-known to one with ordinary skill in the art, represents mere tradeoff considerations routinely contemplated by one with ordinary skill in the art.

⁸ See Footnote 7.

path between endpoint devices is established through the ALGs and a media path between endpoint devices is established through the BGs. Within each IP realm every endpoint is reachable from every other endpoint using a common IP address space. Ex. 1103 ¶ 4. Ejzak discloses limitation [1a].

For limitation [1b], Petitioner provides persuasive explanation on pages 27–28 and 33–34 of the Petition. Specifically, the inbound communication session setup request message is in the form of a “SDP offer,” and it is received by the ALG of each gateway along a signaling path. Pet. 27, 33–34. Ejzak discloses limitation [1b].

For limitation [1c], Petitioner provides persuasive explanation on pages 28 and 34–35 of the Petition. Specifically, after receiving an SDP offer from the ALG of a preceding media gateway on the signaling path, the ALG in the current media gateway adds a traversed-realm instance to the received SDP offer and then forward the modified SDP offer to the next media gateway on the signaling path. Pet. 28, 34–35. The modified SDP offer constitutes the outbound communication session setup request message. *Id.* Ejzak discloses limitation [1c].

For limitation [1d], Petitioner provides persuasive explanation on pages 28–29 and 35 of the Petition. Specifically, the added traversed-realm instance in the modified SDP offer includes preceding device connectivity data in the form of connection and port information for a prior IP realm. Pet. 28–29, 35. Ejzak discloses limitation [1d].

For limitation [1e], Petitioner provides persuasive explanation on pages 29–30 and 35–36 of the Petition. Specifically, the IP realm

information in the “traversed-realm” SDP extension field (“attribute”) includes information about previously traversed IP realms and constitutes the media connectivity setting for a preceding device, e.g., BG or media gateway. Pet. 29–30, 35–36. Petitioner explains that within an IP realm there are endpoint devices that are mutually reachable by a common IP address space. *Id.* at 36. Petitioner also explains that traversed-realm SDP extension of an outbound SDP offer has IP realm information about prior BGs. Pet. 29, 37. In that connection, Petitioner relies (Pet. 29–30) on Declaration ¶ 168 of Mr. Bress, which reads:

168. Furthermore, the traversed-realm information in the SDP extension field included in the SDP offer message received by an ALG includes traversed-realm information regarding one or more preceding BGs. Therefore, the traversed-realm information copied from the received SDP offer message into the forwarded SDP offer message is necessarily preceding device connectivity data “for at least one preceding device which is located before said media gateway in said inbound signaling path.”

Ex. 1104 ¶ 168. In summary, traversed-realm attribute is information about a preceding BG or media gateway including the BG, and that information identifies devices in a traversed IP realm which are accessible from that BG or media gateway. Ejzak discloses limitation [1e].

For limitation [1f], which recites “to enable bypass of said media gateway in said media path if an ensuing device in said outbound signaling path determines that such bypass should be conducted,” Petitioner provides persuasive explanation on pages 16–17, 30, and 36–37 of the Petition. For instance, Petitioner explains that in Ejzak, if there is a match between a

preceding BG's IP realm and the next IP realm, one or more BGs may be bypassed. Pet. 16, 30. Petitioner cites to "Case 1," described in Ejzak, as one example. Pet. 16–17. Ejzak describes:

An example of case 1, using FIG. 1 as reference, is that upon receiving an SDP offer from the direction of UA1, ALG3 determines that R4 125 and R1 107 are instances of the same IP realm. ALG3 substitutes the connection and port information from UA1 into the outgoing SDP offer and deletes the traversed-realm instances for R2 113 and R3 119 from the SDP before forwarding. After the end-to-end SDP offer/answer transaction is completed, the media path will bypass BG1 105, BG2 111, and BG3 117.

Ex. 1103 ¶ 74. Petitioner also relies on "Case 3," described in Ejzak, as another example. Pet. 17, 30. Ejzak describes:

An example of case 3, using FIG. 1 as reference, is that upon receiving an SDP offer from the direction of UA1, ALG4 121 determines that BG4 123 has access to R2 113. ALG4 121 substitutes its BG connection and port information into the SDP offer, uses the connection and port information from the traversed-realm instance for R2 113 as the remote connection and port information for the UA1 101 side of BG4 123, deletes the traversed-realm instance for R3 119 and R4 125 from the SDP offer, and adds the traversed-realm instance for R5 127 before forwarding. After the end-to-end SDP offer/answer transaction is completed, the media path will bypass BG2 111 and BG3 123.

Ex. 1103 ¶ 78. Petitioner's articulated reasoning is persuasive. Note, in particular, that the media gateway making the bypass determination of preceding BGs is an ensuing device relative to those BGs. Ejzak discloses limitation [1f].

Claims 2, 3, 8, 9, 15–18, 23, and 24

Claims 2, 3, 8, 15–18, 23, and 24 each depend directly from claim 1. Petitioner has persuasively accounted for claim 2’s additional limitations on pages 38–39 of the Petition, for claim 3’s additional limitations on pages 40–41 of the Petition, for claim 8’s additional limitations on pages 46–47 of the Petition, for claim 9’s additional limitations on pages 47–49 of the Petition, for claim 15’s additional limitations on pages 40–41 of the Petition, for claims 16–18’s additional limitations on pages 55–57 of the Petition, and for claims 23–24’s additional limitations on pages 57–58 of the Petition. Patent Owner does not present arguments for these dependent claims apart from those it presented for claim 1, which are discussed below. We agree with and adopt the reasoning put forth by Petitioner to account for the limitations added by these dependent claims relative to base claim 1. Also, with respect to claim 23, we already have determined above that each ALG and associated BG pair in Ejzak is a distributed mode Session Border Controller.

Claims 4 and 5

Claim 4 depends from claim 1. Claim 5 depends from claim 4. For the reasons explained by Petitioner, and notwithstanding the arguments of Patent Owner which are addressed below, we find that Ejzak discloses the limitations added by claims 4 relative to base claim 1, and would have rendered obvious the limitation added by claim 5 relative to its base claim 4.

Claims 4 and 5 are reproduced below, with bracketed lettering to identify particular subparts:

4. The method according to claim 1, further comprising:
 - [a] retrieving ensuing device connectivity data for an ensuing device which is located after said media gateway in said outbound signaling path, said ensuing device connectivity data indicating at least one media connectivity setting for said ensuing device, the connectivity setting identifying one or more other devices to which said ensuing device is configured to be connectable in said media path; and
 - [b] comparing said preceding device connectivity data and said ensuing device connectivity data, and determining, from said comparison, whether said media gateway may be bypassed in said media path.
5. The method according to claim 4, wherein said ensuing device connectivity data is retrieved from storage in said media gateway.

With regard to step [a] in claim 4 of retrieving ensuing device connectivity data for an ensuing devices located after said media gateway, Petitioner explains:

Specifically, *Ejzak* '270 discloses that “[w]hen an ALG receives an SDP offer from a UA or another ALG . . . it first determines the IP realm for the **next segment** of the media path.” Ex. 1103 at ¶ 0069 (emphasis added). The ALG may do this by “examining [a] list of instances for the next internet protocol realm that the media path may traverse through.” *Id.* at ¶ 0027; Ex. 1104 at ¶¶ 204, 210–211. *Ejzak* '270 also discloses that “since the extension does not incorporate end-to-end connectivity checks or the media path, it takes advantage of accurate provisioning of the IP realms,” and that “IP realms may be provisioned to correctly identify mutually reachable IP addresses.” *Id.* at ¶¶ 0048, 0066. *See also* Ex. 1104 at ¶¶ 206–209. Furthermore, *Ejzak* '270 discloses “said ensuing device connectivity data indicating at least one media connectivity

setting for said ensuing device, the connectivity setting identifying one or more other devices to which said ensuing device is configured to be connectable and said data path,” as recited in Limitation [4a]. As discussed in connection with Claim 1, IP realm information identifies to which devices the ensuing border gateway is configured to be connectable.

Pet. 41–42. With regard to the step [b] in claim 4, Petitioner explains:

Specifically, *Ejzak* '270 discloses that an ALG may determine, based on a traversed-realm instance in the SDP extension of a received SDP offer, that a preceding BG can connect to the next IP realm in the path, and replace connection and port information in the media line in the SDP offer with the connection and port information from the preceding BG to bypass one or more gateways. Ex. 1103 at ¶¶ 0071–74 and ¶ 0077 (“In case 3, the ALG determines that a BG under its control has access both to the next IP realm and to an IP realm associated with a prior traversed-realm instance for a media line in the received SDP offer.”).

Pet. 42–43.

For claims 4 and 5, Petitioner relies (Pet. 45) on the testimony of Mr. Bress, who explains: (1) that *Ejzak* discloses that IP realms may be provisioned to identify mutually reachable IP addresses, (2) that provisioning as it relates to media gateway refers to the process of configuring or entering information, (3) that in the process of building a network, a media gateway would need to be provisioned for devices on both sides of the media gateway, and (4) that a person of ordinary skill in the art would understand that provisioning information for the media gateway would necessarily be stored in memory. Ex. 1104 ¶ 206.

Petitioner further relies (Pet. 45) on the testimony of Mr. Bress, who states: (5) that provisioning network equipment or devices includes entering address information to enable connectivity to other networked equipment and various other settings to control the operation of the equipment or device (Ex. 1104 ¶ 207), (6) that one with ordinary skill in the art would understand that it would be necessary to provision each side of the media gateway's network connections (*id.* ¶ 208), (7) that the "provisioning information" would necessarily be stored in memory so that the device would maintain its configuration after being powered off by retrieving the configuration (i.e., provisioning information) from memory upon being powered on or reset (*id.* ¶ 208), and (8) one with ordinary skill in the art would understand that the provisioning disclosed in Ejzak would involve storing this information on the ALG, which information would be retrieved from the ALG's memory each time an outbound communication setup request message was to be transmitted to an ensuing device (*id.* ¶ 209).

Petitioner additionally relies (Pet. 45) on the testimony of Mr. Bress, who states: (9) "It is my opinion that one of ordinary skill in the art would understand these disclosures in *Ejzak* '270 to teach that connectivity data for the next IP realm is stored in, and retrieved from, some form of memory in the ALG." Ex. 1104 ¶ 217.

In the alternative, Petitioner pursues a theory of obviousness in connection with storing media connectivity setting in a memory of the

media gateway, and relies (Pet. 44–45) on the testimony of Mr. Bress, who explains:

218. Moreover, *Ejzak* '270 also discloses that the ALG may “keep information about which of the four cases it selected for handling of BG bypass” and “use this information in the processing of the corresponding SDP answer.” Ex. 1103 at ¶ 0082. It would have been obvious to keep other types of information in memory, such as ensuing device connectivity data, in the same manner as the information about which of the four cases it selected for handling of BG bypass. This is further supported by *Ejzak* '270's disclosure of provisioning, which reinforces that the media gateway is configured to store information, such as ensuing device connectivity data, in memory.

Ex. 1104 ¶ 218. The obviousness reasoning for storing media connectivity setting in a memory within the given ALG has rational underpinning and is persuasive.

We are persuaded that in *Ejzak* the ensuing device connectivity data media in the form of IP realm information is necessarily retrieved from memory, but we are not persuaded that *Ejzak* discloses that such a memory must be within the given ALG or media gateway. Claim 4, however, does not specify or restrict the location of the memory. We find that, based on Petitioner's arguments noted above, and notwithstanding the Patent Owner's arguments, which we address below, *Ejzak* discloses the limitations added by claim 4 relative to base claim 1. We find also that, based on Petitioner's arguments noted above, and notwithstanding Patent Owner's arguments, which we address below, *Ejzak* renders obvious to one with ordinary skill in the art the limitation added by claim 5 relative to its base claim 4.

Claim 10

Claim 10 depends from claim 8, and claim 8 depends from claim 1. Claim 10 recites, among other limitations, an additional requirement of determining from said bypass mode data that said media gateway “must” be bypassed in said media path. That is in contrast with the language of claim 9, which also depends from claim 8, and which recites, among other limitations, the additional requirement of determining from said bypass mode data that said media gateway “may” be bypassed in said media path. Neither Petitioner nor Patent Owner proposes an express construction for the word “must.” In the circumstances here, the plain and ordinary meaning of “must” in the English language applies. There is no indication that one with ordinary skill in the art would understand the word as conveying something different. The Specification of the ’640 patent does not set forth a special definition of “must.” Also, consistent with the plain and ordinary meaning of “must,” the Specification of the ’640 patent distinguishes between “must” and “may”:

It may be determined from the retrieved bypass mode data that the media gateway *may be bypassed* in the media path, in which case preceding device connectivity data is included in the outbound communication setup request message.

It may be determined from the retrieved bypass mode data that the media gateway *must be bypassed* in the media path, in which case preceding device connectivity data is included in the outbound communication session setup request message.

Ex. 1101, 12:35–42 (emphasis added).

We determine that “must,” when applied to an action, such as bypassing a media gateway as recited in claim 10, eliminates not taking that action as a possibility and precludes the not taking of that action. In that regard, the different language used between claims 9 and 10 further supports the distinction between the absolute nature of “must” as used in claim 10 and the permissive nature of “may” as used in claim 9. In that regard, as is noted by Patent Owner, Petitioner’s witness, Mr. Bress, agrees that the permissive nature of “may” does not meet the absolute requirement of “must.” PO Resp. 43 (citing Ex. 2004, 123:7–124:5).

On pages 49–51 of the Petition, Petitioner attempts to account for the requirement of claim 10. Pet. 49–51. Petitioner identifies description in Ejzak that local policy may influence the actions of the ALG and that in certain circumstances, the most common local policy will be the case that bypasses the largest number of BGs. *Id.* at 49. Petitioner refers to description in Ejzak of an ALG bypassing one or more BGs. *Id.* at 50. In particular, Petitioner identifies a specific embodiment in Ejzak of bypassing multiple BGs. *Id.* at 50.

The arguments and evidence presented by Petitioner are sufficient for the permissive nature of “may” as is recited in claim 9, but not the absolute nature of “must” as is recited in claim 10. We agree with Patent Owner’s argument (PO Resp. 43) that claim 10 “requires a media gateway to be bypassed regardless of any media connectivity setting considered in the bypass procedure.” The choice or possibility of selecting not to bypass the media gateway must not exist, to meet satisfy claim 10. To determine

otherwise, such as by regarding “must” as met simply by taking of the referenced action, as Petitioner has done, effectively reads the “must” requirement out of the claim.

The concept of “must,” in the sense of elimination or preclusion of the non-taking of an action as a possibility is entirely absent from Petitioner’s attempt to account for the subject matter of claim 10. We are not persuaded that Petitioner has shown that Ejzak discloses or renders obvious claim 10’s requirement of determining from said bypass mode data that said media gateway “must” be bypassed in said media path.

Claim 22

Claim 22 depends from claim 1, and further recites: “wherein a given media gateway comprises a plurality of input and output communication trunks via which communication sessions can be conducted, each trunk being capable of having different associated media connectivity settings.” On pages 57 and 59 of the Petition, Petitioner addresses claim 22. For the reasons explained by Petitioner, and notwithstanding the arguments of Patent Owner, which we address below, we find that Petitioner persuasively accounts for the added limitation of claim 22.

Petitioner identifies Ejzak’s disclosure that the border gateways may have “access to additional IP realms on the path,” and that “this is an opportunity to create a shorter media path.” Pet. 57 (citing Ex. 1103 ¶ 4). relying on the testimony of Mr. Bress, Petitioner states: “One of ordinary skill in the art would recognize based on this disclosure that the border gateways of *Ejzak* ’270 therefore have a plurality of input and output trunks,

and that each trunk would be capable of having different associated media connectivity settings.” *Id.* (citing Ex. 1104 ¶¶ 305–306). Petitioner further notes that Cisco teaches that a Session Border Controller “supports dynamic route selection across multiple trunks.” Pet. 59 (citing Ex. 1110, 11).

Petitioner’s witness, Mr. Bress, also explains:

A person of ordinary skill in the art would understand that one of the primary purposes of a gateway device is to bridge between differing IP address space of separate IP networks or from an IP network to a different type of network (e.g., the circuit switched PSTN). Most gateway installations will provide the capability to bridge from one network to one of multiple other networks. Thus, for the same reasons that a media gateway or SBC is provisioned (or configured) with connectivity information for the network it is connected to on a specific trunk, each trunk connecting to a different network would also require similar provisioning. *See also* ¶¶ 205–210 above regarding media gateway and SBC provisioning and configurations.

Ex. 1104 ¶ 339. We credit the testimony of Mr. Bress and find it persuasive. In light of Ejzak’s disclosure that the border gateways may have “access to additional IP realms on the path,” and that “this is an opportunity to create a shorter media path,” and further in light of Mr. Bress’s explanation of what one with ordinary skill in the art would have understood about the primary purpose of a gateway device, as reproduced above, we agree with Petitioner that Ejzak and Cisco would have suggested the limitation added by claim 22.⁹ Specifically, we find that trunks connecting to different networks,

⁹ We have determined that Ejzak’s ALG and associated BG collectively constitute a Session Border Controller. Thus, what Cisco discloses about Session Border Controllers applies to Ejzak’s ALG/BG.

forming different paths, are associated with different media connectivity settings.

D. Claims 2–5, 8–10, 15–18, and
22–24 as Obvious over Ejzak and Intel

We have reviewed the arguments and evidence presented by Petitioner, and determine that, notwithstanding the arguments of Patent Owner, which we discuss below, Petitioner has established, by a preponderance of the evidence, that claims 2–5, 8, 9, 15–18, and 22–24 are unpatentable on the ground of obvious over Ejzak and Intel. Petitioner has not, however, established by a preponderance of the evidence that claim 10 is unpatentable on the ground of obvious over Ejzak and Intel.

For claims 2–5, 8, 9, 15–18, 23, and 24, the reasoning in support of our conclusion of obviousness is the same as that discussed above in the context of alleged obviousness of the same claims over Ejzek and Cisco, with Intel and Cisco contributing only to show what was well known knowledge to one with ordinary skill in the art. In addition, for the reasons articulated by Petitioner on pages 21–25 of the Petition, Intel would have suggested to one with ordinary skill in the art to implement Ejzak’s ALG and corresponding BG in a single physical device, even assuming that such a single physical device is required to meet the claims.¹⁰ Patent Owner argues

¹⁰ Intel discloses a Session Border Controller that Petitioner regards as a media gateway (Pet. 21). Patent Owner does not dispute that the controller is a media gateway. Intel discloses that the controller intercepts and processes calls on a VoIP network, “allowing a single element to monitor not only the signaling traffic but also the media traffic.” Ex. 1111, 2.

against such a combination to have a unified device, on the basis that Ejzak mentions the importance of freeing the resources of BGs. PO Resp. 12. But a prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp.*, 755 F.2d at 907. The choice of a distributed model Session Border Controller or a unified model Session Border Controller, both of which were well-known to one with ordinary skill in the art, represents tradeoff considerations within the level of skill of one with ordinary skill in the art.

For claim 10, the reasoning in support of our conclusion of insufficient showing of obviousness is the same as that discussed above in the context of alleged obviousness of same claim 10 over Ejzek and Cisco.

Claim 22 depends from claim 1, and further recites: “wherein a given media gateway comprises a plurality of input and output communication trunks via which communication sessions can be conducted, each trunk being capable of having different associated media connectivity settings.” On pages 57 and 58 of the Petition, Petitioner addresses the disclosure of Ejzak and Intel with respect to claim 22. For the reasons explained by Petitioner, and notwithstanding the arguments of Patent Owner, which we address below, we find that Petitioner persuasively accounts for the added limitation of claim 22.

Petitioner identifies Ejzak’s disclosure that the border gateways may have “access to additional IP realms on the path,” and that “this is an opportunity to create a shorter media path.” Pet. 57 (citing Ex. 1103 ¶ 4).

relying on the testimony of Mr. Bress, Petitioner states: “One of ordinary skill in the art would recognize based on this disclosure that the border gateways of *Ejzak* ’270 therefore have a plurality of input and output trunks, and that each trunk would be capable of having different associated media connectivity settings.” *Id.* (citing Ex. 1104 ¶¶ 305–306). Petitioner’s witness, Mr. Bress, explains as follows:

For example, an SBC noted in Figure 1 of Intel connects to multiple networks. A person of ordinary skill in the art would understand that one of the primary purposes of a gateway device is to bridge between the differing IP address space of separate IP networks or from an IP network to a different type of network (e.g., the circuit switched PSTN). Most gateway installations will provide the capability to bridge from one network to one of multiple other networks. Thus, for the same reasons that a media gateway or SBC is provisioned (or configured) with connectivity information for the network it is connected to on a specific trunk, each trunk connecting to a different network would also require provisioning specific to the connectivity requirements for the network that the trunk is connected to. *See also* ¶¶ 205–208 above regarding media gateway and SBC provisioning and configurations. Moreover, a person of ordinary skill in the art would understand that the input trunk and output trunk of *Ejzak* ’270 connect to different IP realms, and thus have different media connectivity settings. *Ejzak* ’270 combined with Intel therefore discloses “wherein a given media gateway comprises a plurality of input and output communication trunks via which communication sessions can be conducted, each trunk being capable of having different associated media connectivity settings,” as recited in Claim 22.

Ex. 1104 ¶ 306. We credit the testimony of Mr. Bress and find it persuasive. In light of *Ejzak*’s disclosure that the border gateways may have “access to additional IP realms on the path,” and that “this is an opportunity to create a

shorter media path,” and further in light of Mr. Bress’s explanation of what one with ordinary skill in the art would have understood about the primary purpose of a gateway device, as reproduced above, we agree with Petitioner that Ejzak and Intel would have suggested the limitation added by claim 22.¹¹ Specifically, we find that trunks connecting to different networks, forming different paths, are associated with different media connectivity settings.

E. Patent Owner’s Contentions

Limitations Incorporated from Claim 1

For limitations incorporated from claim 1, Patent Owner presents seven variations of the same argument, i.e., that Ejzak does not disclose “said preceding device connectivity data indicating at least one media connectivity setting for at least one preceding device . . . the at least one media connectivity setting identifying one or more other devices to which the preceding device is configured to be connectable in said media path.”¹² For that central argument, which applies to all challenged claims, the

¹¹ We have determined that Ejzak’s ALG and associated BG collectively constitute a Session Border Controller. Thus, what Intel discloses about Session Border Controllers applies to Ejzak’s ALG/BG.

¹² These are aside from the contention, already addressed and rejected above, that one with ordinary skill would not have implemented Ejzak’s ALG and corresponding BG in the form of a single physical device.

construction of media connectivity setting as discussed above is determinative.

1.

On pages 18–20 of the Patent Owner Response, Patent Owner argues that because the Specification gives three different examples of a media connectivity setting, i.e., a domain identifier, a network identifier, and a gateway identifier, and because a media connectivity setting is defined as describing three things a preceding device can connect to, i.e., a part, a domain, or a region of a telecommunications network, a part, a domain, and a region must be mutually distinct from each other. The argument is unpersuasive, for reasons already explained in the discussion of the claim construction of media connectivity setting, and for additional reasons discussed hereinafter.

Although the Specification sets forth three examples of media connectivity setting, i.e., a domain identifier, a network identifier, and a gateway identifier, Patent Owner does not identify any portion of the Specification indicating that a region of a telecommunication system must be a network, or that a part of a telecommunication system must be a gateway. Nor does Patent Owner identify any portion of the Specification that indicates (1) a network identifier is an example only of identifying a region but not a part of the telecommunication system, or (2) a domain identifier is an example only of identifying a domain but not a region or a part of the telecommunication system.

The record does not support Patent Owner’s assertion that a part, a domain, and a region of a telecommunication system must be mutually distinct. In particular, we find that a “part” of a telecommunication system does not have to be distinct from a domain or a region of a telecommunication system. Even if a part of a telecommunication system has to be distinct from a domain and a region of a telecommunication system, Patent Owner has not, on pages 18–20 of the Patent Owner Response, explained how that distinction undermine Petitioner’s assertion of unpatentability.

2.

On pages 20–22 of the Patent Owner Response, Patent Owner argues that the media connectivity setting as recited in claim 1 is limited to identifying one or more other devices to which the preceding device is configured to be connectable in the media path. Patent Owner contends that this means device-to-other-device connectivity is specifically required, which would not be met by preceding device-to-domain or preceding device-to-region connectivity. PO Resp. 21–22. The argument is unpersuasive based on our claim construction of “media connectivity setting” and “media connectivity setting identifying one or more other devices” as discussed above. We have determined that a preceding device being connectable to a domain means the preceding device is connectable to devices within the domain, and that a preceding device being connectable to a region of the telecommunication system, such as a network, means the preceding device is connectable to devices within the network. Under

appropriate claim construction, identification of a domain identifies devices within the domain, and identification of a region of a telecommunication system identifies devices within the region. The claims are not as narrow as asserted by Patent Owner.

3.

On pages 22–24 of the Patent Owner Response, Patent Owner contends that Ejzak’s “IP realm” is neither a preceding device nor an “other device” to which the preceding device is configured to be connectable in said media path, but is equivalent to a domain as described in the ’640 patent. The argument is misplaced. Petitioner has not regarded Ejzak’s IP realm as either a preceding device or an “other device” to which a preceding device is configured to be connectable in the media path. Instead, Petitioner regards information in a “traversed realm” field of an SDP offer as media connectivity setting that identifies one or more other devices (within the traversed realm) to which a preceding device, such as a BG, is connectable in the media path. Pet. 28–30. Patent Owner’s expert, Mr. Akl, testified that an IP realm includes end point devices that are mutually connectable and share a common IP address space. Ex. 1133, 87:19–88:16.

Patent Owner contends that in Ejzak, the bypass consideration is made at the realm level. PO Resp. 23. The argument is ineffective because making a bypass consideration at the realm level is not excluded by the breadth of the challenged claims. Patent Owner asserts that the claimed “media connectivity setting” is specific to devices and not to domains or regions of a telecommunication network. PO Resp. 24. That is not an

accurate characterization based on a proper construction of the claims as we have discussed above. A traversed-realm attribute still identifies one or more other devices, e.g., the devices within an IP realm, to which a preceding BG is configured to be connectable in the media path.

4.

On pages 25–29 of the Patent Owner Response, Patent Owner proposes a hypothetical scenario in which Ejzak’s traversed-realm attribute would not cause any media gateway to be bypassed but in which a disclosed embodiment of the ’640 patent would. Petitioner notes that such a comparison is irrelevant. Reply 15. We determine that such a comparison is inconsequential and not meaningful. At issue is what is claimed, i.e., the breadth of the claims, and not whether the prior art operates exactly the same as one of the specific and narrow embodiments of the ’640 patent. Here, the claims are sufficiently broad to encompass the approach taken in Ejzak, despite the fact that that approach is not the same as one of the narrow embodiments disclosed in the ’640 patent.

On pages 24–25 of the Patent Owner Response, Patent Owner asserts that the “traversed-realm” data in Ejzak identifies neither a preceding device nor another device to which that preceding device is connectable. The reasoning articulated by Patent Owner is that an IP realm is not a device and that the “traversed-realm attribute” of Ejzak relates to traversed realms and not to traversed devices. The argument is misplaced and unpersuasive.

That an IP realm is not, itself, a device does not mean it cannot identify one or more devices. Patent Owner states that an “IP realm” is

equivalent to a domain as described in the '640 patent. PO Resp. 22. Thus, an IP realm identifies devices in the domain, relative to devices that are not in the domain. The claims do not restrict the particular manner of identification. Also, if the “traversed-realm attribute” is related to a domain, it is related to the devices within the domain. Patent Owner asserts that Petitioner’s expert admitted that an IP realm identifier identifies a realm and not any particular device. PO Resp. 24–25. We have read the cited testimony of Mr. Bress, and do not find any such admission. In any event, specific identification of a particular device is not required by the claims. The identification required by the claims can be made indirectly and as a group, as explained above.

5.

On pages 30–31 of the Patent Owner Response, Patent Owner asserts that Petitioner’s expert “admitted that the ‘traversed-realm’ attribute only provides information regarding the signaling path, and not the media path.” We have reviewed the cited portions of the cross-examination testimony of Mr. Bress, and can see no such admission from Mr. Bress. That the traversed-realm attribute provides connection and port information for prior realm traversed through on the signaling path does not mean the traversed realm provides no information about prior border gateways on the media path. Moreover, Mr. Bress clearly testified that the traversed-realm attribute relates to the media path and cited to Ejzak’s disclosure that the traversed-realm attribute is a “media level attribute only.” Ex. 2004, 80:17–82:6.

On page 31 of the Patent Owner Response, Patent Owner asserts that one with ordinary skill in the art would not understand the traversed-realm attribute of Ejzak to be media connectivity setting identifying one or more other devices to which the preceding device is configured to be connectable in the media path. The basis of that contention is Patent Owner's apparent assertion that prior IP realms are on the signaling path but not the media path. The argument is unpersuasive. First, Patent Owner's expert, Mr. Akl, has testified that "Ejzak describes that its IP realms and associated border gateways are on the media path." Ex. 1133, 93:15–18. Second, Petitioner has identified a multitude of disclosures in Ejzak that describes IP realms as being located and traversed on the media path. Reply 14. Additionally, Ejzak expressly states: "The traversed-realm attribute is a media-level attribute only. It contains an IP realm identifier and IP address for a previously traversed through realm that can potentially be used to bypass allocated BGs." Ex. 1103 ¶ 123. Based on such information in the record, we find that a traversed-realms are connectable on the media path.

6.

On pages 31–33 of the Patent Owner Response, Patent Owner argues that identifying an IP realm comprising a set of mutually reachable IP endpoints that share a common IP addressing scheme is not the same as identifying a particular device in a telecommunication network that is connectable to, but not otherwise in, a preceding IP realm. The argument is misplaced. As is noted by Petitioner (Reply 12–13), the claims do not require that the media connectivity setting identify a "particular" device,

much less one that is connectable to, but not otherwise in, a preceding IP realm.

That a media connectivity setting need not specifically identify any particular device is explained above in the claim construction portion of this decision. That such a particular device additionally must not be one that is connectable to, but not otherwise in, a preceding IP realm is further without basis in the claims. Patent Owner makes no meaningful explanation for this additional “not otherwise in a preceding IP realm” requirement.

7.

On pages 33–35 of the Patent Owner Response, Patent Owner revisits claim construction of “media connectivity setting” by citing to *Straight Path IP Group, Inc. v. Sipnet EU S.R.O.*, 806 F.3d 1356, 1361 (Fed. Cir. 2015), for the proposition that a facially clear and plain meaning of a claim term should not be contradicted even by resort to consideration of the specification. *Straight Path*, however, is inapposite to the situation here. The premise to the principle articulated in that case is that the claim language has a plain meaning that leaves no genuine uncertainties on interpretive questions relevant to the case. Even then, the case indicates only that the specification plays a more limited role, and not that the specification would not be considered. *Id.*

Here, the language at issue does not have such facially clear meaning that leaves no genuine uncertainties on interpretive questions. For instance, on this record the term “media connectivity setting” is not a term of art with a well established conventional meaning. Also, *Straight Path* identifies two

exceptions to the principle articulated therein, one of which is the existence of a definition provided in the specification. *Id.* We have essentially such a definition in the specification for “media connectivity setting.” Ex. 1101, 11:38–48. Additionally, there is no plain meaning on how specific an “identification” has to be. The degree of specificity in question leaves genuine uncertainties on interpretive questions.

Claims 4 and 5

With respect to claims 4 and 5, Patent Owner acknowledges that ensuing device connectivity data is substantially similar to preceding device connectivity data except that it is associated with an ensuing device rather than a preceding device. PO Resp. 36. Patent Owner asserts all of the arguments it had raised previously in the context of a preceding device based on the contention that IP realm information associated with the device does not constitute the claimed media connectivity setting. *Id.* Those arguments, however, already have been discussed and rejected above, and need not be addressed again. Patent Owner also argues that an IP realm is not a device. *Id.* at 37. That argument also has been addressed above, and is misplaced because it is not necessary to meet any claim that an IP realm is itself a device. It is sufficient that an IP realm includes one or more devices that are identified by identification of the IP realm. Patent Owner further argues that Ejzak discloses only determining the IP realm for the next segment and not retrieving such information from anywhere. *Id.* at 38. The argument is unpersuasive, because Patent Owner does not address Petitioner’s reasoning based on Ejzak’s disclosure about provisioning of IP realm with respect to

media gateways. In that connection, we credit the testimony of Petitioner's witness, Mr. Bress, over the testimony of Patent Owner's witness, Mr. Akl, in part because Mr. Bress discusses and explains more of the disclosure of Ejzak.

Patent Owner's argument that it is possible to obtain the media connectivity setting of the ensuing device by requesting the ensuing device for such information (PO Resp. 38) is ineffective with respect to claim 4, which does not specify from where the information is retrieved. Retrieving information from the ensuing device nonetheless still is retrieving. With respect to claim 5 which requires retrieving the information from within the given media gateway, not the ensuing device, we have determined that Petitioner has not established that Ejzak necessarily discloses retrieving such information from within the storage of the given gateway.

Patent Owner's argument that the claim limitation of "retrieving ensuing device connectivity data for an ensuing device" would not have been regarded by one with ordinary skill in the art as an obvious variant of Ejzak's determining the IP realm for the next segment of the media path is not supported by sufficient reasoning and explanation directed to Ejzak's disclosure of provisioning IP realms of media gateways as identified and explained by Petitioner. Between the testimony of respective expert witnesses of Petitioner and Patent Owner, we credit the testimony of Mr. Bress, Petitioner's witness, over that of Mr. Akl, Patent Owner's witness. Mr. Bress's testimony, in our view, is more thorough, whereas Mr. Aky's testimony, in our view, focuses more on what a prior art

disclosure literally states without enough explanation as to the understanding by one with ordinary skill in the art of the teachings associated with that language.

Patent Owner argues that Petitioner does not point to any disclosure in Ejzak to indicate that the ALG includes a memory. PO Resp. 41. That is incorrect. Petitioner quotes text from ¶ 82 of Ejzak: “The ALG may keep information about which of the four cases it selected for handling of BG bypass.” Pet. 44. In any event, whether Ejzak expressly discloses that its ALG includes a memory is inconsequential to Petitioner’s reasoning regarding claims 4 and 5.

First, claim 4 does not require a specific location for memory. Second, as indicated by Petitioner (Reply 21), its reasoning is not that because Ejzak discloses a memory, it also discloses a particular type of data in that memory. Rather, Petitioner’s position is that a person of ordinary skill in the art would have understood from Ejzak that provisioning information for the media gateway would necessarily be stored in memory, and specifically in some form of memory on the ALG. Pet. 45. Third, Petitioner argues that it would have been obvious to store ensuing device connectivity data in a memory within the ALG. Pet. 44–45.

Patent Owner also argues that Petitioner’s witness, Mr. Bress, equivocated on whether Ejzak’s ALG is a device. PO Resp. 39–40. We have reviewed the pertinent testimony and do not see equivocation by Mr. Bress. Patent Owner’s argument is unpersuasive.

As is noted by Petitioner (Reply 19–20), the alleged equivocation, when considered in context, is not equivocation at all. Rather, the testimony relates to a separate topic, i.e., whether the ALG and associated BG in Ejzak could be a single physical device or must be two separate devices. In that regard, according to Mr. Bress, Ejzak describes implementing the ALG and associated BG in many different ways including within a single physical device. Ex. 2004, 85:11–23. Patent Owner also identifies no testimony of its own witness, Mr. Akl, to the effect that Ejzak’s ALG is not a device.

Claim 22

Patent Owner argues that Ejzak does not disclose “trunks” of any sort and that none of Petitioner’s evidence purports to disclose “*trunks being capable of having different associated media connectivity settings.*” PO. Resp. 48–49. But explicit disclosure is not the pertinent test. The same literal words as recited in a claim need not be mentioned in any prior art reference so long as the subject matter of what is claimed is addressed and accounted for by sufficient and persuasive reasoning, which is the case here.

Patent Owner further argues that there is no disclosure in any cited reference that refers to the feature of having trunk lines associated with different media connectivity settings, particularly where no media connectivity setting is disclosed. PO Resp. 49. The argument is misplaced and unpersuasive. We have rejected Patent Owner’s contention regarding what constitutes a media connectivity setting. Patent Owner does not explain why, based on our construction of media connectivity setting that

was stated in the initial decision, two trunk lines connecting to different networks do not have an association with different media connectivity settings. Patent Owner is focused on finding the exact same words in the prior art rather than finding the subject matter of what is claimed, as Petitioner has done and explained. Furthermore, claim 22 requires only that the input and output trunks “being capable of” having different associated media connectivity settings, rather than actually having different associated media connectivity settings. Patent Owner also does not explain why the connections in Ejzak are incapable of being made to different networks, or why it would not have been obvious to one with ordinary skill in the art that the connections in Ejzak are capable of being made to different networks.

F. Patent Owner’s Motion to Exclude Evidence

Patent Owner filed a Motion to Exclude Evidence, seeking to exclude Exhibits 1134–1137. Paper 26 (“Mot.”). Petitioner filed an Opposition. Paper 28 (“Opp.”). Patent Owner filed a Reply. Paper 30 (“PO Reply on Exclude”).

1. Exhibits 1134–1136

Exhibits 1134–1136 are claim interpretation documents from related district court action in the Eastern District of Texas between the parties and involving the ’640 patent. Specifically, Exhibit 1134 is Patent Owner’s “Opening Claim Construction Brief” before the district court; Exhibit 1135 is Patent Owner’s “Reply Claim Construction Brief” before the district court; and Exhibit 1136 is the district court’s “Claim Construction memorandum and Order.”

According to Patent Owner, these documents are irrelevant because in this proceeding Patent Owner has proposed the construction of a phrase that is different from those which were construed in the district court action. Mot. 2–5. Patent Owner explains that in this proceeding it seeks to have construed the phrase “at least one media connectivity setting identifying one or more other devices,” whereas the term at issue in the district court action was “media connectivity settings.” *Id.* at 3. The argument is unpersuasive. First, what terms the Board construes are not limited by what Patent Owner proposes that the Board construes. Indeed, in the initial decision, we already construed “media connectivity setting.” Second, the phrase Patent Owner seeks to have construed includes the term “media connectivity setting.” The district court’s determination on “media connectivity settings” and the parties’ arguments to the district court in that regard are not irrelevant.

Also according to Patent Owner, because the rule of broadest reasonable interpretation does not apply in district courts, the claim construction documents from the district court action are irrelevant. Mot. 5–6. We disagree. Although the rule of broadest reasonable interpretation does not apply in district courts actions, it does not follow that the claim construction documents from the district court action are irrelevant. For instance, it is not irrelevant whether Patent Owner is urging a claim construction here that is even more restrictive than that it had urged before

the district court.¹³ Also, that the Board applies a different claim construction standard than does the district court does not mean a district court's claim interpretation of the same term is irrelevant. The District Court's construction has value by possibly providing contrast.

Further according to Patent Owner, the claim construction documents from the district court action should be excluded because they confuse the claim construction issues in the present proceeding. Mot. 6–7. Patent Owner explains that at issue in this proceeding is the meaning of the phrase it proposes to have construed, i.e., “at least one media connectivity setting identifying one or more other devices,” not “media connectivity setting.” *Id.* at 7. As discussed above, however, the phrase proposed by Patent Owner to be construed includes the term “media connectivity setting” the meaning of which also is at issue in this proceeding. The meaning of the larger encompassing phrase is not independent of or entirely separate from the meaning of “media connectivity setting.” We are not persuaded that submission of Exhibits 1134–1136 confuses claim construction in this case.

For the foregoing reasons, with respect to Exhibits 1134–1136, Patent Owner's Motion to Exclude is *denied*.

2. Exhibit 1137

With regard to Exhibit 1037, Patent Owner states:

¹³ We have not concluded that Patent Owner is urging a construction in this proceeding that is narrower than what it had contended before the district court. Patent Owner's focus in this proceeding is on the entire phrase rather than just the term “media connectivity setting.”

Exhibit 1137 is an incomplete transcript of the July 10, 2015 Deposition of Nicholas Larkin [a co-inventor of the '640 patent] in the District Court Litigation. *See generally* Ex. 1137 [Larkin Transcript]. Petitioner relies on Exhibit 1137 regarding Mr. Larkin's understanding of (1) "connectivity data"; (2) "bypass mode data" (as it relates to Claim 8); and (3) "Distributed SBCs." *See* Paper 23 [Reply] at 20 and FN 9. Patent Owner timely objected to this Exhibit on July 14, 2016. *See* Paper 24 [Patent Owner's Objections] at 1–6. Ex. 1137 should be excluded as irrelevant under F.R.E. 402 and excluded under F.R.E. 403 for confusing the issues.

Mot. 7–8.

With regard to Mr. Larkin's testimony on internet realm information as "connectivity data," Patent Owner asserts that it should be excluded because it unfairly prejudices the Patent Owner. Mot. 7–8. In that regard, Patent Owner explains that the portions produced by Petitioner in Exhibit 1137 are incomplete and additionally "obfuscated by redactions." *Id.* at 8. Patent Owner also asserts:

Critically, the transcript does not provide important context, such as: what document Mr. Larkin is being questioned about; whether or not Mr. Larkin is being [questioned] about "IP Realms" in the context of the Ejzak referenced (Ex. 1103 in this proceeding); whether or not Mr. Larkin has ever reviewed the Ejzak reference; whether or not Mr. Larkin is talking about "IP Realms" in the context of the '640 Patent claim language; etc. It is not even clear from what little is provided that Mr. Larkin knows that he is being asked specifically about "internet realms." *See* Ex. 1137 [Larkin Transcript] at 85 ("What about internet realm **or something like that?**") (emphasis added).

Id. at 8–9. The above-noted arguments of Patent Owner do not justify, on the basis of prejudice, exclusion of the evidence sought to be excluded. To

the extent that any or all of the points made above by Patent Owner undermine the persuasiveness of the evidence relied on by Petitioner, and would prejudice Patent Owner if not articulated, Patent Owner had the opportunity to request authorization to file a sur-reply with or without additional clarifying testimony from Mr. Larkin, a co-inventor of the '640 patent. Accordingly, with respect to those portions of Exhibit 1137 that include Mr. Larkin's testimony regarding internet realm information as connectivity data, Patent Owner's Motion to Exclude is *denied*.¹⁴

With regard to Mr. Larkin's testimony regarding "bypass mode data" and "Distributed SBCs," Patent Owner argues it is irrelevant as not responsive to any issue presented in the Patent Owner Response. Mot. 9. Citing 37 C.F.R. § 42.23(b), Patent Owner states: "a reply may only respond to arguments raised in corresponding opposition or patent owner response." *Id.* This subject is not a matter addressable by way of a motion to exclude. In an Order entered January 29, 2016, we instructed the parties "not to use the Motion to Exclude for any purpose other than admissibility issues under the Federal Rules of Evidence," and stated: "[i]f an issue arises with regard to a paper, such as a reply, being out of scope for that paper, the parties shall contact the Board, in a timely manner, to raise the matter." Paper 15, 2. Patent Owner is not in compliance with that Order.

¹⁴ In any event, our claim construction does not change whether or not the testimony of Mr. Larkin regarding internet realm information as "connectivity data" is considered.

Patent Owner also asserts that because the testimony regarding “bypass mode data” and “Distributed SBCs” has nothing to do with any argument presented by Patent Owner in the Patent Owner Response, it confuses the issues in this proceeding and should be excluded under Rule 403 of the Federal Rules of Evidence. Mot. 10. We are not confused. It is clear that Patent Owner has not argued in its Patent Owner Response either the additional limitation recited in claim 8 or that the subject matter of any claim excludes distributed SBCs. During oral argument, counsel for Patent Owner acknowledged that Patent Owner in its Patent Owner Response did not challenge the articulation in the initial decision that each pair of ALG and associated BG in Ejzak constitutes a media gateway. Tr. 48:7–18.

Accordingly, with respect to those portions of Exhibit 1137 that include Mr. Larkin’s testimony regarding “bypass mode data” of claim 8 and “Distributed SBCs,” Patent Owner’s Motion to Exclude is *denied*.¹⁵

In summary, all aspects of the Motion to Exclude with regard to Exhibit 1137 are deficient. With respect to Exhibit 1137, Patent Owner’s Motion to Exclude is *denied*.

III. CONCLUSION

Petitioner has shown, by a preponderance of the evidence, that claims 2–5, 8, 9, 15–18, and 22–24 are unpatentable as obvious over Ejzak and Cisco.

¹⁵ In any event, our conclusion regarding claim 8 and our finding that each pair of ALG and BG in Ejzak constitutes a media gateway does not change whether or not Exhibit 1137 is considered.

Petitioner has shown, by a preponderance of the evidence, that claims 2–5, 8, 9, 15–18, and 22–24 are unpatentable as obvious over Ejzak and Intel.

Petitioner has not shown that claim 10 is unpatentable over either (1) Ejzak and Cisco, or (2) Ejzak and Intel.

IV. ORDER

It is

ORDERED that claims 2–5, 8, 9, 15–18, and 22–24 of the '640 patent are unpatentable;

FURTHER ORDERED that claim 10 of the '640 has not been shown to be unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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Patent 8,687,640 B2

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