

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

UNILOC LUXEMBOURG S.A.,
Patent Owner.

Case IPR2017-02080
Patent 8,724,622 B2

Before JENNIFER S. BISK, MIRIAM L. QUINN, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

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

I. INTRODUCTION

Google, Inc., now known as Google LLC¹ (“Petitioner”), filed a Petition requesting *inter partes* review of claims 3–23 of U.S. Patent No. 8,724,622 B2 (Ex. 1001, “the ’622 patent”). Paper 2 (“Pet.”). Uniloc Luxembourg S.A. (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). With authorization from the Board, Petitioner additionally filed a Reply to Patent Owner’s Preliminary Response. Paper 9.

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons given below, we determine after having considered the information presented in the Petition, the Preliminary Response, and the Reply that Petitioner has not established a reasonable likelihood of prevailing as to any of the challenged claims of the ’622 patent, and we deny institution of *inter partes* review.

II. BACKGROUND

A. *Related Matters*

Concurrently with the instant Petition, Petitioner additionally filed a petition requesting *inter partes* review of claims 1, 2, and 24–39 of the ’622 patent (Case IPR2017-02081). IPR2017-02081, Paper 2. In that case, as in the instant case, Petitioner identifies Motorola Mobility LLC, Huawei Device Co., Ltd., Huawei Device USA, Inc., Huawei Investment & Holding

¹ See Paper 6, 2.

Co., Ltd., Huawei Technologies Co., Ltd., and Huawei Device (Dongguan) Co., Ltd. as additional real parties in interest. See Pet. 1; IPR2017-02081, Paper 2 at 1. The '622 patent also has been the subject of petitions for *inter partes* review in Cases IPR2017-00223, IPR2017-00224, IPR2017-01804, and IPR2017-01805 (filed by Apple Inc.), all of which were denied; Cases IPR2017-01667 and IPR2017-01668 (filed by Facebook and WhatsApp), in which we instituted *inter partes* review on January 19, 2018; Cases IPR2017-01797 and IPR2017-01798 (filed by Samsung Electronics America, Inc.), in which we instituted *inter partes* review on February 6, 2018; and Case IPR2017-02090 (filed by Huawei Device Co., Ltd. and LG Electronics, Inc.), in which we instituted *inter partes* review and granted a motion for joinder with Case IPR2017-01667 on March 6, 2018. Apple Inc. additionally has filed petitions for *inter partes* review of certain claims of the '622 patent in Cases IPR2018-00579 and IPR2018-00580, accompanied by motions for joinder with Cases IPR2017-01667 and IPR2017-01668, respectively.

The parties additionally indicate that the '622 patent is involved in *Uniloc USA, Inc. v. Google, Inc.*, No. 2:17-cv-00214 (E.D. Tex.), *Uniloc USA, Inc. v. Google, Inc.*, No. 2:17-cv-00224 (E.D. Tex.), *Uniloc USA, Inc. v. Google, Inc.*, No. 2:17-cv-00231 (E.D. Tex.), *Uniloc USA, Inc. v. Motorola Mobility LLC*, No. 2:16-cv-00992 (E.D. Tex.), and *Uniloc USA, Inc. v. Huawei Device USA, Inc.*, No. 2:16-cv-00994 (E.D. Tex.), among numerous other actions in the United States District Court for the Eastern District of Texas. Pet. 1–3; Paper 4, 2.

B. The '622 Patent

The '622 patent, titled “System and Method for Instant VoIP Messaging,” relates to Internet telephony, and more particularly, to instant voice over IP (“VoIP”) messaging over an IP network, such as the Internet. Ex. 1001, [54], 1:18–22. The '622 patent acknowledges that “[v]oice messaging” and “instant text messaging” in both the VoIP and public switched telephone network environments were previously known. *Id.* at 2:22–46. In prior art instant text messaging systems, according to the '622 patent, a server would present a user of a client terminal with a “list of persons who are currently ‘online’ and ready to receive text messages,” the user would “select one or more” recipients and type the message, and the server would immediately send the message to the respective client terminals. *Id.* at 2:34–46. According to the '622 patent, however, “there is still a need in the art for . . . a system and method for providing instant VoIP messaging over an IP network,” such as the Internet. *Id.* at 1:18–22, 2:47–59, 6:47–49.

In one embodiment, the '622 patent discloses local instant voice messaging (“IVM”) system 200, depicted in Figure 2 below. Ex. 1001, 6:22–24.

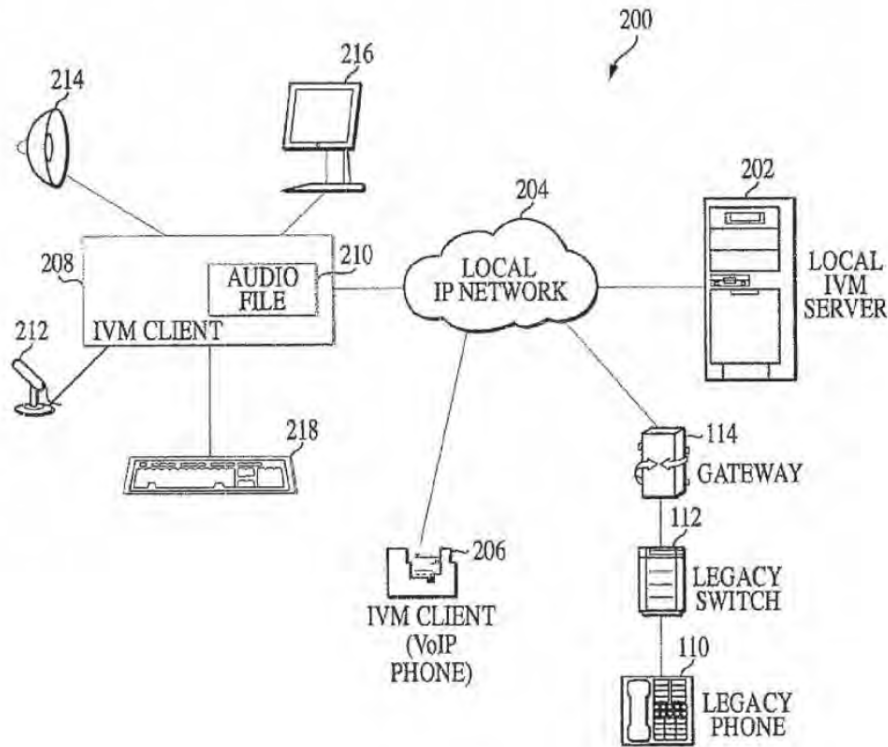


FIG. 2

As illustrated in Figure 2, local packet-switched IP network 204, which may be a local area network (“LAN”), “interconnects” IVM clients 206, 208 and legacy telephone 110 to local IVM server 202. *Id.* at 6:50–7:2; *see id.* at 7:23–24, 7:61–65. Local IVM server 202 enables instant voice messaging functionality over network 204. *Id.* at 7:61–65.

In “record mode,” IVM client 208 “displays a list of one or more IVM recipients,” provided and stored by local IVM server 202, and the user selects recipients from the list. Ex. 1001, 7:57–59, 7:65–8:4. IVM client 208 then transmits the selections to IVM server 202 and “records the user’s speech into . . . digitized audio file 210 (i.e., an instant voice message).” *Id.* at 8:4–11.

When the recording is complete, IVM client 208 transmits audio file 210 to local IVM server 202, which delivers the message to the selected

recipients via local IP network 204. Ex. 1001, 8:15–29. “[O]nly the available IVM recipients, currently connected to . . . IVM server 202, will receive the instant voice message.” *Id.* at 8:33–34. IVM server 202 “temporarily saves the instant voice message” for any IVM client that is “not currently connected to . . . local IVM server 202 (i.e., is unavailable)” and “delivers it . . . when the IVM client connects to . . . local IVM server 202 (i.e., is available).” *Id.* at 8:34–39; *see id.* at 9:17–21. Upon receiving the instant voice message, the recipients can audibly play the message. *Id.* at 8:29–32.

C. Illustrative Claim

Independent claim 3 is illustrative of the challenged claims and is reproduced below.

3. A system comprising:
 - a network interface connected to a packet-switched network;
 - a messaging system communicating with a plurality of instant voice message client systems via the network interface; and
 - a communication platform system maintaining connection information for each of the plurality of instant voice message client systems indicating whether there is a current connection to each of the plurality of instant voice message client systems,wherein the messaging system receives an instant voice message from one of the plurality of instant voice message client systems, and
wherein the instant voice message includes an object field including a digitized audio file.

Ex. 1001, 24:12–27.

D. Asserted Grounds of Unpatentability

Petitioner asserts five grounds of unpatentability (Pet. 6):

Challenged Claim(s)	Basis	Reference(s)
3–8, 11, 13, 18–21	§ 102(b)	Zydney ²
3–8, 11, 13, 18–23	§ 103(a)	Zydney and Enete ³
10, 14–17	§ 103(a)	Zydney, Enete, and Stern ⁴
12	§ 103(a)	Zydney, Enete, and Coussement ⁵
9	§ 103(a)	Zydney, Enete, and RFC2131 ⁶

Petitioner also relies on a Declaration of Paul S. Min, Ph.D., filed as Exhibit 1003.

III. DISCUSSION

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the

² Zydney et al., WO 01/11824 A2, published Feb. 15, 2001 (Ex. 1005).

³ Enete et al., US 2003/0208543 A1, published Nov. 6, 2003 (Ex. 1009).

⁴ Stern, WO 98/47252, published Oct. 22, 1998 (Ex. 1006).

⁵ Coussement, US 2002/0055967 A1, published May 9, 2002 (Ex. 1008).

⁶ R. Droms, “Dynamic Host Configuration Protocol,” *Request for Comments 2131, Standards Track*, Internet Engineering Task Force Network Working Group, 1–45 (March 1997) (Ex. 1012).

patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard as the claim interpretation standard to be applied in *inter partes* reviews). 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 in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). We note that only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Neither Petitioner nor Patent Owner proffers a construction for any claim term. Pet. 10; Prelim. Resp. 19. Based on our review of the record and the dispositive issues in our determination of whether to institute *inter partes* review, we determine that no claim terms require an express construction to resolve the issues presented by the patentability challenges.

B. Analysis of Asserted Grounds of Unpatentability

1. Principles of Law

A claim is anticipated under 35 U.S.C. § 102 “only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Moreover,

unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of

the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1371 (Fed. Cir. 2008); *accord In re Arkley*, 455 F.2d 586, 587 (CCPA 1972).

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art;⁷ and (4) objective evidence of nonobviousness, i.e., secondary considerations.⁸ *Graham v. John Deere Co.*,

⁷ Petitioner’s declarant, Dr. Min, opines that a person of ordinary skill in the art of the ’622 patent “would have had at least an undergraduate degree in computer science, electrical engineering, or a related field, and at least two years of experience in the field of telecommunications devices and systems, or an equivalent advanced education in the field of telecommunications systems.” Ex. 1003 ¶ 24. Patent Owner’s declarant, William Easttom II, proffers substantially the same opinion as to the educational background of the person of ordinary skill in the art, but opines that such a person’s post-educational experience would be “in computer programming and software development, including the development of software for communication with other computers over a network.” Ex. 2001 (Easttom Declaration) ¶ 14. To the extent there is any substantive difference between the declarants’ assessments, we adopt Dr. Min’s assessment for purposes of this Decision.

⁸ Patent Owner does not contend in its Preliminary Response that any such

383 U.S. 1, 17–18 (1966). “To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). We analyze the asserted grounds with the principles stated above in mind.

2. *Ground 1: Anticipation by Zydney*
(*Claims 3–8, 11, 13, and 18–21*)

a. *Overview of Zydney*

Zydney, titled “Method and System for Voice Exchange and Voice Distribution,” relates to packet communication systems that provide for voice exchange and voice distribution between users of computer networks. Ex. 1005, [54], [57], 1:4–5. While acknowledging that e-mail and instant messaging systems were well-known text-based communication systems utilized by users of online services and that it was possible to attach files for the transfer of non-text formats via those systems, Zydney states that the latter technique “lack[ed] a method for convenient recording, storing, exchanging, responding and listening to voices between one or more parties, independent of whether or not they are logged in to their network.” *Id.* at 1:7–17. Zydney thus describes a method in which “voice containers”—i.e., “container object[s] that . . . contain[] voice data or voice data and voice data properties”—can be “stored, transcoded and routed to the appropriate recipients instantaneously or stored for later delivery.” *Id.* at 1:19–22; 12:6–8. Figure 1 of Zydney is reproduced below.

secondary considerations are present.

FIG. 1

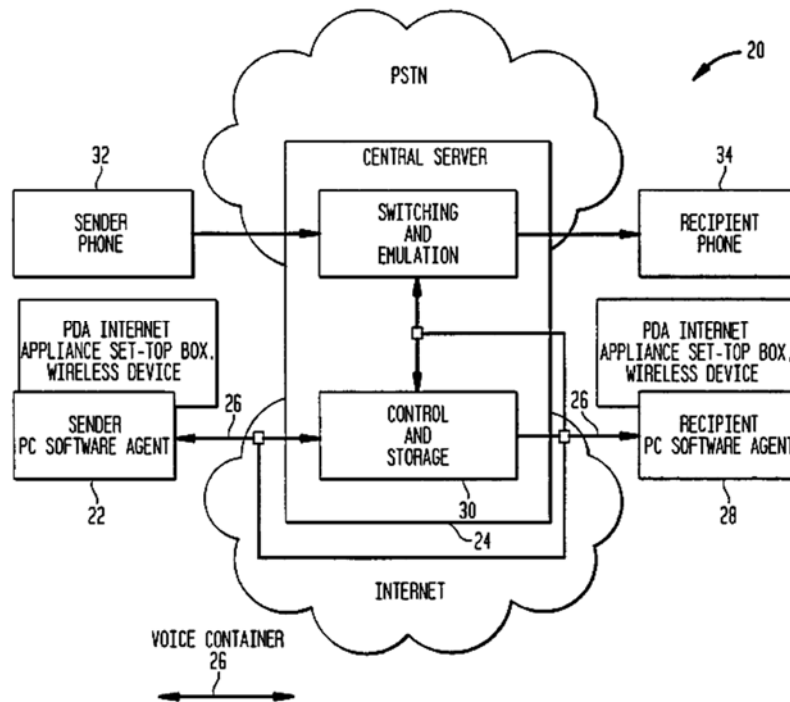


Figure 1, above, illustrates a high-level functional block diagram of Zydney's system for voice exchange and voice distribution. *Id.* at 10:19–20. Referring to Figure 1, system 20 allows software agent 22, with a user interface, in conjunction with central server 24 to send messages using voice containers illustrated by transmission line 26 to another software agent 28, as well as to receive and store such messages, in a “pack and send” mode of operation. *Id.* at 10:20–11:1. Zydney explains that a pack and send mode of operation “is one in which the message is first acquired, compressed and then stored in a voice container 26 which is then sent to its destination(s).” *Id.* at 11:1–3. The system has the ability to store messages both locally and centrally at server 24 whenever the recipient is not available for a prescribed period. *Id.* at 11:3–6.

In the use of Zydney's system and method, the message originator selects one or more intended recipients from a list of names that have been previously entered into the software agent. Ex. 1005, 14:17–19. The agent permits distinct modes of communication based on the status of the recipient, including the “core states” of whether the recipient is online or offline and “related status information” such as whether the recipient does not want to be disturbed. *Id.* at 14:19–15:1. Considering the core states, the software agent offers the originator alternative ways to communicate with the recipient, the choice of which can be either dictated by the originator or automatically selected by the software agent, according to stored rules. *Id.* at 15:3–6. If the recipient is online, the originator can either begin a real-time “intercom” call, which simulates a telephone call, or a voice instant messaging session, which allows for an interruptible conversation. *Id.* at 15:8–10. If the recipient is offline, the originator can either begin a voice mail conversation that will be delivered the next time the recipient logs in or can be delivered to the recipient's e-mail as a digitally encoded Multipurpose Internet Mail Extension (“MIME”) attachment. *Id.* at 15:15–17. Zydney explains that the choice of the online modes “depends on the activities of both parties, the intended length of conversation and the quality of the communications path between the two individuals, which is generally not controlled by either party,” and that the choice of the offline delivery options “is based on the interests of both parties and whether the recipient is sufficiently mobile that access to the registered computer is not always available.” *Id.* at 15:10–14, 15:17–19.

Once the delivery mode has been selected, the originator digitally records messages for one or more recipients using a microphone-equipped

device and the software agent. Ex. 1005, 16:1–3. The software agent compresses the voice and stores the file temporarily on the PC if the voice will be delivered as an entire message. *Id.* at 16:3–4. If the real-time “intercom” mode has been invoked, a small portion of the digitized voice is stored to account for the requirements of the Internet protocols for retransmission and then transmitted before the entire conversation has been completed. *Id.* at 16:4–7. Based on status information received from the central server, the agent then decides whether to transport the voice container to a central file system and/or to send it directly to another software agent using the IP address previously stored in the software agent. *Id.* at 16:7–10. If the intended recipient has a compatible active software agent online after log on, the central server downloads the voice recording almost immediately to the recipient. *Id.* at 16:10–12. The voice is uncompressed and the recipient can hear the recording through the speakers or headset attached to its computer. *Id.* at 16:12–14. The recipient can reply in a complementary way, allowing for near real-time communications. *Id.* at 16:14–15. If the recipient’s software agent is not online, the voice recording is stored in the central server until the recipient’s software agent is active. *Id.* at 16:15–17. In both cases, the user is automatically notified of available messages once the voice recordings have been downloaded to storage on their computer. *Id.* at 16:17–19. The central server coordinates with software agents on all computers continuously, updating addresses, uploading and downloading files, and selectively retaining voice recordings in central storage. *Id.* at 16:19–21.

Zydney discloses that the voice container also has the ability to have other data types attached to it. Ex. 1005, 19:6–7. Formatting the container

using MIME format, for example, “allows non-textual messages and multipart message bodies attachments [sic] to be specified in the message headers.” *Id.* at 19:7–10.

Figure 3 of Zydney is reproduced below.

FIG. 3

302	ORIGINATOR'S CODE
304	ONE OR MORE RECIPIENT'S CODE
306	ORIGINATING TIME
308	DELIVERY TIME(S)
310	NUMBER OF "PLAYS"
312	VOICE CONTAINER SOURCE
	PC
	TELEPHONE AGENT
	NON-PC BASED APPLIANCE
314	VOICE CONTAINER REUSE RESTRICTIONS
316	ONE TIME AND DESTROY
318	NO FORWARD
320	PASSWORD RETRIEVAL
322	DELIVERY PRIORITY
324	SESSION VALUES
326	SESSION NUMBER
328	SEQUENCE NUMBER FOR PARTITIONED SEQUENCES
330	REPEATING INFORMATION
334	NO AUTOMATIC REPEAT
336	REPEAT TIMES
338	REPEAT SCHEDULE

Figure 3, above, illustrates an exemplary embodiment of Zydney's voice container structure, including voice data and voice data properties components. Ex. 1005, 2:19, 23:1–2. Referring to Figure 3, voice container components include:

[O]riginator's code 302 (which is a unique identifier), one or more recipient's code 304, originating time 306, delivery time(s) 308, number of “plays” 310, voice container source 312 which may be a PC, telephone agent, non-PC based appliance, or other, voice container reuse restrictions 314 which may include one time and destroy 316, no forward 318, password

retrieval 320, delivery priority 322, session values 324, session number 326, sequence number for partitioned sequences[] 328, repeating information 330, no automatic repeat 332, repeat times 334, and a repeat schedule 336.

Id. at 23:2–10.

b. Independent Claim 3

As reproduced above, independent claim 3 of the '622 patent recites a messaging system that receives an “instant voice message” from one of a plurality of instant voice message client systems, “wherein the instant voice message includes an object field including a digitized audio file.” Ex. 1001, 24:23–27. In asserting that Zydney anticipates claim 3, Petitioner maps Zydney’s voice container to the recited “instant voice message” and Zydney’s digitized voice message to the recited “digitized audio file.” *See* Pet. 14–19.

With respect specifically to the limitation “wherein the instant voice message includes an object field including a digitized audio file” (the “object field limitation”), Petitioner contends that Zydney teaches that the voice container “includes a ‘body,’ which . . . holds the digitized voice message” and “corresponds to the claimed ‘object field’ in an instant voice message to carry a digitized audio file.” *Id.* at 19 (citing Ex. 1005, 23:1–2, 34:4–7, Fig. 7). Pointing to Figure 3 and corresponding text of Zydney, Petitioner alleges that “Zydney teaches an arrangement of fields 302–338 for the ‘voice data properties components’ of a voice container” and that “[t]he voice container carries data organized in a set of fields.” *Id.* (citing Ex. 1005, 23:1–12, Fig. 3). Petitioner concedes that “Figure 3 does not expressly show the ‘body’ of the voice container that carries the digitized voice message,” but contends that “Zydney teaches elsewhere that the voice container

includes a ‘body,’ which is in addition to the voice data properties components shown in Figure 3.” *Id.* Relying on Dr. Min’s testimony, Petitioner further contends that a person of ordinary skill in the art “would have appreciated that providing the digitized voice message in an object field (e.g., body) of the voice container would allow the recipient software agent to locate and extract the digitized voice message from other data stored in the voice container.” *Id.* (citing Ex. 1003 ¶ 62).

Patent Owner disputes Petitioner’s evidence with regard to the object field limitation. Prelim. Resp. 20–27. Patent Owner argues, *inter alia*, that, “[w]hile the Petition points . . . to an alleged ‘arrangement of fields’ in Figure 3 of *Zydney*, . . . *Zydney* does not use the word ‘field’ *at all* in relation to its structural description of the voice container.” *Id.* at 22. “[E]ven if *Zydney* had described elements 302 through 338 of Figure 3 as fields,” Patent Owner contends, “none of [those] *twenty-five* ‘voice data components’ . . . is an ‘object field *including a digitized audio file.*’” *Id.* (citing Ex. 2001 ¶¶ 43–57). Further, Patent Owner contends, “[t]here is likewise no merit to Petitioner’s suggestion that *Zydney*’s use of the word ‘body’ somehow anticipates the ‘object field’ as claimed.” *Id.* at 23. Patent Owner points out that although *Zydney* recites the word “body” two times, nothing in those recitations characterizes the body as an “object field,” and “[i]ndeed, *Zydney* provides no detail on the structure of the ‘body.’” *Id.* (citing Ex. 1005, 34:4–10; Ex. 2001 ¶¶ 56–57). Patent Owner also argues that, to the extent Petitioner intended implicitly to rely on an inherency argument, such argument fails because Petitioner has not shown that *Zydney* “*necessarily* requires its ‘voice container’ to include a specific ‘object field including a digitized audio file.’” *Id.* at 26–27.

We agree with Patent Owner that Petitioner has not demonstrated a reasonable likelihood of showing that the object field limitation of claim 3 is disclosed by Zydney. We recognize that we previously instituted trial with respect to claim 3 over the combined teachings of Zydney and other references in Cases IPR2017-01667 and IPR2017-01797. In those cases, however, the respective petitioners proffered expert testimony and advanced arguments, different from those presented here, sufficient to establish a reasonable likelihood that the claimed object field would have been obvious to a person of ordinary skill in the art. There is insufficient evidence on the record to support Petitioner's contention that Zydney's disclosure of a message "body," without any disclosure of the structure of that body, expressly discloses the recited object field.

We also agree with Patent Owner that Petitioner has not established a reasonable likelihood of showing that the claimed object field is inherently anticipated by Zydney. See Prelim. Resp. 27–28. Although Zydney discloses that its voice container includes "voice data" and "information concerning codec type, size, sample rate, and data," in addition to the "voice data properties components" depicted in Figure 3 (see Ex. 1005, 23:1–2, 23:10–12), and we understand that Figure 3, therefore, does not provide a "comprehensive . . . list" of voice container components (*cf.* Prelim. Resp. 27), we agree with Patent Owner that Petitioner has not shown that voice data necessarily would be included in an "object field" (see *id.* at 26–27).

For the foregoing reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in its contention that claim 3 is anticipated by Zydney.

c. Dependent Claims 4–8, 11, 13, and 18–21

Claims 4–8, 11, 13, and 18–21 depend directly or indirectly from independent claim 3. Ex. 1001, 24:28–52, 24:61–25:3, 25:9–13, 25:31–50. Accordingly, the deficiency in Petitioner’s anticipation showing for independent claim 3, discussed above, also applies to these claims. Petitioner’s arguments directed to the additional limitations of these dependent claims do not cure the deficiencies. See Pet. 19–33.

*3. Ground 2: Obviousness over Zydney and Enete
(Claims 3–8, 11, 13, and 18–23)*

a. Independent Claim 3

Petitioner advances an alternative theory that claim 3 is unpatentable over the combined teachings of Zydney and Enete. Pet. 33–38. In particular, Petitioner relies on Enete as “confirm[ing] that an instant voice messaging system having a central server . . . that communicates with instant voice message client systems via a network interface was a predictable option before the ’622 patent” (*id.* at 34) and as demonstrating that the features of a central server maintaining connection information for client software agents (corresponding to the “communication platform system” and “instant voice message client systems” recited in claim 3, respectively) were well-known in instant voice messaging systems before the invention of the ’622 patent (*id.* at 35). Regarding the object field limitation of claim 3, however, Petitioner relies only on its arguments presented in connection with its assertion that Zydney anticipates claim 3. *Id.* at 38. For the reasons stated in our discussion of those arguments above, we also conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing in

establishing that claim 3 is unpatentable over the combined teachings of Zydney and Enete.

b. Dependent Claims 4–8, 11, 13, and 18–23

Claims 4–8, 11, 13, and 18–23 depend directly or indirectly from independent claim 3. Ex. 1001, 24:28–52, 24:61–25:3, 25:9–13, 25:31–58. Accordingly, the deficiency in Petitioner’s obviousness showing for independent claim 3, discussed above, also applies to these claims. Petitioner’s arguments directed to the additional limitations of these dependent claims do not cure the deficiencies. See Pet. 38–46.

4. Remaining Grounds (Claims 9, 10, 12, and 14–17)

Claims 9, 10, 12, and 14–17 depend directly or indirectly from independent claim 3. Petitioner contends that claim 9 is unpatentable over the combined teachings of Zydney, Enete, and RFC2131; that claims 10 and 14–17 are unpatentable over the combined teachings of Zydney, Enete, and Stern; and that claim 12 is unpatentable over the combined teachings of Zydney, Enete, and Coussement. Pet. 46–68. Petitioner, however, does not rely on any of RFC2131, Stern, and Coussement as teaching or suggesting the object field limitation of claim 3 that we conclude Zydney and Enete lack. Accordingly, for the reasons stated in our analysis above of Petitioner’s contentions with respect to claim 3, we determine that Petitioner does not show a reasonable likelihood of prevailing in establishing that any of claims 9, 10, 12, and 14–17 are unpatentable on the respective grounds presented.

C. Additional Considered Arguments

Patent Owner has advanced a variety of additional arguments concerning the repeated challenges to the '622 patent and related patents asserted by other parties, an alleged failure on the part of Petitioner to name all real parties in interest, and the constitutionality of *inter partes* review proceedings. Prelim. Resp. 1–15, 31–32. We have considered those arguments, but in view of our determination not to institute trial on the basis of Petitioner's substantive grounds, we do not address those arguments further herein.

IV. CONCLUSION

In summary, we do not institute *inter partes* review on any challenged claim as shown below:

Ground	Basis	Claims Challenged	Claims Instituted
1	§ 102 Zydney	3–8, 11, 13, 18–21	none
2	§ 103 Zydney and Enete	3–8, 11, 13, 18–23	none
3	§ 103 Zydney, Enete, and Stern	10, 14–17	none
4	§ 103 Zydney, Enete, and Coussement	12	none
5	§ 103 Zydney, Enete, and RFC2131	9	none
Summary		3–23	none

V. ORDER

Upon consideration of the record before us, it is, therefore,
ORDERED that the Petition is *denied*, and no trial or *inter partes*
review is instituted on any asserted ground.

IPR2017-02080
Patent 8,724,622 B2

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