

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

MULTIMEDIA CONTENT MANAGEMENT LLC,
Patent Owner.

Case IPR2017-01934
Patent 8,799,468 B2

Before PATRICK M. BOUCHER, MICHELLE N. WORMMEESTER, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Unified Patents Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) pursuant to 35 U.S.C. §§ 311–319 to institute an *inter partes* review of claims 1–5, 9, 11–13, 19, 23–27, and 32–34 of U.S. Patent No. 8,799,468 B2 (“the ’468 patent”). Multimedia Content Management LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). Applying the standard set forth in 35 U.S.C. § 314(a), which requires that Petitioner demonstrate a reasonable likelihood that it would prevail with respect to at least one challenged claim, we deny the Petition.

I. BACKGROUND

A. *The ’468 Patent*

The ’468 patent is directed to regulating access and managing distribution of content from a service provider network to a subscriber site. Ex. 1001, Abstract. A Service Preference Architecture (SPA) includes an Internet Control Point (ICP) connected to network 52. *Id.*, Fig. 1, 4:54–57. Communication Gateways (CGs), or “gateway units,” are also connected to network 52. *Id.*, Fig. 1, 4:64–5:3. Figure 1, reproduced below, illustrates an exemplary embodiment of network 52.

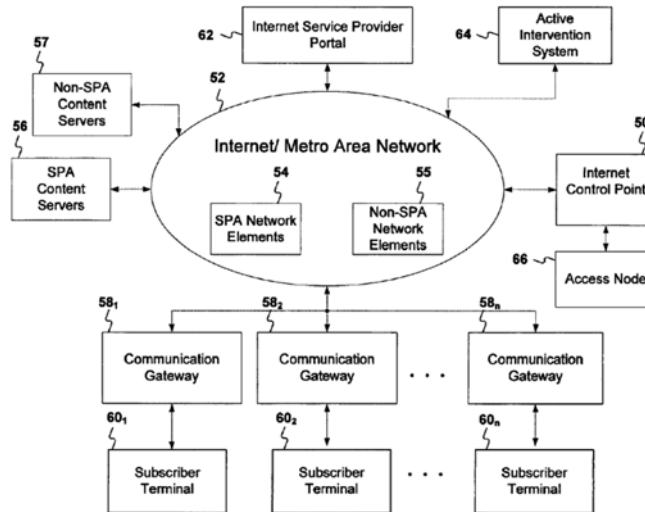


Figure 1

Figure 1 shows Internet/Metro Area Network 52 is comprised of SPA Network Elements 54 and Non-SPA Network Elements 55. *Id.*, Fig. 1, 4:57–63. Network 52 connects Internet Control Point 50 and Communication Gateways 58₁–58_n. *Id.*, Fig. 1, 4:64–5:3. Each of Communication Gateways 58₁–58_n is connected to a respective one of Subscriber Terminals 60₁–60_n. *Id.*, Fig. 1, 4:64–5:3.

Internet Control Point 50 generates and issues instructions to the CGs. *Id.*, 5:24–33. These instructions control whether the CGs may access content over the network, for example from SPA Content Servers 56 or Non-SPA Content Servers 57. *Id.*

B. Illustrative Claim

Independent claim 1 of the '468 patent is illustrative of the claims at issue:

1. A system for regulating access to a service provider network, the system comprising:
 - a controller node coupled to the service provider network, the controller node comprising:

a first processor configured to generate controller instructions, and
first network interface configured to transmit the controller instructions over the service provider network to a plurality of gateway units; and
the plurality of gateway units, each of the plurality of gateway units comprising:
a user interface configured to receive user-entered content requests for the service provider network;
a second network interface coupled to the service provider network and configured to receive the controller instructions from the controller node through the service provider network; and
a second processor coupled to the user interface and the second network interface, wherein the second processor is configured to selectively transmit the content requests to the service provider network in accordance with the controller instructions, and transfer received content data responsive to the transmitted content requests from the service provider network via the second network interface.

Ex. 1001, 18:30–54.

C. Evidence Relied Upon

Petitioner relies on the following references:

Reference		Date	Exhibit
Freund	U.S. Patent No. 5,987,611	issued Nov. 16, 1999	Ex. 1004
Spusta et al.	U.S. Patent Application Publication No. 2002/0032870 A1	published Mar. 14, 2002	Ex. 1005

Petitioner also relies on the Declaration of Norman Hutchinson, Ph.D.

Ex. 1003.

D. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–5, 9, 11–13, 19, 23–27, and 32–34 under 35 U.S.C. § 103(a) based on the following references. Pet. 6.

Reference	Claims
Freund	1–5, 9, 12, 19, 23–27, 33
Spusta	1–3, 11, 13, 23–25, 32, 34

E. Related Proceedings

Petitioner identifies the following now-closed proceedings as involving the '468 patent: (1) *Catonian IP Management, LLC v. Charter Communications, Inc. et al.*, Case No. 2:17-cv-00191 (E.D. Tex.); and (2) *Catonian IP Management, LLC v. Cequel Communications LLC et al.*, Case No. 2:17-cv-00190 (E.D. Tex.). Pet. 2.

II. ANALYSIS

A. Claim Construction

The Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142 (2016) (affirming applicability of broadest reasonable construction standard to *inter partes* review proceedings). Under the broadest reasonable interpretation standard, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). However, a “claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the

specification or prosecution history.” *CCS Fitness, Inc. v. Brunswick Corp. Eyeglasses*, 288 F.3d 1359, 1366–67 (Fed. Cir. 2002). “Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a special definition or other consideration, “limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Only terms which are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *See 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).

Petitioner proposes constructions for the following terms, each of which is recited in independent claims 1 and 23: “service provider network,” “controller instructions,” and “gateway unit.” Pet. 13–17. Patent Owner proposes constructions for the same terms, as well as “generate [controller instructions],” which is recited in claims 1 and 23. Prelim. Resp. 4–12. No term requires an express construction. We address Petitioner’s proposed construction of “service provider network” below in the context of how the prior art applies to the challenged claims.

B. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art with respect to the ’468 patent “would have had a bachelor’s degree in Computer Science, or related discipline, and two years of relevant experience and knowledge of regulating network access and designing such systems, TCP/IP-based networking as practiced in the Internet, routers, web proxies,

web caches, and web servers, and distributed systems and their advantages and management.” Pet. 12–13. Petitioner’s position is supported by the Declaration of Dr. Hutchinson. Ex. 1003 ¶ 21.

Patent Owner asserts that a person of ordinary skill in the art with respect to the ’468 patent “would have possessed the education, experience and training commensurate with a person with a bachelor’s degree in electrical engineering or computer science.” Prelim. Resp. 3. Patent Owner asserts a person of ordinary skill in the art “would have knowledge of access controls, network protocols and communications, including TCP/IP-based standards, software design, distributed systems, and network equipment configuration.” *Id.* Patent Owner’s position is supported by the Declaration of Joel R. Williams. Ex. 2001 ¶¶ 43–44.

The parties’ proposals are similar, although Petitioner proposes that a person of ordinary skill would possess more specific experience. Even under Petitioner’s articulation of the level of ordinary skill, with such particularized experience, we conclude that the Petition does not set forth a reasonable likelihood of prevailing. Accordingly, we adopt Petitioner’s proposed level of ordinary skill in the art for purposes of this decision.

C. Ground 1: Alleged Obviousness of Claims 1–5, 9, 12, 19, 23–27, and 33 over Freund

Freund discloses methods for monitoring access to an open network, such as a Wide Area Network (WAN) or the Internet. Ex. 1004, Abstract. Freund discloses monitoring and access filtering by a combination of client-based and centralized components. *Id.* Freund discloses an exemplary embodiment of this system in Figure 3A, which is reproduced below.

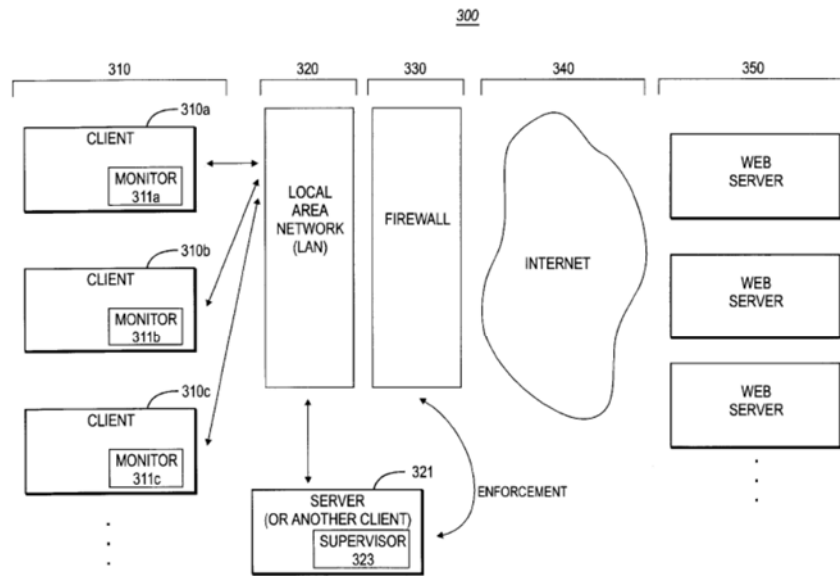


FIG. 3A

Figure 3A depicts multiple clients 310a, 310b, and 310c, connected to Local Area Network (LAN) 320. *Id.*, Fig. 3A, 14:52–59. LAN 320 is connected to firewall 330, which is connected to Internet 340. *Id.*, Fig. 3A, 15:1–11. Internet 340 is also connected to various web servers 350. *Id.*, 15:1–11. Users of clients 310 may request access to content on web servers 350. *Id.*, 15:1–11. Server 321, also connected to LAN 320, executes Supervisor 323, which independently verifies security access for each client, allowing or disallowing content requests made by each client. *Id.*

Petitioner contends Freund discloses “a gateway unit . . . configured to receive the controller instructions from the controller node through the service provider network.” Pet. 38–41. Specifically, Petitioner contends Freund discloses client 310 (the claimed “gateway unit”) comprising a personal computer or workstation, such as system 100. Pet. 38 (citing Ex. 1004, 14:55–57). System 100 contains a network interface 111 (the claimed “second network interface”) that is coupled to Internet 340. Pet.

38–39 (citing Ex. 1004, Fig. 3B, 21:57–64). Petitioner contends Internet 340 corresponds to the claimed “service provider network.” Pet. 28.

Petitioner further contends network interface 111 is coupled to LAN 320, which is also part of the claimed “service provider network.” *Id.* at 40. Petitioner asserts an ordinarily skilled artisan “would have considered LAN 320 to be part of the Internet 340, because, by definition, the Internet is merely the collection of all interconnected networks, which includes LAN 320.” *Id.* at 31; *see also* Ex. 1003 ¶ 102. Petitioner asserts network interface 111 receives controller instructions over its connection to Internet 340. *Id.* at 39–40. Petitioner asserts network interface 111 is configured to receive rules (the claimed “controller instructions”) “from the controller node through the service provider network,” as recited in claim 1. *Id.*

Even if we accepted (i) Petitioner’s proposed construction of “service provider network” to mean “a network over which content is delivered” and (ii) Petitioner’s contention that Freund’s teaching of Internet 340 corresponds to the claimed “service provider network,” Petitioner’s reasoning is not persuasive. Contrary to Petitioner’s assertion, Freund does not disclose client 310 receiving rules (the asserted “controller instructions”) over Internet 340 (the asserted “service provider network”). Instead, Freund discloses supervisor 323 is connected to client 310 by LAN 320. Ex. 1004, Fig. 3A. Internet 340 is separated from LAN 320 by firewall 330. *Id.*, 15:1–11. Accordingly, client 310 receives rules from supervisor 323 over LAN 320, not Internet 340. *Id.*, 14:52–67.

Petitioner’s assertion that LAN 320 is “part of the Internet 340” is also not persuasive. Petitioner’s expert, Dr. Hutchinson, testifies in support of

Petitioner's assertion that "the Internet is merely the collection of all interconnected networks, which includes LAN 320." Ex. 1003 ¶ 102.

Even viewing this evidence in the light most favorable to Petitioner, we find this testimony unpersuasive because Dr. Hutchinson does not account for the presence of firewall 330. *See id.* Instead, we are persuaded by the contrary testimony of Patent Owner's expert, who notes that Freund discloses LAN 320 is separated from Internet 340 by firewall 330. Ex. 2001 ¶ 86 (citing Ex. 1004, Fig. 3A); *see also* Ex. 1004, 15:1–11. Freund discloses firewall 330 may be implemented in a "conventional manner" for monitoring communications between clients 310 and with various web servers 350. Ex. 1004, 15:1–11. Freund also discloses that firewalls are "designed to keep outside hackers from penetrating the LAN." *Id.*, 2:18–19. "Firewalls are applications that intercept the data traffic at the gateway to a wide area network (WAN) and try to check the data packets . . . being exchanged for suspicious or unwanted activities." *Id.*, 2:19–23. Freund explains that firewalls are typically used to prevent a device from accessing the Internet unless it satisfies some criteria. *Id.*, 2:15–30, 5:6–30.

Thus, an ordinarily skilled artisan would not consider LAN 320 to be part of Internet 340. Instead, we agree with Patent Owner's expert that an ordinarily skilled artisan would consider LAN 320 to be separated from Internet 340 by firewall 330. *See* Ex. 2001 ¶¶ 86, 120–126. As such, Petitioner's reasoning that LAN 320 is "part of Internet 340" and, therefore, part of the claimed "service provider network," is unpersuasive.

Accordingly, even accepting Petitioner's proposed construction of "service provider network" and Petitioner's contention that Internet 340 satisfies this limitation, Petitioner has failed to demonstrate sufficiently that

Freund teaches “a gateway unit . . . configured to receive the controller instructions from the controller node through the service provider network.”

Petitioner also argues that if LAN 320 is not part of Internet 340, an ordinarily skilled artisan would have been motivated to connect supervisor 323 to Internet 340 in situations where the system is used by an organization with a network implemented in widely dispersed geographic locations, each with its own LAN. Pet. 31. Dr. Hutchinson’s testimony supports this assertion. Ex. 1003 ¶ 103. Petitioner asserts that in such a system it would have been obvious to transmit rules from a central supervisor 323 over the Internet to clients at each of these widely dispersed locations. *Id.*

Petitioner’s reasoning is not persuasive. Petitioner discusses Freund’s embodiment disclosed in Figure 3A, where supervisor 323 is connected to client 310 over LAN 320, which is separated from Internet 340 by firewall 330. However, Freund also discloses an embodiment where the supervisor node (supervisor 373) is located remotely from client 310. Ex. 1004, Fig. 3B. In this “ISP-based embodiment,” client 310 is connected to decentralized installations called Points-of-Presence (POPs), such as POP 320a. *Id.*, 21:57–60. Client 310 may be connected to POP 320a directly or through a LAN. *Id.*, 21:60–64. POP 320a is connected to ISP Authentication Server 371 and ISP Supervisor Server 372 over Internet 340. *Id.* ISP Supervisor Server 372 executes the supervisor component 373. *Id.*

In this embodiment, supervisor 373 provides rules to POP 320, which in turn monitors content requests submitted by client 310. *Id.*, 22:7–21. Notably, contrary to the hypothetical suggested by Petitioner, client 310 does not receive rules from supervisor 373 over Internet 340. *Id.* Instead, POP 320a receives rules from supervisor 373 over Internet 340. *Id.* POP

320a uses these rules to manage the access to content granted to client 310. *Id.* Thus, Freund discloses an embodiment with widely dispersed geographic locations, but does not disclose client 310 (the “gateway unit”) receiving rules from the supervisor node over Internet 340 in this embodiment (“configured to receive the controller instructions from the controller node through the service provider network”). Dr. Hutchinson does not address this alternate embodiment, which operates differently than the hypothetical system proposed by Petitioner. *See* Ex. 1003 ¶¶ 102–103. To the contrary, Patent Owner’s expert, Mr. Williams, testifies that to the extent an organization has multiple premise locations where each contains a LAN, none of these locations contain a “service provider network” over which the “gateway unit” receives “controller instructions,” as claimed. Ex. 2001 ¶¶ 114–115. To the extent the opposing testimony of Dr. Hutchinson and Mr. Williams identifies a genuine issue of material fact, we have viewed that issue in the light most favorable to Petitioner. Nevertheless, because of the deficiencies in Dr. Hutchinson’s testimony, we give greater weight to the testimony of Mr. Williams.

Accordingly, Petitioner’s argument that it would have been obvious in a system with geographically dispersed clients and supervisors to modify Freund’s teachings such that client 310 would receive rules from supervisor 323 over Internet 340 is unpersuasive because it is not supported by persuasive evidence and is contrary to the teachings of Freund.

For these reasons, we conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 1. Petitioner relies on the same rationale for the commensurate limitations in independent claim 23. *See* Pet. 65. We conclude that Petitioner has not

demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 23 for the same reasons. We also conclude Petitioner has not demonstrated a reasonable likelihood of prevailing on dependent claims 2–5, 9, 12, 19, 24–27, and 33 for the same reasons.

D. Ground 2: Alleged Obviousness of Claims 1–3, 11, 13, 23–25, 32, and 34 over Spusta

Spusta discloses a web browser for limiting access to content on the Internet. Ex. 1005, Abstract. Spusta discloses restricting the web browser's access to sites that are listed in either a local database or a central database, each of which contain entries for authorized websites. *Id.*

Spusta discloses a user initiates navigation by entering a URL into a browser window. Ex. 1005, Fig. 4, ¶ 62. The URL is captured and loaded into a hidden browser, which is not accessible to the end user. *Id.* The URL is checked for hidden redirection and a final URL is returned. *Id.*, Fig. 4, ¶¶ 62–63. The final URL is parsed to identify the relevant portions for comparison against the local security database. *Id.*, Fig. 4, ¶¶ 63–64. If the relevant portion of the URL is found in the security database, the website is “approved” and the user is granted access to the site. *Id.* ¶¶ 64–68.

However, if the URL is not found, the user is not granted access to the site. *Id.* ¶¶ 66–67.

Petitioner contends Spusta discloses “wherein the second processor is configured to selectively transmit the content requests to the service provider network in accordance with the controller instructions.” Pet. 90–93.

Specifically, Petitioner contends Spusta discloses a navigation process that a user initiates by typing a URL into a browser. *Id.* at 90 (citing Ex. 1005 ¶ 62). The URL is parsed into an appropriate format for processing. *Id.* at

91 (citing Ex. 1005 ¶¶ 62–64). Petitioner contends Spusta discloses consulting controller instructions to determine whether to permit the user to access the requested URL. *Id.* at 91–92 (citing Ex. 1005, Fig. 5, ¶¶ 65, 67). Petitioner asserts an additional security level check is performed in accordance with the controller instructions. *Id.* at 92 (citing Ex. 1005 ¶ 70).

Petitioner has not demonstrated sufficiently that Spusta discloses “wherein the second processor is configured to selectively transmit the content requests to the service provider network in accordance with the controller instructions.” Petitioner’s contention is unpersuasive because Petitioner has not sufficiently established that Spusta discloses “selectively transmit[ing]” the content request based on the controller instructions. *See* Pet. 90–93. The testimony of Petitioner’s expert, Dr. Hutchinson, does not specifically address the “selectively transmit[ing]” limitation. *See* Ex. 1003 ¶¶ 133–134.

As explained above, Spusta discloses a hidden browser, which is not accessible to the end user, performs a security check on a submitted URL. Ex. 1005, Fig. 4, ¶ 62. The URL is compared against the local and central security databases. *Id.*, Fig. 4, ¶¶ 63–64. If the URL is found in either database, the website is “approved” and the user is granted access to the site. *Id.* ¶¶ 64–68. However, if the URL is not found in either database, the user is not granted access to the site. *Id.* ¶¶ 66–67.

Spusta, therefore, does not disclose *selectively* transmitting the content request to the service provider network in accordance with the controller instructions. Instead, as Patent Owner’s expert, Mr. Williams, testifies, Spusta discloses that the hidden browser *always* transmits the content request, but the content received by the hidden browser is selectively

displayed to the user in accordance with the security check performed by the hidden browser. Ex. 2001 ¶¶ 161–162; Ex. 1005 ¶¶ 64–70. Accordingly, Petitioner has failed to establish that Spusta discloses “wherein the second processor is configured to selectively transmit the content requests to the service provider network in accordance with the controller instructions,” as recited in claim 1.

For these reasons, we conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 1. Petitioner relies on the same rationale for the commensurate limitations in independent claim 23. *See* Pet. 104. We conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing on its challenge of independent claim 23 for the same reasons. We also conclude Petitioner has not demonstrated a reasonable likelihood of prevailing on dependent claims 2, 3, 11, 13, 24, 25, 32, and 34 for the same reasons.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

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